

REPUBLIC OF POLAND

**FINAL
COUNTRY PROCUREMENT
ASSESSMENT REPORT**

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ACRONYMS

APP	Act on Public Procurement
CPAR	Country Procurement Assessment Report
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EU	European Union
FY	Financial Year
GCC	General Conditions of Contract
GEF	Global Environment Facility
GOP	Government of Poland
ICB	International Competitive Bidding
MOF	Ministry of Finance
NBP	National Bank of Poland
NCB	National Competitive Bidding
NRC	Negotiations with Retaining Competition
OPP	Office of Public Procurement
PCBC	Polish Testing and Certification Center
PLN	Polish New Zloty
PPB	Public Procurement Bulletin
SBD	Standard Bidding Documents
SCC	The Supreme Chamber of Control (NIK)
UNCITRAL	United Nations Commission for International Trade Law
USAID	United States Agency for International Development
WTO	World Trade Organization

POLAND
COUNTRY PROCUREMENT ASSESSMENT REPORT
(CPAR)

PREFACE

Date of the Report

This report was finalized in July 2000 after discussions in May 2000 with the Office of Public Procurement.

Basis of Report

This report, which updates the CPAR on Poland dated March 15, 1996, was prepared on the basis of the findings of a Bank mission to Poland from August 30 to September 9, 1999, and analysis of the materials and other information collected. The Bank's mission comprised of Messrs. Naushad Khan, Senior Procurement Specialist, (CPAR team leader); Shaun Moss, Senior Procurement Specialist, and Robert Kietlinski (Operations Officer, World Bank Office, Warsaw). The CPAR counterpart team appointed by the Government of Poland comprised, for the Ministry of Finance, Ms. Agnieszka Rudniak, Deputy Director of the International Department and Ms. Beata Nehrebecka, Head of Division in the International Department and, for the Office of Public Procurement Office (OPP), Dr. Marian Lemke, Chairman, and Mr. Piotr Nils Gorecki, Director of the Department of European Integration and International Relations. The Bank is grateful to the Polish Government's counterpart team for their full and proactive commitment to the CPAR mission, participation in key meetings and, in particular, for the comprehensive dialog, which they entered into with the Bank, to discuss the issues identified by the assessment and to develop the recommendations which this report presents.

Purpose of the Report

The World Bank undertakes assessments of the procurement environment, covering both public and private sectors in borrowing member countries on a systematic basis. The objective of the assessment is to determine the compatibility of national procurement law and practices with the principles of economy and efficiency and with international procurement practices. The findings and recommendations of this work not only helps the Bank ensure that sound procurement practices are followed in the projects that the Bank finances, but also enables it to provide valuable feedback to member countries regarding the strengths and weaknesses of their public procurement systems. This enables member countries to improve the transparency of the procurement process and enhance the efficiency of public spending.

Acknowledgements

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Bank Office in Warsaw assisted with logistics and the team is grateful to them for their patience and valuable support. The team is particularly grateful to Ms. Bola Surakat for processing the report.

FINDINGS AND RECOMMENDATIONS

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

Public Sector

1. Legal and Regulatory Framework

1.1 The principal sources of law in Poland are its constitution and laws/acts passed by Sejm, decrees of the Council of Ministers, and those of government ministers. The general legal framework in Poland is comprehensive. This is the result of Poland's efforts that began in 1991 to adapt itself to the new system of market economy. The efforts are ongoing, both to refine the legal framework further as well as to achieve consistency among the laws.

1.2 The current legal framework for public sector procurement in Poland consists of the Act on Public Procurement (APP) of June 10, 1994, as amended on August 29, 1997, and the following Ordinances:

- (i) Ordinance of the Council of Ministers dated December 29, 1994 on domestic preferences in public procurements;
- (ii) Ordinance of the Minister of Physical Planning and Construction of December 30, 1994 on the methods and basis for preparing investor's cost estimates; and
- (iii) Ordinance of the Minister of Physical Planning and Construction of December 30, 1994 on establishing the threshold values of construction works for which security for performance of the contract is necessary and the forms of this security.

1.3 The APP is based on the UNCITRAL Model Law with substantial customization of the model to the Polish general legal framework. The Polish procurement legal framework is generally comprehensive, clear, and well-coordinated. The amendment made in August 1997 substantially improves upon the June 1994 law. It also reflects the feedback that the World Bank provided to the Polish government through the CPAR of March 15, 1996.

1.4 The other major procurement-related laws that complement and supplement the procurement legal framework are the Civil Code, Commercial Code, Labor Code, Customs Law, Foreign Exchange Act, Tax Laws, Insurance Law, Law of the Supreme Chamber of Control, and the Law on Public Finance which improves public servant accountability. These laws are comprehensive and are frequently amended not only to create a well coordinated general legal framework in Poland, but also to harmonize these with EU directives in light of the impending EU membership of Poland planned for 2003-2005.

1.5 Although the legislative environment for public procurement in Poland is already well-developed, there remain a number of deficiencies in the current law, which need to be remedied in order to promote transparency and competitiveness, as well as to increase the economic efficiency achieved through the expenditure of public funds on procurement. The current law does, nevertheless, have some notable strengths. For example, in 1998, the use of the Unlimited Tendering method – the primary open tendering procedure, the use of which is mandatory for contracts above €200,000, with the exception of certain waivers - yielded an average of 12% savings against cost estimates. In addition, there are deficiencies in the application of the law in implementation, which the Government needs to address. The key to much-needed improvement in implementation is more focused government support to procuring entities at all levels of government through the provision of better procurement guidelines, documentation, preparation and implementation of regular training programs, and accreditation by government of training programs conducted by private sector training providers.

1.6 It is worth mentioning here that the OPP provided the CPAR team with the new draft of the public procurement law. This draft further harmonizes the Polish procurement legislation with the EU directives on procurement. This law also deals with some of the shortcomings of the APP. For example, the draft Law requires that bids be opened immediately after submission. The Bank's Legal Department has reviewed the new draft law and their comments are attached at Attachment 2.

2. Procedures and Practices

2.1 The preferred method of conducting public procurement is Unlimited Tendering which allows all interested parties to participate in competition except that procuring entities may limit participation solely to domestic bidders, including foreign bidders who have a branch or representative office in Poland, for contracts estimated less than €30,000. The other procurement methods used are limited tendering; two-stage tendering; negotiation with retaining competition; request for quotations; and single source selection. A public procurement valued less than €30,000 does not require advertisement, written procedures, proceedings records, and tender security unless the procurement occurs in Unlimited Tendering, for which an advertisement in a public place and in the Public Procurement Bulletin is required. The use of a different method other than the Unlimited Tendering, if the value of the contract exceeds €200,000, is subject to a waiver by the OPP Chairman. The strengths and weaknesses of the procurement procedures and practices in Poland are as follows:

Strengths

- (i) A single Act governs procurement by both central and local governments. The main legislative provisions governing public procurement are contained in the Act, with specific provisions made in the secondary legislation or Ordinances which are more easily amended without recourse to voting in the Sejm.
- (ii) There is an autonomous Office for Public Procurement (OPP), whose Chairman reports directly to the Prime Minister, with clearly defined authority and obligations under the Act. The Chairman of the OPP has a legal obligation to submit an Annual

Report on the functioning of the public procurement system to the Council of Ministers.

