

77953

Document of
The World Bank

TAJIKISTAN

COUNTRY PROCUREMENT STATUS REVIEW



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

May 2013

Currency Equivalents

Currency unit = Tajik Somoni
 US \$1.00 = 5.00 Tajik Somoni
 (As of February 22, 2012)

Government Fiscal Year

January 1st – December 31st

Abbreviations and Acronyms

ADB	Asian Development Bank
BLIs	Baseline Indicators
CA	Chamber of Accounts
CAB	Central Authorized Body
CFAA	Country Financial Accountability Assessment
CPSR	Country Procurement Status Review
DFID	UK Department for International Development
EA	Executing Agency
EBRD	European Bank for Reconstruction and Development
EC	European Commission
e-GP	Electronic Government Procurement
GCC	General Conditions of Contract
GDP	Gross Domestic Product
GOT	Government of Tajikistan
IDF	Institutional Development Fund of the World Bank
IFIs	International Financial Institutions
MOF	Ministry of Finance
MOH	Ministry of Health
MTEF	Medium Term Expenditure Framework
NBT	National Bank of Tajikistan
PEFA	Public Expenditure and Financial Accountability assessment

PFM	Public Financial Management Framework
OECD-DAC	Organization for Economic Co-operation and Development-Development Assistance Committee
PIU	Project Implementation Unit
PPA	Public Procurement Agency
PPB	Public Procurement Bulletin
PPL	Public Procurement Law
PPP	Public Private Partnership
QC	Qualification Committee
SBDs	Standard Bidding Documents
SIPMC	State Investment and Property Management Committee
SOEs	State Owned Enterprises
TORs	Terms of Reference
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WB	The World Bank
WTO	World Trade Organization

Philippe H. Le Houerou	Regional Vice President, ECAVP
Saroj Kumar Jha	Country Director, ECCU8
Samia Msadek	Sector Director, ECSOQ
Hiba Tahboub	Regional Procurement Manager, ECSO2
Majed M. El-Bayya	Task Team Leader, Lead Procurement Specialist, ECSO2

**TAJKISTAN
COUNTRY PROCUREMENT STATUS REPORT**

Table of Contents

PREFACE.....	iii
EXECUTIVE SUMMARY	v
Chapter I. Introduction.....	1
A. Country Economic Context.....	1
B. Political System	2
C. Public Expenditure.....	2
D. Donors Involvement in Tajikistan	2
Chapter II - Assessment of Public Procurement System	6
A. Legislative and Regulatory Framework.....	6
B. Institutional Framework and Management Capacity	13
C. Procurement Operation and Market Practices	17
D. Integrity and Transparency of the Public Procurement System.....	23
Chapter III. Recommendations and Suggested Action Plan	30
Annex A: People Met.....	35
Annex B: Key Material Reviewed	38
Annex C: Tajikistan OECD-DAC Baseline Indicators (BLIs)	40
Annex D: Conditions on National Competitive Bidding (NCB) Procedures.....	96

PREFACE

Basis of the Report

The Country Procurement Status Review (CPSR) report was prepared on the basis of the World Bank (WB)/Asian Development Bank (ADB) joint review team's findings. The team visited Tajikistan in February, 2012. Majed M. El-Bayya (Lead Procurement Specialist, ECSO2, Team leader); Naushad Khan, Procurement Consultant; Lisa Miller, Senior Counsel, LEGOP; Nurbek Kurmanaliev, Procurement Specialist, ECSO2; Dilshod Karimova, Procurement Analyst, ECSO2; Shodi Nazarov, Financial Management Analyst, ECSO2; and Muhammad A. Ingratubun, Senior Procurement Specialist, ADB comprised the team. Knut J. Leipold, WB Senior Procurement Specialist, ECSO2, assisted the team in the review of e-procurement and M Ilyas Butt, WB Operation Analyst, ECSO2, assisted in the formatting of the report.

Objectives and Scope

The main objective of the Country Procurement Status Review (CPSR) was to carry out a broad assessment of Tajikistan's public procurement system with a view to: (a) analyze its different components, including the existing legal framework, organizational responsibilities, control and oversight mechanisms, capacity, and current procedures and practices, as well as how well these work in practice; (b) ascertain the status of modernization of public procurement; (c) make recommendations to the Government of Tajikistan (GOT) to strengthen the system's performance based on these analyses and review; and (d) prepare an action plan for further improvements in the system jointly with the counterpart team.

CPSR Process

The team worked in close collaboration with the GOT, including the Ministry of Finance (MOF), Public Procurement Agency (PPA), the counterpart team, and key public procurement entities and oversight bodies. The team based their work on review of all relevant legislation and other background documentation; discussions with the counterpart team; meetings with several procuring entities and private sector and civil society representatives; and a meeting with the donor community. At the end of the mission, the task team presented to the GOT in a wrap-up meeting the initial key findings. A draft final report as well as a pre-final report was shared with the GOT for comments. A dissemination workshop to discuss the report's findings, recommendations, and action plan is planned in October 2012. A list of persons met is provided in Annex A and a list of materials reviewed is in Annex B.

Report Structure

The report has three chapters: I Introduction; II Assessment of the Public Procurement System; and III Recommendations and Action Plan. The Executive Summary at the beginning of the report includes a discussion of key findings and recommendations. Chapter II is divided into four parts in order to relate the discussion to the four pillars of public procurement developed by the Organization for Economic Cooperation and

Development's Development Assistance Committee (OECD-DAC) with the WB, including the Baseline Indicators (OECD-DAC methodology). At the end of each issue discussed, the main recommendations, if any, are also presented. Annex C provides the detailed assessment of the Baseline Indicators, while Annex D presents additional Provisions for National Competitive Bidding under WB and ADB-financed operations.

Acknowledgements

The WB/ADB assessment team would like to express its appreciation to the various government officials, private sector, and donor representatives who met with the team and provided valuable input. The team is also thankful to the peer reviewers (listed below) for their valuable inputs.

From the World Bank:

Asha Ayoung (Lead Procurement Specialist, OPSOR)
Yuling Zhou (Lead Procurement Specialist, EASR2)
Rowena M. Gorospe (Senior Counsel, LEGOP)
Svetlana Klimenko (Senior Financial Management Specialist, LCSFM)

From the Asian Development Bank:

Jeff Taylor (Senior Procurement Specialist, and Regional Coordinator)
Yo Ikeda (Senior Procurement Specialist)

From European Bank for Reconstruction and Development (EBRD):

Eliza Niewiadomska (Legal Transition Program - Public Procurement)

From Islamic Development Bank:

Sami Faruqi (Divisional Manger, Operations Policy and Project Procurement)
Bisma Husen (Senior Procurement Specialist)

Mr. Devesh Mishra, Ex Regional Procurement Manager, Europe and Central Asia, reviewed the draft CPSR report and provided guidance during the process. The team would like to thank Mr. Saroj Kumar Jha, Regional Director, Europe and Central Asia Region (WB), Ms. Marsha McGraw Olive, Country Manager for Tajikistan, Europe, and Central Asia Region (WB) for their guidance and continuous support of the work.

EXECUTIVE SUMMARY

Introduction

1. It is commendable that, near the end of the civil war in 1997, the Government of Tajikistan (GOT) introduced a public procurement law which, to a considerable extent, introduced economy, efficiency, transparency, and fairness into the system of public procurement of goods, works, and services. Following the recommendations of the country procurement assessment that the World Bank (WB) carried out jointly with the Asian Development Bank (ADB) and the European Bank for Reconstruction and Development (EBRD), the GOT revised its Public Procurement Law (PPL) in 2006, and further improved the country's public procurement system. The main purpose of the review of the public procurement system in the country that took place in January 2012 was to take a snapshot of the functioning of that system. The review was conducted using the OECD-DAC methodology. The review findings and recommendations are summarized in the following paragraphs.