- (iii) Procurement is substantially decentralized to the procuring entities. The role of the OPP is to provide oversight and support to procuring entities for effective and correct implementation of the Act.
- (iv) The Act forbids splitting of procurement needs in order to avoid the application of the Act.
- (v) The Act clearly establishes Unlimited Tendering as the 'primary procedure for conducting public procurements.' Contracts estimated to cost more than €30,000 are open equally to all bidders.
- (vi) For exceptional procurements >€200,000 as well as single source procurement, procuring entities must apply to the Chairman of the OPP for permission to use a procurement method other than Unlimited Tendering.
- (vii) The communications arrangements for advertising and notification of bidding opportunities, particularly the Public Procurement Bulletin (PPB) and OPP's website, are exceptionally advanced and, at least national government level, generally work effectively.
- (viii) The Act makes specific/express provision for the consolidation of procurements of several entities in order to achieve economies of scale.

Weaknesses

- (i) There is no governmental supervision of procurements <€3,000 per contract and no ceiling on the value of funds which can be spent by such uncompetitive methods. Contracts can be directly negotiated and there is no legal requirement for procuring entities to document the procurement process.
- (ii) The criteria for the OPP's granting of waivers to procuring entities using a procurement method other than Unlimited Tendering for procurements >€200,000 although stated in the Act are flexibly interpreted to circumvent Unlimited Tendering. The OPP is not required to report on waivers granted, which seem to be of considerable numbers (almost 15,000 in 1999).
- (iii) The Negotiations with Retaining Competition (NRC) procurement method, which may be used even for purchases >€200,000, albeit with an OPP waiver, is particularly open to abuse. For example, for procurements >€200,000, whilst procuring entities are obliged to place an advertisement in the PPB, they need only invite two bidders to participate in negotiations. Not only is this procurement method uncompetitive and

untransparent, it also presents ample opportunity for corruption in negotiations between procuring entities and the invited bidders.

- (iv) The APP contains unnecessary limitations on the participation of foreign bidders in public tenders, including a provision that, if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring agency may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products.
- (v) The provisions of the Act for public bid openings are unclear and do not require opening of bids immediately after the bid submission deadline. The new draft law (see paragraph 1.6 above) requires that bids be opened immediately after submission.
- (vi) Compliance with the notification and advertising requirements of the procurement law is weak at sub-national levels of government, where abuses include restricted dissemination of information on bidding opportunities and short bidding periods, which favor local bidders.
- (vii) There are no standard bidding documents for the main types of procurement – goods, works and services – with the result that there is wide disparity in the type and quality of procurement and contract documentation used by various procuring entities. At the time of submitting their bids, bidders are often unsure of their contractual rights and obligations. Equally, the rights and obligations of the procuring entities (employer/purchaser/client) are often inadequately defined.
- (viii) Assessment of bidders' qualifications is invariably done as part of bid evaluation, with the result that the outcome of bid evaluations may be based on factors other than the content of the bidders' bids.
- (ix) The Two-Stage Tendering procedure, provided for in the Act, is often misused, with the first stage acting as a prequalification exercise.
- (x) Evaluation of bids is invariably done on subjective criteria, usually based on Merit Points. The result is that bid evaluation is often subjective, open to manipulation and has unpredictable results.
- (xi) There are no separate, dedicated selection methods for procurement of services. Methods designed for goods and works, but inappropriate for procurement of services, are used.
- (xii) The provision of training of public procurement officials is inadequate, with little or no participation by the Government and no standards set or recognizable qualifications provided.

- (xiii) Bid evaluation committees often lack evaluators with appropriate technical qualifications and expertise.
- (xiv) Planning of procurement, particularly works projects, is weak, especially at local government level, with the result that cost and time overruns are commonplace in works contracts.
- (xv) The provision for protests and appeals, as provided in the APP, is not adequate. A major weakness of the procedure is that, if the procuring entity fails to respond to a protest within seven days, the protest is deemed to have been dismissed. This does not offer aggrieved bidders adequate right of redress. Every complaint or protest within the specified period should be considered and suitably resolved in writing.
- (xvi) While most exceptions to the Act require the issue of waivers by the Chairman of the OPP, the criteria for such waivers are unclear and the OPP does not report on the bases or number of waivers granted. According to procuring entities, such waivers are easily obtained.
- (xvii) Whilst the Office for Public Procurement (OPP) is autonomous, the current arrangement whereby the Prime Minister directly appoints and may dismiss its Chairman may leave the holder of this crucial position open to political pressure. The independence and integrity of the OPP would be enhanced by the adoption of appointment and dismissal procedures which are less directly political and which include a greater element of due process, independent oversight and public scrutiny.
- (xviii) Whilst the APP has provisions which render ineligible for participation in public procurement natural persons who have been sentenced for a crime committed in connection with procurement proceedings and legal persons who employ an officer thus sentenced, the effectiveness of these provisions would be strengthened if the OPP were to instigate a practice of publishing the names of people and firms thus debarred in the PPB and on the OPP website.
- (xix) Procurement is not a recognized profession within the public service.

2.2 Limitations on Participation by Foreign Bidders: The APP establishes the principle that domestic and foreign bidders may participate in public tenders on an equal basis.

However, for tenders whose value is estimated at <€30,000, the APP provides that procuring entities may limit participation in bidding to domestic bidders and foreign bidders which have a branch or representative office in Poland.

Also, the APP provides that ‘if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring entity may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products.’ This limitation

is not linked to any financial threshold. Although its application in practice is unclear, it could have the effect of closing the Polish public procurement market to foreign consulting firms and works contractors and, as such, we believe that it is unnecessarily restrictive and should be removed.

2.3 Application of Domestic Preference: The Council of Minister's Ordinance of December 28, 1994 'On Applying Domestic Preferences in Conducting Public Procurements' makes it obligatory to apply a domestic preference in the evaluation of bids for all procurements. This applies to all procurement methods available under the APP, including those where bidders are invited directly. The margin of preference is 20% for goods, civil works and services and, in the comparison and evaluation of bids, this percentage is subtracted from the bid price of qualifying domestic bidders.

To qualify for domestic preference, a bidder must meet the following requirements:

- for goods contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;
- for services contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;
- for civil works contracts: use at least 50% of the value of domestic raw materials and products and by means of domestic companies taking part in at least 50% of the performance of the procurement.

We believe that this combination of, on the one hand, limitations on the participation of foreign bidders and exclusion of foreign works and services with, on the other hand, the obligatory application of domestic preference to all procurement methods, including restrictive methods, may have the effect of creating an over-protected and uncompetitive domestic market, which may deliver poor economic value for public-sector procuring entities.

We recommend, therefore, that the Government introduce more open and competitive provisions in this area, comprising:

- delete the provision that, for tenders <€30,000, procuring entities may limit participation in bidding to domestic bidders and foreign bidders which have a branch or representative office in Poland;
- delete the provision that if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products;
- allow foreign bidders and inputs to compete in public procurements - irrespective of the subject of the procurement (goods, works or services), the procurement method or value of the procurement – but continue the current practice of applying domestic preference, as described under 2.3 above. For procurements estimated at <€200,000, bidding documents would still be in the Polish language and foreign bidders would be required to bid in Polish;

- for procurements whose estimated value is >€200,000, domestic preference would still be applied to the Unlimited Tendering procurement method, but the bidding documents should be in an international language, to promote participation by foreign bidders.