Key Findings and Recommendations

2. The main finding of the review is that, while the public procurement legislative and regulatory framework has considerably evolved and continues to evolve in Tajikistan, there still is room for improvement in certain aspects of public procurement. A summary of the key findings and recommendations is discussed below.

3. Overall, the procurement legislative framework would benefit from review and revision to ensure that the various legislative instruments are comprehensive, coordinated and current. There also is a need to prepare a consolidated, coordinated, and comprehensive set of implementing regulations that detail matters set out in the PPL. Furthermore, matters of critical importance, such as identification of the Authorized Body, should be addressed in the PPL, with related details to be set out in the regulations. A procurement manual reflecting current legislation also should be prepared. A comprehensive set of separate Standard Bidding Documents (SBDs) for goods, works, and services is lacking. Such documents should be prepared in a manner consistent with the current legislation, and their use by procuring entities should be mandated under the PPL.

4. There is a need for better integration of procurement reforms with a broader governance reform agenda, including public administration, PFM, audit and accountability, and anti-corruption matters. There is also work to be done on internal procedures, including planning, budgeting, delegation, and approval mechanisms.

5. In that regard, public procurement in Tajikistan is not properly integrated with PFM. Procurement planning, both during budget formulation and execution, is weak. However, the procuring entities receive all funds, which were allocated in the State Budget and requested on time. These funds are usually allocated on the quarterly basis to

the procuring entities. However, the GOT should also consider multi-year budget planning. There is, therefore, the need to properly integrate public procurement with the budget cycle, including the need for preparation of sound procurement plans based on assured funding. A system for monitoring procurement plans also should be put in place.

6. The role of the Public Procurement Agency (PPA) as a regulatory body conflicts with its other functions, such as its direct involvement in the actual conduct of procurement on behalf of procuring entities. The PPA, as the main public procurement regulatory body, should not be involved in the actual conduct of procurement. The GOT, therefore, instead of using the PPA to conduct procurement may consider establishing a separate department within a ministry to conduct procurement on behalf of other procuring entities not certified to conduct procurement on their own. This department may also be assigned to conduct centralized procurement of common used goods and services for the whole government procuring entities. Also, the GOT may consider assigning procuring responsibility for some unqualified procurement entities to other affiliated procuring entities already qualified to conduct procurement on their own. Furthermore, the GOT should expedite capacity-building of procuring entities at all levels of government so that they can acquire the necessary qualifications to be certified by the Qualification Committee to conduct their own procurement.

7. The country does not have a strategy for collection and analysis of procurement data. It is necessary to improve information systems for the collection, maintenance, and dissemination of procurement data in order to increase transparency of the use of public funds in procurement. In addition, monitoring and performance measurement techniques related to public procurement should be developed and applied, possibly through electronic systems.

8. In order to ensure that the procurement legislative and regulatory framework is implemented effectively, it is imperative for the GOT to carry out a capacity-building needs analysis and, based on the findings, to prepare a national procurement capacity-building strategy that considers all the available public and private resources.

9. Procurement is not a profession in Tajikistan. Therefore, the conduct and management of procurement is assigned to public officials as a secondary task. Frequently, these officials lack specific procurement skills. The lack of procurement capacity is one factor that results, in some cases, in uneconomic and inefficient procurement. It is, therefore, necessary for the GOT to undertake professionalization of procurement and to establish a separate professional stream for it. In addition, the GOT should design and deliver a procurement capacity-building/awareness program that meets the needs of public officials at all levels of government and those of the private sector. Contract management capacity of public officials also needs to be enhanced, which can be done through the preparation of a simple contract management manual, accompanied by necessary training in the subject.

10. Internal and external audit of procurement is weak because of the lack of audit skills of auditors and the absence of clear guidelines for both internal and external audit

bodies. The GOT should mandate internal auditors to conduct periodic procurement audits. It should develop audit guidelines that are consistent with international audit practices. A training program for audit of procurement should be designed and delivered on a regular basis.

11. In order to keep up with the growth of e-commerce and mindful of the need for efficiency and transparency in the procurement system, the GOT should consider preparing and introducing a strategy on e-GP, as well as a detailed regulation on the subject. Such strategy should provide a comprehensive roadmap for the continued adoption of e-GP and should include action plans with clearly defined roles, responsibilities, and milestones.

12. Although the GOT has been implementing positive measures to curb fraud and corruption, there is still room for improvement. It is recommended that the GOT, jointly with private sector and civil society, develop further anti-corruption initiatives and involve the private sector and civil society actively in national programs on the subject. The GOT also should take additional steps to raise awareness, within both the private and public sectors, of anti-corruption activities and should engage civil society to exercise social audit and control.

13. With a view to enhancing accountability of public officials, the GOT needs to strengthen the code of conduct for civil servants and put in place mechanisms for its effective implementation. The code of conduct should include provisions specific to civil servants who are involved in public procurement.

Impact of Public Procurement Environment on Donor-Funded Projects

14. The public procurement environment in Tajikistan has a direct impact on the way procurement is carried out in projects funded by IFIs. This is evidenced by the fact that findings about weaknesses in procurement planning, bidding process, contract management, etc. under IFI-financed projects are the same as those found in public contracts funded with GOT budgetary resources. Therefore, improvements in the public procurement system would also improve efficiency of procurement in IFI-funded projects.

15. In January 2011, the GOT introduced a set of “Rules on bid opening applicable to procurement of goods, works, and services within the context of state investment projects” (Rules). According to the Rules, the SIPMC is the designated “Central Authorized Body” (CAB) to centralize the bid opening process under state investment projects financed by various donors and IFIs, including WB and ADB. The Rules require that all bid evaluation reports for procurement under such projects be cleared by the CAB before these reports are submitted to the financing institution concerned. In addition to seriously affecting the ownership and accountability of implementing agencies for the outcomes of the investments, this arrangement has unnecessarily increased the time for completion of the bidding process and appears to duplicate the bid evaluation process since the CAB is conducting its own separate bid evaluation.

16. An analysis of the procurement data collected from several WB and ADB projects relating to goods, works, and services contracts revealed that the CAB's review of evaluation reports under these projects added an average of three (3) weeks to the bidding process. It is also worth mentioning that the CAB has not added value to the bidding process through the reviews of the evaluation reports, because the CAB has cleared most of the reports without any change or improvement. Based on the foregoing, the most prudent approach would be to discontinue CAB involvement in the bidding process.

Recommended Action Plan

17. Based on the review findings, an action plan, which was discussed with the PPA, has been prepared and is included in Chapter III of this report. In order to promote awareness, communications and understanding of, and support for, the public procurement reform process among key stakeholders in public procurement, consideration may be given to holding a one-day dissemination workshop for the public and private sectors, civil societies and key active donors. Such a workshop could generate a better understanding of, and broader support for, the continuing public procurement reform process. The dissemination workshop is planned to be conducted in October 2012 with key stakeholders and donors. The main objective of this discussion will be to jointly discuss a strategy for an effective implementation of the action plan on procurement reform in the country.

18. Meanwhile, it is recommended that the GOT establish a public procurement performance improvement group. This will ensure that all key stakeholders are involved in continuous development of different aspects of the public procurement system. This group should include representatives from the GOT (PPA, Treasury, Public Administration, Civil Service Institute, etc); private sector (consulting firms, construction industry and suppliers); and civil society. This Group should be charged with oversight and coordination of public procurement improvement activities.

19. The Government may also consider benefiting from other countries experiences in public procurement reform such as Albania, Kosovo, FYR of Macedonia and Turkey. Albania has a procurement regulatory agency (PPA) under the Council of Ministers and a procurement complaint review body (procurement review commission) under the Prime Minister. Kosovo has a procurement regulatory agency (public procurement regulatory commission) and procurement complaint review body that each is fully independent and reports directly to Parliament. In addition to those two independent bodies in Kosovo, there is a central procurement agency located within the ministry of finance responsible for the procurement of common used goods. FYR of Macedonia has a procurement regulatory agency (Public Procurement Bureau) under the Minister of Finance and a fully independent procurement complaint review body (procurement complaint commission) which reports to the parliament. FYR of Macedonia, Albania, Georgia and Turkey have each a functional E-procurement system.

Quick Wins

20. While full implementation of the action plan in Chapter 3 would be a medium- to long- term objective, the following actions could substantially benefit the public procurement function in the country in the short-term:

- (a) Prepare of a national public procurement strategy (including Electronic Government Procurement) for procurement reform that sets out the goals to be achieved, identifies the mechanisms to achieve those goals through regulatory and institutional initiatives, and provides the means of achieving them;
- (b) Further integrate procurement planning with budget cycle so that procuring entities receive allocated budgetary funds in a timely manner to effectively implement their procurement plans. In this regard, prohibit issuance of a tender before corresponding budgetary funds have been secured.
- (c) Separate the public procurement regulatory function of the PPA from its current involvement in actual conduct of procurement. For this purpose, consider establishing a separate unit in the MOF. In addition to conducting procurement for other agencies yet to be qualified, this unit could eventually be made responsible for procurement of frequently used items of goods and services for other government agencies.
- (d) Elaborate and implement a procurement training program to be designed for helping procuring entities qualify to conduct their own procurement; for upgrading the skills of public officials involved in procurement and contract management at both the central and provincial levels; and for raising the awareness of consulting firms, contractors and suppliers about public procurement;
- (e) Prepare a simple contract management manual based on the contract management manual prepared by a consultant financed by the World Bank for Central Asia countries.
- (f) Put in place a procurement monitoring mechanism, and initiate preparation and publication of an annual report on public procurement performance; and
- (g) Prepare and implementing a program aimed at strengthening the relationship between government and other stakeholders in public procurement, including the control bodies, the private sector, and civil society.

CHAPTER I. INTRODUCTION

A. Country Economic Context

1. Tajikistan is a small landlocked country vulnerable to natural disasters and strongly influenced by external economic conditions. Located in the heart of Central Asia, Tajikistan is blessed with abundant water resources, contributing to its specialization in cotton production. Tajikistan also has considerable hydropower potential—inexpensive electricity has led to its other specialization: processing of aluminum. However, shortly after its independence in 1991, the country descended into a civil war that lasted until mid-1997 and brought widespread physical damage and loss of life. Tajikistan also is susceptible to natural disasters, and is regularly affected by floods, landslides, earthquakes, and droughts. Only seven percent of its total land area is arable. High mountain ranges make communication between different parts of the country difficult, especially in winter. These factors all combine to make Tajikistan one of the world's poorest economies: its gross national income per capita was estimated at US \$800 in 2010. Limited employment opportunities at home have led 40 percent of Tajikistan's working-age population to seek better jobs in Russia.

2. Despite these difficult initial conditions, the country's economy experienced robust growth during the past decade. Tajikistan's economy grew at an average of 8.6 percent per year during 2000-2008. Strong economic growth during the past decade reflected post-conflict 'catch-up' and rising domestic demand fuelled by remittances and other inflows. Total investment, dominated by public investment, has hovered around 20 percent of GDP, with private investment stagnating at around 5 percent of GDP. Strong growth was made possible by five (5) favorable factors: (i) the peace agreement that permitted businesses and households to return to normal economic activity; (ii) a stabilization dividend from the GOT's success in stabilizing the economy; (iii) the growing global and regional economy that led to rising aluminum and cotton export receipts and remittances; (iv) rising inflows of donor assistance, including from international financial institutions; and (v) reforms that permitted existing businesses and households to take advantage of emerging opportunities.

3. Government reforms, although gradual, covered areas relevant for the country to benefit from a growing world economy. Following the end of the civil war, Tajikistan opened up trade, established a central bank and a commercial banking system, negotiated visa-free access for Tajik workers to go to Russia, and removed taxes on remittance inflows. Private businesses and households were given a bigger role than before as a large number of small and medium-size enterprises were privatized, and land reform provided more land for private farms and households. In recent years, reforms have sought to improve the private investment climate; increase access to air transportation; rationalize cotton-sector operations; remove restrictions on exports; and strengthen governance in selected areas, including the National Bank of Tajikistan (NBT) and the large state-owned enterprises (SOEs). Public expenditure management also was strengthened.

B. Political System

4. The Presidency is the dominant political institution at the national level. The Constitution provides for a bicameral Supreme Assembly or Majlisi Oli consisting of the Assembly of Representatives (lower chamber) or Majlisi Namoyandagon (63 seats; members are elected by popular vote to serve five-year terms), and the National Assembly (upper chamber) or Majlisi Milliy (33 seats; members are indirectly elected, 25 selected by local deputies representing majlises (legislative bodies), 8 appointed by the President; all serve five-year terms).

C. Public Expenditure

5. In 2011, the GOT spent 3.2% of its GDP (or US \$200 million equivalent) on procurement of goods, works, and services. With the expected continuing improvement in the country's economy, further growth in expenditures on goods, works, and services is likely. The World Bank (WB)'s 2007 Public Expenditure and Financial Accountability (PEFA) presented key features of the PFM system in Tajikistan, and identified a number of weaknesses in the areas of predictability and control of budget execution, including internal audit. During the past several years, the GOT has taken a number of positive steps to address these weaknesses.

D. Donors Involvement in Tajikistan

6. The Asian Development Bank (ADB) and the European Commission (EC) are supporting the implementation of agriculture sector reforms, including the establishment of privately-led agriculture finance schemes. The WB, EC, the UK Department for International Development (DFID), and the United States Agency for International Development (USAID) are working together closely to support the GOT's public sector and public financial management reform. The WB, EC, World Health Organization (WHO), USAID, and United Nations Children's Fund (UNICEF) are all supporting reforms in the health and education sectors. In addition, the EC is also collaborating with the WB to help the GOT improve the targeting and administration of the country's social protection system. The Swiss State Secretariat for Economic Affairs (SSSEA) is considering technical assistance for external audit reform. Active development partners in the area of improving the performance of the public sector include WB, ADB, the UN, Sweden, the UK, and the USA. The ADB has a program loan and technical assistance for local government financing and budget reforms. On improving transparency and accountability in public financial management, the EC and the WB are leading the efforts, working closely with other partners like DFID and the SSSEA.

E. World Bank and ADB Portfolio in Tajikistan

7. Since 1996, IDA has approved 85 operations in Tajikistan, including investment projects, development policy loans, technical assistance grants, and trust-funded activities for a total commitment of about US \$680 million. Tajikistan joined the ADB in 1998. Since then, ADB has approved 109 operations in the amount of about US \$859.57 million

(\$372.54 million in loans, \$37.66 million in technical assistance and \$449.37 million in grants).

8. The following procurement issues have been identified in both the ADB and WB portfolios:

Procurement Planning

- i. Under Article 3(15) of the PPL, the GOT sets the minimum and maximum thresholds for procurement annually. This poses problems in the preparation of ADB projects, because such preparation takes more than one year. As such, the threshold stated in the procurement plan during preparation could have changed prior to project implementation.
- ii. Allocation of budget for contingencies, especially for price adjustments as well as provision for taxes and duties, is inadequate.
- iii. Inadequate competition is attributable to an unfavorable business environment and slow private sector growth. Factors such as lack of confidence in, among others, public procurement and banking practices, and difficulty in obtaining licenses and transportation of goods, contribute to a general lack of interest on the part of international suppliers in participating in tenders in Tajikistan. This business environment has also resulted in limited growth of the private sector, which means that there are fewer domestic providers of goods, works, and services, which sometimes results in repeated contract awards to the same bidders, and even to bid collusion. The lack of interest of international bidders in participating in international tenders (ICB) in Tajikistan also results in excessive use of national competitive bidding procedures (NCB).