3. Organization and Resources

3.1 The responsibility for conducting public procurement is decentralized to the individual 'procuring entities' e.g., ministries, municipalities etc. Each procuring entity has the right to initiate and conduct its own procurement financed with budgetary resources, and subject to the granting of waivers for certain applications. The financial aspects of the procuring entities' conduct of public procurement are governed by the Public Finances Act, which includes provisions for auditing of procurement transactions and related expenditures by the Supreme Chamber of Control (NIK) or the regional clearing houses. The scope of the Act includes all public procurement financed fully or partially with public funds.

3.2 The identity of the public agencies covered by the Act is determined by the source of funds they receive. Agencies who spend funds raised from their trading activities are not covered by the provisions of the Act only in respect of those funds. The procuring entities subject to the Act are: state units and support services created by the state budgetary units; funds established by state earmarks; units of local self-government and self-government assemblies; cooperatives, foundations and associations to the extent that they dispose of public funds; public utility entities, defined as state organizational units, municipal organizational units and subsidiaries; state agencies within the scope not regulated by separate provisions of the law; and public radio and television broadcasting entities.

3.3 The Act gives the Council of Ministers the authority to designate, by ordinance, other entities which may be governed by the Act. The Council of Ministers may, also by ordinance, define specific principles for conducting public procurement related to: states of natural disaster; the protection of internal and external national security; and the protection of state secrets.

3.4 Role and Functions of the Office for Public Procurement (OPP): The Act defines the duties and obligations of the Chairman of the OPP, who is directly responsible to the Prime Minister and whose rank is equivalent to that of a Deputy Minister of Government. The Chairman is appointed and may be dismissed by the Prime Minister. The Chairman's duties are: approving the use by a public procuring entity of a procurement method other than Unlimited Tendering for contracts estimated to cost more than €200,000 equivalent; establishing, maintaining and publishing a list of arbiters to review appeals; presenting an Annual Report on the functioning of the public procurement system to the Council of Ministers; preparing draft regulations and Acts on public procurement; disseminating general conditions, forms of contract, rules and standard procedures for conducting public procurement; collecting information about the planning and performance of public procurement; preparing training programs, conducting and encouraging training on public procurement; international cooperation on public procurement matters; publication of the Bulletin of Public Procurement; motioning the Council of Ministers to assign a particular procuring entity to conduct a joint procurement exercise on behalf of a number of administrative units which have a common procurement requirement; requiring procuring entities to provide and publish information

about the conduct of public procurement; notifying breaches of the Act to the relevant jurisdiction, where there has been a violation of budgetary discipline.

3.6 Granting of Waivers by the OPP: The Act authorizes the Chairman of the OPP to grant waivers in cases where procuring entities wish to: use a procurement method other than Unlimited Tendering for contracts estimated to cost more than €200,000 equivalent; use the Single-Source procurement method for contracts estimated to cost more than €20,000 equivalent. This system is adhered to and appears to work reasonably well. However, its weakness is the absence in the Act or secondary legislation of any criteria to judge each waiver application. This may be contrary to the interests of transparency and competitiveness. There is no hard evidence in this regard, as the OPP does not report on the number of waivers granted. It may, however, be noted that the procuring entities report that they have no difficulty in obtaining waivers from the OPP.

3.7 Monitoring of Low-Value Purchases: Another weakness in the current system is that the Act does not provide for any particular method of procurement for purchases <€3,000 made by procuring entities, and the OPP does not monitor such purchases. There is ample evidence of abuse of this flexible procedure, including high volumes of low-value purchases made through the Single-Source procurement method and procurement being conducted without any written record. Such procedures are clearly open to abuse and there is much evidence that such abuse occurs, particularly at local government level. For example, one major city authority reported that it organizes its procurement staff by value of contracts placed, with the same small group of procurement officers dealing repeatedly with undocumented, Single-Source procurements under €3,000. Such procurement and staffing arrangements are clearly open to abuse.

3.8 Budgetary Allocations to Fund Public Procurement: The Government's annual budgeting cycle adversely affects the procuring entities' efficient conduct of procurement because they usually learn about their budgetary allocation only in April or May each year for funds to be spent by December 31. As a result, they find it difficult to plan their procurement effectively and often have to cram their annual expenditures on procurement into an unrealistically short time period of perhaps as little as seven or eight months. There is evidence that this also affects the procuring entities' selection of procurement methods in that, faced with shorter time frames to implement procurement, ministries apply frequently to the OPP for waivers to use methods other than Unlimited Tendering, which takes more time.

3.9 It is recommended that the Ministry of Finance and other stakeholders develop a method to inform entities of the approval of their budgetary allocation as early as possible, as well as to ensure financing beyond the one-year budgetary cycle.

3.10 Organization of Procurement Operations within Procuring Entities: Most procuring entities form bidding committees to undertake procurement exercises. Although their membership varies depending on the value and complexity of the procurement, they have some permanent members who participate in all procurement activities, from planning to bid evaluation and contract administration. The permanent involvement of a small number of procuring entity staff in all procurements and all bid evaluations may create conflicts of interest and increase the opportunity for corruption.

3.11 We recommend that the OPP should promote the creation by procuring entities of a two-tier approach to the management of procurements >€200,000. This structure would comprise:

- a permanent **Procurement Committee**, comprising three members of the senior management team of the procuring entity, for example at Director General or Head of Department level. The functions of this Procurement Committee would be to:
 - approve annual procurement expenditure programs and ensure adequate planning of all tenders >€200,000;
 - oversee the entire procurement procedure of each tender, to ensure its probity and compliance with the Act on Public Procurement;
 - ensure that the most appropriate and competitive procurement method is used;
 - critically appraise any proposal to use a procurement method other than Unlimited Tendering for purchases >€200,000 before the submission of such an application to the OPP;
 - appoint the members of the Bidding Committee for each procurement and nominate its Chairman;
 - approve the bidding documents before their issue to the bidders;
 - approve the bid evaluation report and recommendation for award of contract, made by the Bidding Committee.

- for each procurement >€200,000, an ad hoc **Bidding Committee**, comprising up to five staff, including Procurement Officers, Technical Specialists/Engineers in the discipline relevant to the subject matter of the procurement, and Finance/Economics/Accounting Specialists. For each procurement, the end user department of the procuring entity should be represented in the Bidding Committee. The members of each Bidding Committee would vary from one procurement exercise to another, depending on the subject matter of the procurement. The functions of the Bidding Committee would be to:
 - prepare a procurement plan and cost estimate for each procurement;
 - implement the procurement procedure in accordance with the Act on Public Procurement;
 - draw up the bidding documents, including the technical specifications, to be approved by the Procurement Committee;
 - evaluate bids and prepare the bid evaluation report and recommendation for award of contract, to be approved by the Procurement Committee.
 - after approval of the recommendation for award by the Procurement Committee, place the contract with the winning bidder.