Procurement Process

- iv. Inconsistencies with the agreed procurement procedures, including, among others, (i) poor quality of bidding documents, some with deficient technical specifications; (ii) poor quality of evaluation reports; (iii) inadequate disclosure of procurement information (e.g., procurement plans, contract award information); and (iv) issuance of amendments to contracts subject to WB/ADB prior review without prior agreement of the WB/ADB.
- v. A protracted procurement process is the most critical reason behind delays in project implementation. The protracted procurement process is due to factors such as: (i) the lengthy process of establishing evaluation committees and a lack of procurement expertise among the members of evaluation committees; (ii) inadequate procurement capacity of Executing Agencies (EAs) and Project Implementation Units (PIUs); (iii) poor bid packaging that leads to poor quality of bids; and (iv) underdevelopment of the national market leading to a limited number of qualified bidders.

Contract Management

- vi. Poor contract management is another major prevailing issue common to all projects, as evidenced by the results of physical inspections. Weak contract management capacity results, in some cases, in (i) delays in delivery/completion; and (ii) acceptance of, and payment for, poor quality goods, works, and services. The main objective of a sound contract management system is to ensure that consultants, contractors and suppliers are performing in accordance with contract conditions. To achieve this objective, it is essential that a contract team comprising a contract manager, engineers, accountants, and monitoring and evaluation specialists, closely supervises contract performance.
- vii. Attracting and retaining skilled staff is difficult given the lack of local specialists with adequate relevant educational and professional backgrounds. PIU staff often lack detailed knowledge of procurement processes and requirements. In general, delays in implementation of procurement processes also are caused by the need to translate all ADB and WB documents and communications into Russian. Capacity of PIUs also varies markedly. Common problems identified among PIUs, include: (i) high staff turnover; (ii) lack of procurement skills and inadequate training skills; and (iii) ineffective links between PIUs and the relevant sector strategies of the line ministries responsible for projects and procurement.
- viii. WB and ADB project-related fiduciary requirements should be better harmonized and coordinated when they are involved in the same sector. A joint audit, by an audit firm acceptable to both the ADB and WB, and under terms of reference (TORs) acceptable to both the institutions, may result in reducing the GOT cost of doing business.

Role of State Investment and Property Management Committee (SIPMC)

9. In January 2011, the GOT introduced a set of “Rules on bid opening applicable to procurement of goods, works, and services within the context of state investment projects” (Rules). According to the Rules, the SIPMC is the designated “Central Authorized Body” (CAB) to centralize the bid opening process under state investment projects financed by various donors and IFIs, including WB and ADB. The Rules require that all bid evaluation reports for procurement under such projects be cleared by the CAB before these reports are submitted to the financing institution concerned. In addition to seriously affecting the ownership and accountability of implementing agencies for the outcomes of the investments, this arrangement has unnecessarily increased the time for completion of the bidding process.

10. An analysis of the procurement data collected from several WB and ADB projects relating to goods, works, and services contracts revealed that the CAB’s review of

evaluation reports under these projects added an average of three (3) weeks to the bidding process. It is also worth mentioning that the CAB has not added value to the bidding process through the reviews of the evaluation reports, because the CAB has cleared most of the reports without any change or improvement. Based on the foregoing, the most prudent approach would be to discontinue CAB involvement in the bidding process.

CHAPTER II - ASSESSMENT OF PUBLIC PROCUREMENT SYSTEM

Introduction

11. Below is the team's summary assessment of Tajikistan's public procurement system according to the four pillars of procurement as defined in the OECD-DAC methodology: A--Legislative and Regulatory Framework; B--Institutional Framework and Management Capacity; C--Procurement Operations and Market Practices; and D--Integrity and Transparency of Public Procurement System. A detailed assessment using the Baseline Indicators (without scores¹) is presented in Annex C.

A. Legislative and Regulatory Framework

12. **Scope and Coverage:** The PPL of 2006, as amended on April 16, 2012 (PPL Amendment), is the major legal instrument that regulates public procurement in Tajikistan. Numerous resolutions, presidential decrees, and guidance materials supplement the PPL, but these are not comprehensive, coordinated, and current. In addition, these secondary materials often are used to address matters of critical importance that should be better addressed in the PPL, most notably, perhaps the specific identity of the Authorized Body. Furthermore, there are no regulations on the participation of state-owned enterprises in public procurement. Nor are there any regulations relating to procurement of commonly-used goods or framework contracts.

13. A procurement User's Guide/manual is available to procuring entities. The User's Guide is intended to help entities handle their own procurement consistent with the requirements of the PPL. However, the User's Guide does not reflect the current procurement legislative framework.

14. The PPL spells out the major principles of the public procurement process. It covers all public procurement of goods, works, and services conducted in the Republic of Tajikistan, except for public procurement aimed at ensuring national defense, national security, State secrets, and precious metals and stones. The basis for an exception regarding emergency circumstances added by the PPL Amendment is unclear given that the PPL otherwise provides procedures for emergency procurement. The PPL identifies the parties and types of public procurement to which the PPL applies. Although the PPL covers procurement of consulting services, distinctions between the definitions of "consulting services" and "services" are unclear. The PPL outlines the stages of purchasing procedures, with a view to ensuring transparent, fair, and competitive procurement that should lead to efficient public expenditure. The PPL also defines the scope of authority of the Authorized Body (currently, the Agency on Procurement of Goods, Works, and Services (PPA)).

¹ The task team decided not to use scores in order to keep the focus of the Government on the findings and recommendations rather than on what score the country gets on each indicator.

15. The PPL provides for gradual decentralization of procurement of goods, works, and services to procuring entities. It includes provision for a Qualification Committee (QC) that is to consider each procuring entity's procurement capacity and capability to determine whether such an entity should be accredited to do its own procurement, or whether the PPA should remain responsible for conducting procurement on behalf of such an entity. However, the provision in the PPL relating to decentralization has not been fully implemented, and the actual conduct of public procurement continues to be centralized in the PPA. Since 2006, the QC has qualified only 19 procuring entities to conduct procurement on their own behalf. Notably, cases exist where the relevant procuring entity has refused to sign a contract following a PPA-run procurement, for example, because of the price, which raises additional questions as to the efficiency of this practice.

16. The PPL does not contain a clear provision exempting public procurement financed by International Financial Institutions (IFIs) from the PPL. Such a provision would be consistent with the Constitution, which provides that "International legal acts recognized by Tajikistan are a constituent part of the legal system of the republic. In the case of discrepancy between the laws of the Republic [of Tajikistan] and recognized international legal acts, the norms of the international legal acts are applied." Including such a provision in the PPL would ensure greater clarity regarding the conduct of procurement under IFI-financed projects.