- We believe that this separation of functions would deliver the following benefits:
 - increase the control of procuring entities' senior management over the planning and execution of annual procurement programs and individual tenders >€200,000;
 - reduce the opportunity for political interference in contract award decisions;
 - reduce the opportunity for individual employees of procuring entities to exercise discretion in the award of contracts or to forge corrupt relationships with bidders;
 - increase the accountability of procuring entity staff involved in procurement.

For procurements <€200,000, where the regular involvement of the procuring entity's senior management is not warranted, procuring entities should put in place appropriate organizational arrangements which balance decision-making authority with accountability for probity and compliance with the APP. Senior management should require a periodic (e.g. quarterly) report on all procurements <€200,000 and should also ensure that the conduct of such procurements is subject to regular audits by the procuring entity's Internal Audit function, in addition to the routine scrutiny exercised by external audit bodies, such as NIK and the Regional Clearing Houses.

3.12 Training of Public-Sector Officials in Public Procurement: While the OPP prepares and disseminates materials on procurement and related topics, for the use of procuring entities' staff for self-training purposes, it takes no direct role in the provision or management of such training. With the exception of the initial training programs arranged and funded by external sources, such as the EU Phare Program, the private sector is assuming this role increasingly. We believe that the OPP should play a proactive role in fulfilling its obligation of managing the preparation and provision of training to the staff of the procuring entities, both by the public and the private sectors. The need for the OPP to play this role is particularly acute, given that, throughout the public sector, there is a marked shortage of trained procurement personnel. Specific areas of weakness, which need to be addressed by training, include: procurement planning, and scheduling; cost estimating, particularly for civil works contracts; drafting of comprehensive, appropriate bidding documents; bid evaluation; and contract administration.

3.13 The OPP should adopt a more proactive role in providing training for public procurement officials from its own resources and in promoting the growth of other sources of provision, such as universities, technical universities and business schools. The OPP should also promote the development in Poland of an accreditation function, whereby training courses can be independently accredited to a defined quality standard, leading to the award of a recognized professional procurement qualification.

3.14 Status of the Procurement Profession: Procurement is not yet recognized as a profession in its own right in Poland and, as a result, procurement positions in government service are often occupied by non-specialists who have no career progression path ahead of them. Staff working in the procurement function are employed and paid on the same terms as other public-sector employees. It is clearly in the interests of all concerned – national Government, local government and the individual public employees - that Poland should grow a cadre of professional public procurement officers, adequately trained, professionally qualified and appropriately remunerated. Such a strategy is one key to improving the quality and probity of the public procurement function and to attracting and retaining high-caliber staff to the profession.

3.15 We recommend that the OPP initiate a dialogue within the Government, the objective of which should be to have procurement established as a separate career stream in the Polish civil service, both at national and local government levels. This action should be supported with separate job descriptions, qualifications requirements, career structures and salary scales for procurement officers, as well as an appropriate accreditation system.

3.16 Conduct and Ethics: There is currently no published Code of Ethics for procurement and other officers working in the public sector in Poland. The result is that procurement staff lack any clear guidance on the norms and values to which they are expected to adhere in the way they do their jobs. We recommend that the OPP drafts and publishes a clear and appropriate Code of Professional Ethics for Public-Sector Procurement Officers and that it communicates and promotes this Code throughout all procuring entities. This initiative may have to be coordinated with or implemented through the appropriate civil service administration.

4. Audit and Anti-Corruption Measures

4.1 Auditing of public procurement is exercised by different government agencies at two levels: at national level, the Supreme Chamber of Control (NIK) audits procurement conducted by national government agencies, whilst the Regional Clearing Houses, at regional level, control local government procurement. Both have the authority to refer breaches of the Act to the Committee for Budgetary Discipline in the Ministry of Finance for legal redress, which may be taken against the individual procurement officer or the organization. However, it is widely recognized that both these auditing bodies are severely under-resourced, with the result that auditing of public procurement is less comprehensive than may be necessary to ensure a high degree of compliance with the Act and to combat corruption effectively.

4.2 In order to conduct adequate compliance auditing, it is essential that efforts by NIK and the Regional Clearing Houses be strengthened. The task of this auditing is enormous and will increase as a result of the decentralization of administrative processes to regional and local self governments. Therefore, the need to strengthen audit capacity requires the urgent attention of the Government. It is also important that the frequency of audits by NIK and other auditing bodies be increased and their scope widened. Ministries and other government agencies also need to strengthen their own internal controls and audit functions.

4.3. During 1999, in the wake of the stories of corruption in public administration at both national and local levels, the government made an assessment of the extent of corruption in public administration, as well as that of the effectiveness of the anti-corruption laws and policies. In its efforts to fight corruption, Poland has taken several budgetary control measures, e.g. establishment of a system of budgetary control committees at different administrative levels. It has signed the European anti-corruption convention (January 27, 1999) and is adjusting the Polish penal law, the penal procedure and administrative law to the European standards in force. In addition, at the request of the Polish Government, the World Bank prepared, in October 1999, a report on corruption in Poland. The report contains a review of the priority areas and proposals for action and is under government consideration.

4.4 The World Bank study, to which the CPAR team contributed, also found that public procurement, among others, is a major area of corruption. The study found ample evidence of high-level corruption affecting public procurement, violations of the APP and waste of public money through malpractice at both national and sub-national levels of the administration. NIK has recently exposed several high-profile cases of malpractice, for example involving Polish Railways (PKP),

Social Insurance Board (ZUS), where the APP was breached, large amounts of public funds wasted and expensive contracts mishandled. Areas which have proven particularly susceptible to corruption include high-value IT contracts, railway equipment, road building and other construction projects. Reported malpractices include: bribe rates set as percentage of the price of the winning bid; contracts given to companies belonging to the family of council members; bidding companies have the same owner or the same address, or fictitious addresses. Construction contracts for bridges and office buildings, as reported in the study, appear to be particularly vulnerable to corrupt practices, both during bidding and contract performance stages.

4.5 Instances of the same kinds of abuses were found at sub-national level. Indeed, the problem appears to be growing relatively more quickly at sub-national level, in part due to the creation in 1999 of two new tiers of sub-national government, with the attendant lack of established procurement procedures and of staff trained and experienced in good procurement practice. Also at sub-national government level, the situation is exacerbated by the absence of arm's length relationships in smaller localities and by inadequate separation of functions: for example, elected local officials regularly involve themselves in the evaluation of bids for local government contracts, a practice which greatly increases the risk of corruption.

4.6 The initial proposals for a program to prevent and reduce corruption include a recommendation to introduce technical improvements in various laws and administrative and financial mechanisms to be set in motion immediately. Concerning public procurement, the report recommends accelerated and effective implementation of an improved procurement system. The proposed action plan in this report covers this recommendation.

4.7 The APP has provisions, in Articles 19.4 and 19.5, which render ineligible for participation in public procurement natural persons who have been sentenced for a crime committed in connection with procurement proceedings and legal persons who employ an officer thus sentenced. In addition to these provisions, the impact of the legislation would be significantly strengthened if a mechanism were to be introduced whereby the identities of bidders or suppliers thus debarred could be published. Publication would not only make the process more transparent but also act as a powerful deterrent to others from participating in fraudulent or corrupt activity in relation to public procurement. The OPP could take this step, as an administrative procedure, by publishing the names of debarred firms in the PPB and on its website.