17. **Recommendation:** (i) *The procurement legislative framework should be reviewed and revised to ensure that the various legislative instruments are comprehensive, coordinated, and current. Matters of critical importance should be addressed in the PPL rather than regulated through Presidential Decrees or Resolutions, which are more readily, and less transparently, changed. Decentralization efforts and procuring entity capabilities should be increased. The definitions of "services" and "consulting services" could benefit from clarification. A provision regarding application of IFI procedures under IFI-financed projects should be included in the PPL;* (ii) *There should be in place implementing regulations detailing matters set out in the PPL. The regulations should also deal with participation of state-owned enterprises. There also is a need for a regulation relating to the procurement of commonly-used goods; and* (iii) *The User's Guide should be updated to reflect the changes in the PPL and broader legislative framework.*

18. **Standard Bidding Documents (SBDs):** PPL Article 34 establishes the required contents of bidding documents. However, there is no provision in the PPL clearly mandating the issuance of SBDs and their use by procuring entities, although the Authorized Body is tasked with the development and publication of SBDs that are to be subject to mandatory use (PPL Article 20). Nor is there a complete set of SBDs covering various types and methods of procurement. A single SBD exists for the procurement of goods, works, and services, but this SBD does not include a standard contract form. There also is a Standard Request for Proposals, and various contract forms, for the procurement of consulting services. The use of these SBDs and forms is not mandatory.

19. No General Conditions of Contract (GCC) are included in the SBDs for the procurement of goods, works, and services. The GCC for the procurement of consulting services are broadly consistent with international requirements, but certain gaps in coverage have been observed. Examples of areas that should be more directly addressed in the GCC include matters such as intellectual property rights, termination for convenience of the Government, suspension, assignment, warranty, and governing law. Also, the use of defined terms is not comprehensive or consistent across the GCC, which leaves room for potential inconsistencies in application and interpretation. Furthermore, like provisions included across the GCC are not always consistent, which leaves room for potential inconsistencies in application and interpretation.

20. The PPL does not provide for the use of neutral specifications and international standards. Nor does it provide for equivalency in terms of standards. The adequacy of technical specifications caused concern, as did the indication that such specifications sometimes contain brand names. Also, Chapter 11 of the Regulation indicates that certification by entities accredited by the GOT and/or voluntary certification in accordance with Tajik standards may be required or used in assigning an evaluation preference.

21. **Recommendation:** *(i) The GOT should prepare a comprehensive set of separate SBDs for goods, works, and services (non-consulting and consulting services) and should make their use mandatory. SBDs should be consistent with current legislation; (ii) GCC should be prepared for the procurement of goods, works, and non-consulting services, and gaps in the existing GCC for the procurement of consulting services should be addressed. Certain provisions also could benefit from clarification. Consistency among related provisions of the PPL and the various GCC also should be ensured; and (iii) The legislative framework should provide for the use of neutral specifications and international standards. In order not to discriminate against foreign bidders, equivalency of standards should be considered.*

22. **Procurement Methods:** The PPL provides for the following methods for procurement of goods, works, and non-consulting services: (i) bidding with unlimited participation; (ii) bidding with limited participation; (iii) request for quotations; (iv) single-source procurement; and (v) electronic procurement. The Regulation provides for a simplified procurement method that is not clearly contemplated in the PPL, which should not be the case. Also, the simplified procurement proceedings provision of the PPL could benefit from clarification.

23. Although bidding with unlimited participation should be the default procurement method, the PPL instead implies that bidding with unlimited participation is to be used only if conditions for use of another method are not met. In addition, to the extent that the PPL sets forth the conditions for use of such other methods, and requires written justification for a procuring entity's decision to use other such methods, it is not clear that requiring PPA approval of the selection of another procurement method, which leads to additional lead time, always should be required.

24. Electronic Government Procurement (e-GP) is provided for as a separate procurement method, but e-GP is a means rather than a method of procurement. Although the PPL (Art. 23) and the Regulation refer to joint centralized procurement, framework contracts are not expressly contemplated under the PPA. Conversely, the Regulation provides for a simplified procurement method that is not clearly contemplated in the PPL.

25. International good practice generally restricts the use of single-source procurement to very limited circumstances, such as availability of goods/works/services from only one qualified source, catastrophic or natural disasters, standardization of equipment, and proprietary reasons. Also, the requirement for PPA prior approval to use this method does not appear to be efficient in emergency situations. The PPL language regarding use of single-source procurement in the case of urgent need due to circumstances that the procuring entity could not foresee may be broadly interpreted so as to create a potential for misuse by procuring entities. Poor procurement planning should not be used as a justification for use of single-source procurement. It also appears that the broad language of this provision may be used in practice to justify quick spending at the end of a fiscal year before the funding expires which leads to uneconomic procurement processes lacking transparency.

26. It generally is a good practice to include details on the procurement of consulting services in a procurement law. The PPL provides that the procurement of consulting services may be done through tendering with limited participation (short list), as well as single-source procurement. The PPL provides that the following methods of selecting competitive proposals may be used, in specified circumstances, in the context of short-listing: (i) Quality- and Cost-Based Selection (QCBS); (ii) Quality-Based Selection; (iii) Selection under a Fixed Budget; (iv) Least-Price Selection; and (v) Selection Based on the Consultants' Qualifications. The PPL should more clearly set out the conditions for use of the various consultant selection methods. For example, the PPL does not specify when to use QCBS and is essentially silent as to when it is appropriate to base consultant selection on price, and technical quality considerations. In that regard, the PPL only very generally provides for conditions under which consultant selection based exclusively on technical capacity is appropriate (and there is potential for confusion regarding Articles 68 and 71). Procedures for assessment of technical capacity and for combining price and technical capacity under different circumstances are described generally in the PPL, but no specific methodologies are stated, which may be a matter that could be addressed in implementing regulations.

27. The establishment of thresholds for the application of specific procurement methods is not clearly set forth in the legislative framework. The basis for using a quarterly indicator in establishing thresholds, as well as for requiring thresholds to be reset annually, also is unclear and appears to be complicated.

28. Fractioning of contracts to avoid application of the PPL frequently occurs to keep contract values below the threshold that would require the use of more complex procurement methods. Although fractioning is prohibited under the Regulation, the PPL could benefit from clarification in this regard.

29. **Recommendation:** (i) *The PPL should state, unambiguously, that bidding with unlimited participation is the default procurement method for goods, works, and non-consulting services;* (ii) *The PPL should more clearly set out the conditions for use of the various consultant selection methods, and should specify when it is appropriate to base selection on technical price and quality considerations;* (iii) *E-GP should be noted as a means of, rather than a stand-alone method of, procurement;* (iv) *It should be considered whether to include a method for framework contracts in the PPL;* (v) *Procurement methods not specified in the PPL should not be provided for in the Regulation;* (vi) *The conditions for use of single-source procurement should be reviewed in light of international good practice, which generally restricts use of single-source procurement to very limited circumstances;* (vii) *Consideration should be given as to whether requiring PPA prior approval for use of the single-source method of procurement in emergency situations is necessary;* (viii) *The application of thresholds for the use of specific procurement methods should be clearly set forth in the legislative framework, namely in the implementing regulations;* and (ix) *Strict prohibition on fractioning should be clearly set forth in the PPL.*

30. **Rules on Participation:** The required contents of invitations to participate in tendering are set out in PPL Article 33 and Regulation Chapter 10, Section 1.2. These requirements generally accord with international practice, but might also include the documents that will be required as part of the bid. No similar required contents are specified regarding requests for quotations.

31. The PPL Amendment deleted the prior PPL Article 18 provisions on domestic preferences, the manner of application of which was unclear. PPL Article 18, as amended, simply includes a general statement to the effect that preferences granted to internal suppliers will be subject to rules approved by the GOT. This revision intends to address WTO GPA requirements, but the new provision does little to shed light on how such domestic preferences may be applied. In addition, there exists the potential for ambiguity as to the meaning of “internal supplier” given that the PPL Amendment deleted the related definition from PPL Article 3. Furthermore, with the blanket replacement of PPL Article 18, the PPL Amendment removed from the PPL the important principle that foreign bidders shall be allowed to participate on an equal basis with domestic bidders except for the application of a domestic preference, which principle previously was set forth in former PPL Article 18(5).