5. Public Sector Management Performance

5.1 The performance by procuring entities of public procurement is governed by the provisions of the Act, plus the various Ordinances, as enacted from time to time.

5.2 Application of Procurement Methods: The procurement methods which procuring entities may use are described under the Act. However, whilst the methods described are quite wide-ranging, there are a number of gaps in the Act which have not been plugged by the secondary legislation and which are giving rise to inconsistency of performance of public procurement by the procuring entities. The most serious of these are:

- (i) Because there is no separate set of procurement methods prescribed for services, these are procured using procurement methods applicable to goods. This leads to several undesirable practices. For example, it is common practice for procuring entities to require consulting firms to submit technical and financial proposals simultaneously and hold public bid openings, at which the firms' prices are read out. Evaluation of the technical and financial proposals then proceeds concurrently, with the result that consulting firms frequently complain that procuring entities manipulate the evaluations to get the result they prefer.
- (ii) The Act provides that bids should be opened at the time and in the place which are specified in the bidding documents, without setting any requirement that bids should be opened promptly after their submission. In practice, it appears that most ministries of the national government follow best practice and open bids on the same day as their receipt. However, several procuring entities, including parastatals and local government bodies, open bids 1 or 2 days after receipt. Even if there is no interference with bids in these instances, transparency is compromised.

5.3 Value of Public Procurement: The total value of Unlimited Tendering procedures announced in Poland in 1999 was 17.7 billion PLN (US\$4.5 billion equivalent), up 1% from 1998. It is not possible to put a figure on total value of public funds spent by public procurement, as the OPP does not collect and publish data on purchases <€3,000 per contract made by procuring entities. Of the PLN17.7 billion worth of unlimited tenders announced in 1999, 70% were for civil works, 18% for goods and 12% for services.

5.4 The OPP reports that, in 1999, procuring entities awarded the contract to the lowest-priced bid in 65% of the Unlimited Tenders advertised in the Bulletin. Whilst the practice of awarding to the lowest-priced bid may not follow internationally-accepted best practice - in that relevant non-price factors may not be considered during evaluation – this high percentage does, at least, demonstrate that economy is accorded significant importance under the Polish system. The OPP also reports that, based on a sample of procurements conducted by the Unlimited Tendering method during 1999, the total value of contracts awarded was 12 % lower than the total value of cost estimates for the same procurement exercises, which would appear to indicate that the use of Unlimited Tendering is having a positive economic effect.

5.5 Advertising: Poland has a relatively sophisticated system for the collection and dissemination of information on public bidding opportunities. The main features of the system are the PPB, published by the OPP, and a frequently-visited Internet website, on which bidding opportunities are published. The level of compliance with the advertising requirements of the law is generally high at national government level. However, at sub-national levels of the public sector, there are many instances of poor compliance, including restricted dissemination of information on bidding opportunities, exacerbated by bidding periods which are kept unnecessarily short, to favor preferred, usually local, bidders.

5.6 Bidders' Participation in Public Procurement: Whilst the data here are fairly crude, the OPP 1999 annual report states that the average number of bids submitted for each tender advertised was 5.4, up from 4.7 bids per advertised tender in 1998. This measure indicates that the advertising provisions appear to be working effectively and that the bidding community is participating more fully in public tenders.

5.7 Timeliness of Procurement Performance: The procurement of goods and consultants' services generally occurs on time. Delays in award of civil works contracts are commonplace, as are delays in their performance. Cost and time overruns are also commonplace on works contracts, particularly at local government level, where project management and contract administration skills are weak.

5.8 Appeals: In 1999, the OPP received 1,327 appeals from bidders about various aspects of the operation of the public procurement system. This number was up by 11% from the appeals 1,195 lodged during 1997. It should be kept in mind, however, that the public procurement market in Poland grew also by 30% (for Unlimited Tenders). Of the 1,327 appeals, 283 were withdrawn before the decision date; 657 were dismissed; and 387 were found justified.

5.9 It is recommended that a full record is kept of all the complaints and the action taken thereupon. It is further recommended that a copy of all correspondence relating to bid protests and bidder complaints also be provided to NIK, for them to consider during their scheduled audits.

6 Performance on Bank-assisted Projects

6.1 Since 1990, the Bank has approved 56 loans to finance 33 operations, amounting to a total of close to US\$5.0 billion (US\$4.0 billion net of cancellations), of which US\$3.1 billion has been disbursed. Among the approved loans, 25 are still disbursing, providing funding for the 16 projects under implementation. With the exception of 5 projects, all of the operations approved during the first four years of lending have been completed. Among these 5 older loans, only Health Services Development Loan (approved in 1992) has been disbursing very slowly. However, the loan has recently been restructured and action taken to strengthen its project management and improve its performance.

6.2 A further 2 loans are expected to be approved during the remainder of FY2000, amounting to US\$158 million. Five operations are tentatively scheduled for FY2001, amounting to US\$620 million.

6.3 Procurement under Bank-financed projects is usually handled by Project Implementation Units (PIUs), set up by the Borrower for each Project, and in consultation with the Bank. PIU staff are government employees from sector ministries, local governments, etc. The performance of PIUs has been in general satisfactory. Procurement staff employed in the implementing agencies are continuously trained by the Bank and are gaining experience in application of the Bank procedures.

6.4 Implemented projects are generally rated satisfactory. No misprocurement has been noted. The portfolio's quality is good and there are no projects in which there is a risk of not meeting their development objectives. One of the major issues affecting Bank lending to Poland is that the pace of loan disbursements is sometimes slow, especially just after the loan effectiveness. The disbursement rate is higher than the average rate achieved in all member countries.

6.5 There are a few problems which relate to weak project management rather than procurement, more specifically, there are: (i) delay in project/contract implementation specially at the start up of infrastructure projects (e.g. lack of preceding administrative actions like land acquisition, construction permit application, etc.); (ii) lack of previous experience in implementing Bank procurement procedures (iii) poor technical specifications; (iv) lack of timely decisions and inadequate procurement planning and (v) implementing agencies designing procurement packages in a way which might favor domestic bidders.

7. General Risk Assessment

7.1 Since 1990, several laws and regulations have been introduced in Poland to support the market economy system. The passage by the Sejm of the Act on Public Procurement on June 10, 1994, (and amended several times since then) made Poland a pioneer in central and eastern Europe in setting up a sound public procurement system. Poland has a procurement system which is to a large extent based on transparent procurement procedures adapted from the UNCITRAL model public procurement law. While procurement is the responsibility of government agencies, an independent Office of Public Procurement supports them in this function and provides oversight for effective implementation of the Act on Public Procurement. However, experience in procurement in other countries in the region shows that it takes considerable time before procurement policies and procedures are fully translated into practice. While this translation of policies into practice has been successful to a certain degree in Poland, it has not been able to keep pace with the demands of a very active Polish economy and the ongoing economic and administrative reforms, such as decentralization of public functions to local levels.