32. Chapter 11(6) of the Regulation indicates that preferences favoring domestic contractors also may be permitted (but without clear parameters for their use) in connection with the possession of certificates—issued by authorities accredited by the GOT and applying Tajik standards—as to what is to be supplied under the contract. It is possible that this provision could be applied in such a way as to essentially discriminate against foreign bidders.

33. The requirement of submitting a tax declaration (no debts) as part of a bid is viewed by the private sector as imposing a barrier on the participation of potential bidders, especially in light of the fact that such declaration can only be obtained two (2)

to three (3) days before the bid submission deadline due to its limited validity of only one (1) week.

34. The PPL is silent as to the conditions under which SOEs may participate as bidders in public procurement. The PPL likewise is silent on the matter of joint venture bidders.

35. **Recommendation:** (i) *The manner of use of domestic preference should be more clearly set out in the legislative framework; (ii) Application of domestic preference, when used, should be provided for in the bidding documents, and evaluation criteria; (iii) The PPL should make clear that foreign bidders shall be allowed to participate on an equal basis with domestic bidders, except for the application of a domestic preference; and (iv) Conditions under which SOEs may participate as bidders in public procurement should be set out in the legislative framework. The same is true regarding joint venture bidders.*

36. **Complaints Review Mechanism:** PPL Chapter 7 is devoted to Procurement Complaint Review Procedures. In broad terms, the PPL (Article 79), as amended, provides that participants in tendering proceedings may submit complaints directly to the procuring entity and/or to the PPA (as the Authorized Body) prior to conclusion of the procurement contract. Based on the language of the PPL Amendment (amendment to PPL Article 79(1)), it is unclear whether such a complaint could be submitted simultaneously to the procuring entity and the PPA, which could lead to the undesirable result of parallel proceedings. After a procurement contract has been concluded, complaints may be submitted to the PPA (as the Authorized Body) pursuant to PPL Article 79(1). Chapter 12 of the Regulation on Public Procurement Procedure (Regulation) creates some ambiguity, however, as to whether a procuring entity also can consider complaints after a decision on the contract award has been made. Importantly, complaints also may be brought in court, but it appears that there have been no court cases to date. Complaints may be also made to Prosecutor's Offices under the broader legal framework.

37. With respect to the actual process to be followed regarding complaints, the PPL could benefit from redrafting to more fully set forth the process, to address important issues that presently are not addressed, and to clarify certain other matters. Ambiguities among the PPL and Regulation regarding the complaint review process also should be addressed. Also, the filing of a complaint should be allowed for both actual bidders and also potential bidders who may have decided not to compete for reasons that are the subject of the complaint. Publication of complaint decisions also should be mandated in the PPL.

38. As a general principle, entities responsible for reviewing complaints should be independent and should not be engaged in other functions that may pose conflicts of interest. Granting review responsibility to the PPA may create a conflict of interest with its regulatory and surrogate procuring entity functions. In addition, where the PPA acts as the procuring entity, it appears that one level of review contemplated under the PPL actually is not available to bidders, i.e., a bidders only recourse other than filing a

complaint in court would be the PPA. Potential independence and conflict of interest concerns also are implicated by the procuring entity-level complaint review process, but such process also permits a procuring entity the opportunity to itself revisit a decision that is the subject of a complaint. Moreover, complaint to a procuring entity is a review mechanism that is used in international practice. Where proper safeguards are in place, such a mechanism may be an efficient method of resolution of complaints. However, such a system should be transparent and carefully tailored to provide for due process and independent decision-making.

39. In addition, where a complaint is made against a procurement action of the PPA (acting on behalf of a procuring entity), the PPA's or court's decision on such complaint impacts on the procuring entity on whose behalf the procurement was conducted by the PPA. In other words, such procuring entity essentially would bear the burden for the PPA's procurement action in the event that a complaint against such action was found to be valid. Such a result may put the procuring entity in an untenable position.

40. While PPL Article 45, as amended, indicates that a contract should not be signed (subject to exception for request for quotations and single-source procurements) for three (3) days from the notice to bidders of the award selection, there is a question as to whether such a limited period of time is adequate to allow a disappointed bidder to bring a timely and meaningful complaint. The basis for excluding request for quotations and single-source procurement from the application of a standstill period also is unclear. Furthermore, other language found in materials comprising the broader procurement legislative framework leaves room for question as to whether a standstill period prior to contract signing actually is provided for in the legislative framework.

41. The PPL provides for a decision deadline of three (3) days at the procuring entity level. Per PPL Article 80, the procurement proceedings shall be suspended pending the decision, but only upon coordination with the PPA. The PPA shall issue its decision on a complaint within ten (10) days of receipt of the complaint, during which time the procurement procedure shall be suspended (PPL Article 81). Despite seemingly clear language in the PPA, however, it appears that a suspension is not mandatory—and that agencies do not always suspend the procurement process even though the PPA advised that it sends notice of complaints to procuring entities to initiate suspension—pending decision on a complaint.

42. There is also confusion in practice as to whether the complaint mechanisms set forth in the PPL represent consecutive or alternate venues for review. In other words, it is unclear whether each lower-level of review must be exhausted before a complaint can be brought to a higher-level review entity. It seems that the general understanding is that the intent of the PPL is to create consecutive levels of review, but that the PPA does review cases submitted to it in the first instance.

43. In these regards, and more broadly, the manner of conduct of the complaint review process should be set forth in greater detail. Also, decisions on complaints should be published.

44. **Recommendation:** *Entities responsible for reviewing complaints should be independent and should not be engaged in other functions that may pose conflicts of interest. In addition to procuring entity-level and judicial review, ideally, an independent body should be established as a common forum for complaints regarding procurement processes and contract awards. To the extent that such a level of the complaint review function is retained within the PPA, proper separation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest. With regard to the procuring entity-level complaint review process, proper safeguards, transparency, and due process measures should be put in place in order to ensure the independence of, and encourage public confidence in, this review mechanism. The manner of conduct of the complaint review process should be set forth in greater detail. The legislative framework's treatment of the complaints review process could benefit from redrafting to clarify the process and to address important issues that presently are not addressed or to clarify certain other matters. Ambiguities among the PPL and Regulation regarding the complaint review process also should be addressed. Publication of complaint decisions should be mandated in the PPL. The PPA should facilitate educational programs on complaint review mechanisms for all interested parties.*

B. Institutional Framework and Management Capacity

45. This section examines how the procurement system defined by a country's legal and regulatory framework operates in practice when filtered through the institutions and management systems of public sector governance.

Organizational Structure of Public Procurement

46. The public procurement system in Tajikistan involves the following key central institutions: Public Procurement Agency (PPA); Treasury; Qualification Committee (QC); and procuring entities. Other institutions that play an important role in public procurement include: Chamber of Accounts (CA); Agency on State Financial Control and Fight against Corruption (Anti-Corruption Agency); and Internal Audit.

47. **Public Procurement Agency (PPA):** As currently constituted, the Authorized Body is established as part of the legislative framework and is assigned defined functions. Article 20 of the PPL includes the functions of the Authorized Body. No specific entity is identified as the Authorized Body in the PPL, although the PPA has been so designated by government decree. There is some concern that leaving identification of the Authorized Body to be dealt with by decree or resolution may create the possibility that the specified "Authorized Body" may be more readily changed than would be the case if the specific "Authorized Body" were to be designated in the PPL. In general, a more intensive legislative process is required to change a law than to revise a resolution or decree.

48. In March 2010, the GOT issued a decree that abolished the then PPA which was under the Ministry of Economic Development and Trade and established a new independent PPA under the GOT. The decree provided for a maximum of 38 employees

(excluding service personnel). Four staff members from the Ministry of Economic Development and Trade transferred to the PPA. Notably, the decree assigns more functions to the PPA than the functions assigned to the Authorized Body in the PPL. Granting broad areas of responsibility to the PPA may also create conflicts of interest, in particular with the PPA's regulatory function, and certainly involves the PPA in procurement operations.