7.2 While the public procurement laws and regulations provide for an economic, efficient and broadly transparent public procurement system, procurement practices have been found to be at variance with the stipulations of the law. Shorter (than stipulated by the Act) bid preparation time allowed to bidders, unclear bidding documents, ambiguous technical specifications, lack of transparency in public bid opening, systematic use of a point system of evaluation (not provided for by the law) where qualifications of bidders are evaluated at the same level as their prices and bids rejected for trivial reasons, procuring entities do not conduct procurement in accordance with the law because of lack of experience and training (especially at local levels), small value contracts become large value contracts because of unjustified and discretionary extensions during contract performance and as a result of unclear technical specifications, are evidence of this variation. Of course, certain undesirable practices, such as procuring consultant services using the procedures more applicable to the procurement of goods and works, are encouraged by the silence of the law itself on that subject.

7.3 Despite the fact that Poland is in the process of introducing a revised Act on Public Procurement, both to improve the transparency of the current law and to align its procurement procedures and practices with that of the European Union with a view to its impending accession, and in light of the findings both of the Country Procurement Assessment mission and the recommendations of the Bank report on corruption in the country, it can be concluded that Poland, from the procurement point of view, is an average risk country. This rating recognizes the impressive progress which Poland has made to date in reforming its public procurement system and places Poland in the vanguard of those Eastern European countries which have relatively well-developed public procurement systems, including such countries as Hungary and Croatia. However, a comparison between Poland's public procurement system and those of the EU member countries reveals that further reform is necessary before Poland can attain that standard.

To that end, if the Government agrees to the recommendations in this report and acts promptly to implement the Action Plan (see Attachment 1), the next 1-2 years should deliver further improvement in the procurement system. It should be Poland's objective and one of the OPP's top priorities to implement the recommended reforms, in order to move Poland towards a low-risk rating as soon as possible and, preferably, before EU accession.

8. Private Sector Commercial Regulations

8.1 Private sector commercial entities have their own purchasing rules. Large firms have written purchasing rules prescribing purchasing procedures. They also have necessary procurement committees to make procurement decisions. The private sector commercial activities are generally governed by the Commercial and Civil Codes, tax laws, labor code, foreign exchange, etc. Regulations related to customs, licensing, quotas, quality certifications and inspection have been (or are being) aligned to international standards both in compliance with WTO requirements and also with a view to Poland's accession to EU.

8.2. The private sector view of the public procurement system is generally positive, despite some undesirable practices being followed by procuring entities, such as the use of poor-quality bidding documents and a system of bid evaluation based on merit points. The public procurement system is considered to be a valuable source of business and the transparency assured by public advertising of bids and public bid opening is particularly appreciated.

9. Commercial Practices

9.1 The private sector in Poland has grown rapidly. There is a large number of private enterprises of all types and sizes. These are both purely Polish or having mixed Polish and foreign ownership. These enterprises use various sources of supplies (equipment and materials) both at home and abroad. Their purchasing practices, including contracting arrangements, vary according to the nature and size of their business. A small firm may not have an organization for conducting its purchases and the owner himself or herself may conduct procurement through telephone (and these days through Internet as well) while a large firm generally has a well organized purchasing

department staffed with competent purchasing staff. These departments draw heavily on the firm's technical and legal department for dealing with different aspects of procurement. In both cases, the purchasing practices are based on the selection of sources of supplies through competition. Selection is usually made as a result of comparison of prices and delivery. Price negotiations are also a common practice.

9.2 There is evidence of under-invoicing especially among small companies. There are also reports of "facilitation" payments for expediting customs clearance. Goods are also frequently described incorrectly on the invoices. This is attributed to the introduction of the Single Administrative Document (SAD) where the coding system is often not relevant to reality. Tariffication language is specific and often fails to describe goods properly (especially for customs valuation purposes). This creates discretion and results in different tariffication at different border crossings. Except in case of large contracts, involving manufacturing, pre-shipment inspection is rarely conducted. The general practice is to conduct inspection either at the time of customs clearance or upon receipt of goods. Barter or counter-trade have become things of the past.

9.3 The INCOTERMs are understood well in Poland and used in commercial contracts. CIF, CIP and EXW are the most commonly used INCOTERMS.

B - RECOMMENDED ACTION PLAN

10. Strategic Approach

10.1 From the legislative point of view, Poland has a relatively developed public procurement system, though, as recorded above, further improvements remain necessary. Since June 1994, when the Sejm passed the first public procurement law, the law has gone through several amendments with a view to incorporating the lessons learned by the OPP and procuring entities. The law has been revised again in order to make it compatible with the EU procurement directives. It is expected that this revision will further improve the transparency and competitiveness provided by the current law. Furthermore, during the last five years, procuring entities in Poland, especially at the national level, have acquired experience in implementing procurement according to the requirements of the public procurement law, and the Office of Public Procurement in supporting these entities in their responsibility of conducting public procurement and in supervising the system. However, it has been determined that in most cases the shortcomings relate to practice and only in a few cases to the deficiency of the procedures. Therefore, while it is important to make the law more transparent and competitive, to realize savings in public spending, improvement in procurement practices need an even sharper focus. The areas to be addressed are:

- Provide good quality standard bidding documents;
- Introduce unambiguous and neutral technical specifications;
- Introduce objective evaluation criteria;
- Separate evaluation of bidder's qualification from the bid evaluation;
- Require bid opening the same day as the deadline for bid submission;

- Allow adequate bid preparation time to bidders;
- Remove barriers to participation by foreign bidders;
- Require mandatory post-qualification in the absence of pre-qualification;
- Allow adequate time to procuring entities to spend budget allocations;
- Build procurement as a distinct profession;
- Introduce two-tier procurement decision making system;
- Introduce code of ethics for procurement professionals;
- Include provisions in the law suitable for procurement of consultant services;
- Prepare a training strategy and implement it;
- Improve bid dispute arbitration procedures;
- Introduce procedures for procurement under Euros 3,000 to minimize the use of Sole Sourcing;
- Introduce best practices to procuring entities through the Public Procurement Bulletin;

11. Measures to be Taken by the Government

11.1 The action proposed to be implemented by the Government to address the issues listed in paragraph 10.1 is at Attachment 1. These actions can be grouped as follows:

- Bidding Process
- Planning
- Procurement Organization, Profession, Accountability and Training
- Best Practices

11.2 The EU Perspective: With Poland's candidacy for accession to the European Union now well advanced and accession expected between 2003 and 2005, it is clear that future changes in the public procurement legislation will be heavily oriented towards achieving the necessary compliance with the relevant EU Directives on Supplies, Services and Works. The recommendations for legislative reform made in this report are broadly compatible with current EU public procurement legislation. The one major exception is in the application of Domestic Preference. This report (see 2.3 above) does not argue for the abolition of the current Ordinance 'On Applying Domestic Preferences in Conducting Public Procurements,' preferring instead to recommend the loosening of current restrictions on the participation of foreign bidders. It is clear, however, that both the domestic preference application and the restrictions on foreign bidders – at least, as they apply to bidders from EU member states – will have to be abolished upon Poland's accession to the EU.

A second noteworthy point is that, whilst the EU Directives allow for Negotiated Procurement, this report recommends that Poland discontinues its Negotiations with Retaining Competition procurement method. Nevertheless, this need not be incompatible with the EU Directives, as Polish law may retain the Two-Stage Tendering method, under which bidders submit unpriced technical bids in the first stage, the procuring entity may negotiate with each bidder with regard to the technical content of its bid only, then bidders who complied with the first-stage specification are

invited to submit their revised technical bids with price in the second stage. This two-stage procedure accords with the EU Negotiated Procurement procedure.