49. Overall, the PPA is an independent body in line with good international practice. There are, however, questions relating to potential conflicts of interest arising from the various functions assigned to the PPA as previously discussed. While the PPA's responsibilities are clearly defined in the PPL, these responsibilities are not adequately separated so as to avoid conflicts of interest, especially with respect to the PPA's procuring, regulatory, complaint review, and unreliable contractor determination responsibilities, which conflict to the extent that a regulatory entity shall not have responsibilities related to procurement-specific operations. The PPA still conducts public procurement for government agencies that are not certified as qualified procuring entities by the GOT's Qualification Committee (QC). However, it is anticipated that PPA's involvement in the actual conduct of procurement for procuring entities will gradually diminish as more and more procuring entities are qualified and certified to undertake their procurement themselves.

50. **Recommendation:** (i) *The Authorized Body should be identified, and its functions should be fully set forth in the PPL; (ii) Concerns regarding the PPA's conflicting functions should be addressed. In particular, the PPA should not be involved in the actual conduct of procurement. A separate department with adequate staff and resources therefore should be established to conduct procurement for other procuring entities until they are qualified and certified to conduct procurement by themselves; (iii) The decentralization objective can be achieved through the introduction of a vigorous procurement capacity-building program. To that end, the GOT should design and develop a procurement capacity-building plan for procuring entities so that the PPA is not involved in the actual conduct of procurement, and more procuring entities develop their capacity to undertake procurement by themselves.*

51. **The Treasury:** The Treasury Department of the MOF has a fiduciary responsibility for the creation and management of financial systems. The Treasury plays an important role in procurement, not only in certifying the availability of funds before a procuring entity issues a tender but also in verifying compliance with procurement procedures before making contractual payments.

52. **Qualification Committee (QC):** The QC was established by Resolution No. 319 dated July 1, 2007. The QC, which reports to the GOT, is responsible for determining qualification of procurement organizations to carry out procurement funded with budgetary funds. In that regard, the QC may assign procuring entities the status of qualified procuring entities, as well as deprive them of this status should they violate the PPL. The QC is chaired by the Deputy Minister of Economic Development, and the Deputy Minister of Justice serves as its deputy chairman. The other agencies represented

on the QC are the Ministries of Finance, Transport, Energy, and Industry (through their Deputy Ministers); the State Committee on Investment and State Property (through its Deputy Chairman); and the PPA (through its Director).

In accordance with PPL Article 10, only those procuring entities that have been qualified by the QC may conduct procurement on their own behalf. So far, only 19 procuring entities have been certified by the QC as qualified procuring entities to conduct their own procurement. This indicates that the process of decentralization through qualification and certification is slow and needs to be accelerated through a more rigorous procurement capacity-building plan.

53. **Procuring Entities:** There are over 6,000 procuring entities in Tajikistan. These include at the central level, ministries, agencies, state committees, and SOEs, among others, and at the oblast, rayon, and local levels, the oblast and rayon administrations, including city governments, hospitals, schools, etc. Pursuant to PPL Article 9, public procurement in Tajikistan may eventually be further decentralized, with purchasing of goods, works, and services delegated to government agencies of different levels as they acquire the necessary capacity to undertake these responsibilities.

54. **Chamber of Accounts:** The GOT recently has established the Chamber of Accounts (CA), which is responsible for audit of state bodies. It reports to the President and Parliament. The CA mandate is to help the GOT to improve performance and foster efficient and effective use of public resources through professional audit of public funds based on international standards. However, this institution is in its very early initial organizational stage. Auditors are not adequately informed about procurement requirements and control systems.

55. **Agency on State Financial Control and Fight against Corruption (Anti-Corruption Agency):** The main functions of the Anti-Corruption Agency are prevention, suppression, and detection of corrupt offenses, as well as inquiry and investigation of corruption, and the conduct of state financial control, which appear to be duplicative of functions of the newly-established CA. Thus, the Anti-Corruption Agency possesses both financial control and law enforcement functions. The Anti-Corruption Agency implements financial control and anti-corruption-related activities in all the branches of government, banks, civil society organizations, political parties, and also has authority to pursue prosecution of anti-corruption cases. External control and audit of public funds is mainly focused in the hands of the Anti-Corruption Agency, which essentially acts as a kind of “super” agency with control over even the scope of work of internal auditors. The Anti-Corruption Agency conducts some kind of public procurement review during its regular inspections. However, the process is mainly focused around price quotations and further selection of contract awardees.

56. **Internal Audit:** Internal control and audit of public funds are conducted by GOT authorities on-site and centrally by the Department of Internal Audit within the MOF. In addition, there are five (5) ministries that have formed their internal audit units accordingly. Although all these bodies conduct periodic review of financial transactions, none of them conducts specific audits of public procurement operations. They conduct

procurement review only up to the bid evaluation report and do not go beyond into contract administration.

57. **Recommendation:** *Internal auditors should be mandated to conduct periodic public procurement audits. This can be achieved through amendments to existing legislation. More internal audit units should be organized within the budget organizations. The GOT should develop clear guidelines for both internal and external audit bodies with a view to avoiding duplication of work. Each external audit should be conducted in line with good international practices and should include procurement audits. Follow-up mechanisms should be strengthened. Procurement training should be designed and delivered to both external and internal auditors.*

Procurement Capacity

58. **Procurement Competence:** PPL Articles 11 and 12 address the structure and functions of a procuring entity's subdivision on procurement. PPL Article 13 requires the procuring entity to establish a tender commission for each procurement, with the tender commission's functions as defined under PPL Article 14. The tender commission shall be comprised of qualified specialists in the procurement area. Procurement, however, is not a profession in Tajikistan. Per the PPL Amendment (amendments to PPL Article 10), certified procurement specialists also may be required in order for a procuring entity to be qualified by the Qualification Commission to conduct procurement on its own behalf. These requirements for certified procurement specialists may be challenging, considering the lack of procurement training opportunities for public officials.

59. **Recommendation:** *The GOT should undertake professionalization of procurement and establish a separate professional stream for it. This action should be supported with separate job descriptions (to include mandatory qualification/experience/competencies requirements), career structures and salary scales for procurement professionals, and in due course, an appropriate accreditation system. In addition, the GOT should introduce quality control standards to be used to evaluate the performance of procurement practitioners. Steps should be undertaken to increase institutional competence so as to increase the capacity of procuring entities to conduct procurement themselves.*

60. **Existence of Sustainable Strategy for Procurement Capacity Building:** There is no strategy to build procurement capacity within either the public or private sector. There is no systematic procurement training or information program for either the public or private sector. The current procurement training arrangements are not consistent with the demands of the public and private sectors. The PPA does not have the necessary capacity to fulfill all the procurement training needs of the country. The country has 1,300 procuring entities at the central level and more than 5,000 at the local level, and this number is growing. The process of decentralization of procurement to procuring entities at all levels of government is rather slow, in part because of the lack of sustainable and adequate procurement capacity-building mechanisms. Outreach to the private sector on the subject is also limited.

61. **Recommendation:** (i) The GOT should carry out a capacity-building needs analysis and, based on the findings, prepare a national procurement capacity-building strategy considering all the available public and private resources, such as the existing school of advanced training for civil servants, universities, colleges, private-sector training institutes, chambers of commerce, etc; (ii) In order to increase procurement capacity of all entities using public funds, including SOEs, and to prepare more procuring entities for further decentralization, the GOT should design and deliver a procurement training program for all procuring entities at the central and local levels as well as control bodies and private firms; and (iii) The GOT should create a sustainable and institutionalized procurement capacity-building mechanism, including a testing and certification system. A procurement help desk should be established at the PPA.