12. Measures to be Taken by the Bank

12.1 It is recommended that the Bank continue its procurement dialogue with the Government on the weaknesses of the existing system. The Bank's technical assistance to the OPP may be needed in implementing the proposed action plan, especially to support the OPP efforts to prepare suitable standard bidding documents, training strategy, training programs and their implementation, and provision of best procurement practices.

12.2 The Bank should continue accepting the Unlimited Tendering procedure of the Polish procurement law as National Competitive Bidding (NCB) in Bank-financed projects, subject to the conditions that the NCB draft documents will be satisfactory to the Bank prior to their use, no domestic preference will be applied in NCB; and there will be no restriction on the participation of bidders in NCB from Bank member countries. This procedure was accepted previously as a result of the March 1996 Country Procurement Assessment and has already been used successfully on the Municipal Finance Project and the Emergency Flood Recovery Project.

12.3 The Bank should continue holding procurement seminars and workshops for the staff of implementation agencies responsible for Bank-financed projects. These seminars have been successful in making public officials aware of the benefits of a transparent and competitive procurement system and in introducing international procurement practices to public officials.

13. Technical Assistance

13.1 The Government will need substantial resources in order to implement the proposed action plan. Resources will be needed for training a large number of public officials throughout the country; starting up training courses in educational institutions; and initiating an accreditation system for procurement professionals. It is recommended that it identify funds from its own budgetary resources, in addition to exploring the possibility of seeking technical assistance from international organizations, such as the European Union, OECD, EBRD, World Bank and bilateral donors.

14. Timetable

14.1 In order to ensure that public procurement is conducted efficiently, economically and without creating situations of discretion for public officials, it is recommended that the following actions be implemented without delay:

- Provide good quality standard bidding documents and prequalification documents;
- Introduce unambiguous and neutral technical specifications;

- Introduce objective evaluation criteria;
- Separate evaluation of bidders' qualifications from bid evaluation;
- Require bid opening the same day as the deadline for bid submission;
- Allow adequate bid preparation time to bidders;
- Abolish the untransparent Negotiations with Retaining Competition procurement method;
- Allow adequate time to procuring entities to spend budget allocations.

The following actions can be considered to be medium-term priorities, to be implemented within 6 – 12 months:

- Abolish limitations on the participation of foreign bidders in public tenders;
- Introduce two-tier procurement decision making system;
- Raise procuring entities' awareness of good procurement planning;
- Require mandatory post-qualification in the absence of pre-qualification;
- Introduce code of ethics for procurement professionals;
- Include provisions in the law suitable for procurement of consultant services;
- Improve protest and appeals procedures;

Finally, there a number of other recommendations whose implementation may take place in more than twelve months' time:

- Establish procurement as a distinct profession within the civil service;
- Introduce an accreditation system for procurement professionals;
- Prepare and implement a training strategy for public procurement officers;
- Appoint technically-qualified arbitrators.

For details, see the Action Plan (Attachment 1) and Paragraph 11.1 above.

15. Recommended Bank Approach for Supervision

15.1 In case of acceptance of the Unlimited Tendering procurement method according to the Act on Public Procurement (as amended) as NCB in Bank-financed projects, it is recommended that Bank should pay special attention to the supervision of this procurement method especially in the early stages of project implementation. Ex-post reviews should also be conducted regularly. Project launch workshops for every new project are proving to be useful both to implementation agency staff as these create a better understanding of the Bank procurement requirements and to the Bank as this better understanding results in less staff time spent on project procurement issues.

POLAND
Country Procurement Assessment Report (Draft)

Action Plan

High = < 6 months

Medium = 6 – 12 months

Low = > 12 months

Specific Issue(s)	Recommended Action (s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
A. BIDDING PROCESSES 1. Lack of good quality standard bidding documents	<ul style="list-style-type: none"> Draft standard bidding and pre-qualification documents for goods, works, and consultant services 	√			<ul style="list-style-type: none"> Office of Public Procurement 	<ul style="list-style-type: none"> Set up the drafting committees, one each for goods, works, and services Seek technical and financial assistance from other sources, such as EU, OECD, WB, as needed. Finalize draft standards Disseminate to procuring entities. Collect samples (other countries in the region, European Union, World Bank, etc.) and decide on suitable model Organize training in the use of standard bidding documents 	
2. Poor quality of technical specifications/terms of reference, designs and drawings	<ul style="list-style-type: none"> Prepare model technical specifications/terms of reference Draft guidelines on the preparation of clear, unambiguous and unrestrictive technical specifications and terms of reference Establish technical task force including consultants for contracts. 	√	√	√	<ul style="list-style-type: none"> Office of Public Procurement Implementing agencies 	<ul style="list-style-type: none"> Draft models and disseminate them to procuring entities Draft guidelines on the preparation of precise and un-restrictive technical specifications Include preparation of technical specifications as a separate topic in procurement training. In the short term, disseminate the best practices to procuring entities. 	

Specific Issue(s)	Recommended Action (s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
3. Combined evaluation of qualification of bidders and that of bids	<ul style="list-style-type: none"> Separate evaluation of bidders' qualifications from the evaluation of bids to ensure objectivity Technical Specialists on Bid Evaluation Committees and to separate the evaluation of the qualification of bidders from the evaluation of bids Develop good quality prequalification documents 	√			Office of Public Procurement	<ul style="list-style-type: none"> In the long run, amend the law to provide for a well structured evaluation methodology, i.e., requiring preliminary examination during which substantial responsiveness of bids, including examination of qualification requirements, is established and comparison of prices and other factors of substantively responsive bids plus post-qualification in the absence of pre-qualification 	<ul style="list-style-type: none"> This is one of the practices leading to abuse of discretion
4. Widespread use of a point system of evaluation combining price and qualification criteria, leading to subjectivity and discretion	<ul style="list-style-type: none"> Discourage procuring entities from using a point system of evaluation for goods and works Provide for objective evaluation systems for goods and works 	√			Office of Public Procurement	<ul style="list-style-type: none"> OPP to ask procuring entities to discontinue the use of a point system of evaluation Amend the legislation e.g. new ordinance to include clear and objective evaluation methodologies Disseminate guidance on the use of objective systems of evaluation through directive of OPP and the Public Procurement Bulletin OPP to publish examples in the Bulletin 	<ul style="list-style-type: none"> This step may be combined with the development of standard bidding documents
5. Bid opening is not required immediately after the deadline for bid submission	<ul style="list-style-type: none"> Require procuring entities to open bids the same day as the deadline for bid submission 	√			Office of Public Procurement	<ul style="list-style-type: none"> OPP to initiate amendment to the law or issue directive 	<ul style="list-style-type: none"> Provided in new draft law
6. Short bid preparation time	<ul style="list-style-type: none"> Adequate time should be allowed to bidders to prepare their bids 	√			Office of Public Procurement	<ul style="list-style-type: none"> OPP to strengthen the law to provide at least 4 weeks for bid preparation and issue directive 	<ul style="list-style-type: none"> Provided in new draft law
7. Limitations on participation of foreign bidders in public tenders	<ul style="list-style-type: none"> Remove limitations <€30,000 and on services and works performed in Poland 		√		Office of Public Procurement	<ul style="list-style-type: none"> OPP to amend the legislation 	<ul style="list-style-type: none"> Provided in new draft law
8. Lack of Post-qualification requirements in bidding	<ul style="list-style-type: none"> Lack of Post-qualification requirements in bidding. Introduce a provision that postqualification should be applied in cases where prequalification is not 		√		Office of Public Procurement	<ul style="list-style-type: none"> OPP to amend the legislation 	

Specific Issues	Recommended Action(s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
B. PLANNING 1. Lack of good procurement planning resulting in inefficient and uneconomic procurement	<ul style="list-style-type: none"> Improve procuring entities' awareness of good procurement planning, especially when allocated budgetary funds have to be spent within one year 		√		Office of Public Procurement/ MOF and procuring entities	<ul style="list-style-type: none"> In consultation with the Ministry of Finance and other major procuring entities establish rules that procurement plans are prepared and procurement work is initiated by all procuring entities as soon as information about approval of annual budgetary allocations is available to them Disseminate information to procuring entities on the need for good planning, and guidance on how to prepare good procurement plans 	
C. PROCUREMENT ORGANIZATION, PROFESSION, ACCOUNTABILITY, AND TRAINING 1. Procurement not yet a career stream in Poland	<ul style="list-style-type: none"> Include procurement profession in civil service as a distinct profession Introduce accreditation for procurement professionals 			√	Office of Public Procurement and relevant government administrative units	<ul style="list-style-type: none"> OPP to work with relevant government administrative units to prepare a strategy for including procurement profession as a separate career stream in the Polish civil service. OPP to initiate introduction of an accreditation system 	
2. Lack of appropriate procurement organization at the level of procuring entities	<ul style="list-style-type: none"> Each procuring entity to establish a procurement selection committee and evaluation committees only as needed 		√		OPP to issue instructions to procuring entities for action	<ul style="list-style-type: none"> OPP to create basis for procuring entities to establish a permanent procurement selection committee to serve as a decision making body OPP to draft detailed rules about the composition, competence, and obligation of selection committees Evaluation committee to include qualified technical experts 	

Specific Issues	Recommended Action(s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
3. Absence of a code of ethics for public procurement staff	<ul style="list-style-type: none"> Introduce a code of ethics for public servants 		√		Office of Public Procurement	<ul style="list-style-type: none"> OPP to draft a code of ethics for procuring entities employees dealing with procurement matters 	<ul style="list-style-type: none"> Also Part of anti - corruption measures
4. Removal of non-transparent and uncompetitive procurement method from the law	<ul style="list-style-type: none"> Abolish the Negotiations with Retaining Competition procurement method 	√			Office of Public Procurement	<ul style="list-style-type: none"> Initiate amendment to the Law 	
5. Absence of provisions in the PPL specific to the procurement of consultant services. As a result the provisions applicable to goods and works are used for the selection of consultants resulting in undesirable practices	<ul style="list-style-type: none"> Include separate provisions in future amendments of the APP, distinctly applicable to the procurement of consultant services 	√			Office of Public Procurement	<ul style="list-style-type: none"> Include separate provisions in future amendments of the APP, distinctly applicable to the procurement of consultant services 	
6. Training strategy for the training of procurement staff of procuring entities	<ul style="list-style-type: none"> Prepare a training strategy to fulfill the procurement training needs in general and the needs of the recently decentralized administration in Poland, in particular 			√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to prepare a strategy in consultation with procuring entities, especially regional and local bodies The procurement training strategy to promote the private sector to undertake this training, as well as steps to create procurement training capacity at local and regional levels Prepare a set of nationally recognized professional qualifications procurement, together with accreditation of educational institutions to deliver training curricula to meet the training needs Consider the establishment of a professional institute for procurement profession, or expand an existing one to include procurement profession 	

Attachment 1
Page 5 Of 5

Specific Issue (s)	Recommended Action (s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
7. "Arbitrators" who are responsible for resolutions of bid protests lack technical qualifications"	<ul style="list-style-type: none"> Either appoint technically qualified arbitrators or provide them easy access to technical expertise 			√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to decide on feasibility of the two options and to implement it. 	
8. Protests and Complaints	<ul style="list-style-type: none"> All protests to be formally responded to 		√		Office of Public Procurement	<ul style="list-style-type: none"> Amend law to provide for formal response 	
9. OPP Chairman directly appointed and dismissed by Prime Minister.	<ul style="list-style-type: none"> Adopt more transparent appointment and dismissal procedures for the position of OPP Chairman 	√			Cabinet of Ministers	<ul style="list-style-type: none"> Change appointment and dismissal procedures 	
10. Lack of administrative procedure for publishing the identities of firms debarred for having engaged in procurement-related fraud or corruption	<ul style="list-style-type: none"> Make administrative provision for publishing the identities of firms found to have engaged in fraud or corruption Begin publishing the identities of debarred firms in PPB and OPP website 	√			Office of Public Procurement	<ul style="list-style-type: none"> Instigate administrative procedure for publishing the names of firms debarred for having engaged in fraudulent or corrupt practices. Publish the names of debarred firms in PPB and OPP website. 	
D. BEST PRACTICES							
1. Collection and dissemination of best procurement practices. For example, some entities open bids immediately after bid submission deadline (i.e. the same day), although the PPL does not require it. Some entities instead of using sole-sourcing for small purchases (less than Euro 3,000) combine the entity's needs and procure them through some competitive procedure such as request for proposals	<ul style="list-style-type: none"> All best practices should be collected from procuring entities and disseminated to encourage their application 		√		Office of Public Procurement	<ul style="list-style-type: none"> OPP to collect best practices Disseminate them through the Public Procurement Bulletin Follow-up to assess their application and regularize them OPP to monitor low Value procurements Amend law to require procuring entities to document small value purchases 	

The World Bank's comments
On Draft Public Procurement Law

General

Art. 2(1): The Act should provide a clearer definition of "construction works".

The language in Article 35 (1)(1) is rather expansive and may lead to disqualification of potential bidders on frivolous grounds (failure to provide due care and diligence...)

In Article 37.2: it is not clear what is meant by that "the bid evaluation shall not include the characteristics of the bidder". This appears to separate assessment of the bidders' qualifications from bid evaluation

Article 42 (2): states that the procuring entity shall provide the legal and factual justification for declaring a certain procurement process "null and void". Article 95(2) does not list the decision to reject all bids as one of those decisions on which no appeal can be made. These two articles thus expose the procuring entities to demands for recourse for taking the decision to reject all bids.

In Article 58: on limited tendering, a mechanism similar to prequalification has been introduced. The difference here is that the decision on the number of bidders to invite to submit bids is essentially arbitrary. While the genesis for this provision is the method by same name in the EU Directives, it is necessary to clarify this point by providing a pre-disclosed basis on which to limit participation.

Article 68: All bidders who had submitted first stage bids and who meet the pre-disclosed qualifications for the specific bidding process should be invited to submit second stage bids on the basis of the single set of technical specifications.

Serious consideration be given to doing away with competitive negotiations not only because it is a method that is prone to abuse but also because all the circumstances under which it can be implemented should be subject to other methods.