62. **Delegation of Authority:** It seems that only Ministry and Agency directors and deputy directors have the authority to sign procurement contracts. There is no delegation of authority relative to procurement/contract value.

63. **Recommendation:** The legislative framework could benefit from the revision of provisions addressing delegations of authority and decision-maker accountability.

C. Procurement Operation and Market Practices

64. The team reviewed the operational effectiveness and efficiency of the public procurement system at the level of procuring entities. In order to use private market response as one means of judging the quality and effectiveness of the system in implementing public procurement procedures, the team held meetings with representatives of several contractors, suppliers, and civil society.

65. **Procurement Planning:** Article 12 of the PPL requires procuring entities to prepare and submit a procurement plan to the PPA for the next fiscal year in a prescribed form approved by the PPA. Furthermore, procuring entities are required to prepare annual expenditure programs on procurement; and prepare a schedule for each tender. Procurement planning at the national level, in Oblasts and Rayons, and at local levels begins with the commencement of the budget formulation process. However, procurement planning during budget formulation, as well as after budget allocation, is weak.

66. After the MOF informs the procuring entities of their approved budget allocation, they do not prepare procurement plans for the fiscal year on a timely basis. As a result, procurement is not conducted in a timely manner. More frequently, because of the lack of procurement planning and timely availability of funds, procurement is delayed. Because budgetary allocations not used by the end of the fiscal year (i.e., December 31), are no longer available and cannot be rolled over to the next year, procuring entities in the last quarter of the year rush to conduct procurement to use up their allocations. Such practice often lacks economy, efficiency, and transparency, leading to higher prices for the GOT. Furthermore, even after budgetary allocations are approved for the procuring entities, actual funds are not made available to them on a timely basis, which results not only in delayed procurement but also in delayed contractual payments.

67. There is no provision in the budget cycle for multi-year procurement contracts. As a result, long-term contracts, especially for construction works, are awarded and initiated in a given fiscal year without any assurance of funding the completion of such contracts in the coming fiscal years. This leads to undesirable practices of continuing contract performance only as funds become available. No systematic procurement completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.

68. **Recommendation:** *The procurement planning process should start at least two to three months prior to the upcoming fiscal year. There must be a link between the Medium-Term Expenditure Framework (MTEF) and annual budget. This would allow the procuring entity to develop a more realistic expenditure cycle so that competitive procurement methods and efficient use of public funds are ensured. Procuring entities should be required to prepare and submit procurement plans to the PPA before January 31 every year for publication on the PPA website. No procurement should be allowed before such plans have been prepared, submitted to the PPA, and published. Procuring entities should put in place a monitoring system to ensure that procurement included in procurement plans is carried out in a timely manner. There is need for improvement in the budget formulation and execution processes from the procurement point of view, including provision of funds for multi-year contracts. The procurement system should be integrated with the financial management/budgetary system to provide information on the implementation status of signed contracts. The GOT should require the preparation of completion reports to certify budget execution and to ensure that deliveries reconcile with budget programs.*

69. **Initiation of Tender without Available Budget:** PPL Article 10, in the context of qualifying a procuring entity to conduct procurement on its own behalf, states that a procuring entity, prior to beginning a procurement, must have documents from the Treasury and/or servicing bank certifying the availability of funds assigned for public procurement. It is not clear to what extent this requirement is applicable to all (e.g., qualified and unqualified) procuring entities. In the past, there have been cases at local levels when budget appropriation was confirmed even though actual funds were not available, which meant that the intended procurement could not properly be initiated.

70. **Recommendation:** *The PPL should include an explicit statement that no procurement action shall be initiated without an existing budget appropriation. Ensuring availability of funds before issuing tender notices is a good practice and should be continued.*

71. **Procedures for Prequalification:** Prequalification generally is not used in public procurement in Tajikistan. Although the PPL provides for prequalification procedures, and a prequalification document exists, the PPL is lacking in guidance as to when (i.e., under what circumstances) the prequalification procedure is to be used. Additional lack of clarity regarding prequalification arises from the existence of secondary materials setting out basic parameters regarding the use of pre-selection based on qualifications. The relationship of these materials to the conduct of a prequalification process is unclear. The PPL also does not state that qualifications are to be evaluated on a pass/fail basis.

Nor does the PPL specify that qualification criteria should be limited to meet procurement-specific needs.

72. **Recommendation:** *The PPL should clarify and expand upon the procedures for prequalification, as well as the evaluation criteria relating to qualifications. Care should be taken not to conflate eligibility and qualification criteria.*

73. **Advertisement:** PPL Article 31 specifies that invitations to tender shall be published in the Public Procurement Bulletin (PPB) and also in national and/or international mass media. However, the only issue of the PPB was published in December 2010. Thus, in practice, tender notices are published only in local newspapers, and contract award notices are not published at all. Time limits for the preparation and submission of bids are provided, with a minimum of three (3) weeks for unlimited and limited tendering per PPL Article 37.

74. **Recommendation:** *Publication of procurement information, including contract award notices, on a free-access website should be mandated in the PPL. Furthermore, advertising should be required in all cases (save perhaps for single-source contracts) in order to achieve maximum transparency.*

75. **Submission and opening of tenders:** The PPL (Articles 32 and 34) provides that procurement notices and bidding documents shall specify the date and time of bid submission, as well as bid opening in the case of bidding documents. PPL Article 41 provides that bids are to be opened “at the time and place specified in the bidding documents,” noting that the time of bid opening shall coincide with the bid submission deadline, which at least implies—but does not explicitly state—that bid opening shall occur immediately after bid submission. The PPL provides that bidders or their representatives may be present at bid opening, and that the name, bid price, and amount of bid security shall be promptly announced and shall be registered in the minutes of bid opening. There is no provision in the PPL that would require a procuring entity to reject and return late bids to the bidder unopened.

76. **Recommendation:** *The PPL should specify that any discounts offered also should be read out and recorded at bid opening. The PPL should have a provision requiring a procuring entity to reject and return late bids unopened.*

77. **Tender Evaluation, Award Criteria, Notice of Award, and Contract Signature:** PPL Article 42 relates to evaluation and comparison of bids. While the PPL provides principles, it does not provide specifics of evaluation methods and processes. Rather, the PPL requires only that these be specified precisely in the bidding documents, which may lead to differences in application in practice. The PPL does not specify that evaluation shall be done in strict accordance with the criteria stated in the PPL and bidding documents (along the lines of Regulation Chapter 10, Section 8.4), and that no other criteria shall be applied. In addition, evaluation of bids frequently is done within the same day, in the presence of bidders, using a very simple evaluation report format and using price as the only evaluation criteria. Such practice calls into question whether the PPL is being properly followed.

78. The PPL does not mandate the use of a pass/fail system for determining qualifications. Nor does the PPL provide that criteria not evaluated in monetary terms shall be evaluated on a pass/fail basis, to the extent possible, with regard to the procurement of goods, works, and non-consulting services. Moreover, the Regulation and other materials pertaining to the evaluation process indicate that a scoring/rating/ranking system is to be used in evaluating tenders. The PPL Amendment (specifically, the amendments to PPL Articles 34 and 42) also indicates that such a scoring system would be used, and even goes further, providing that criteria may be stated in scores or percentages, as an alternative to inmonetary terms.

79. Although PPL Article 42 provides that, with regard to procurement of goods, works, and non-consulting services, contract award shall be made to the lowest evaluated substantially-responsive tender, the Regulation and other materials pertaining to the evaluation process raise questions as to whether such basis for award is applied in practice, suggesting that a process more akin to a cost-technical trade-off may be followed instead.

80. The PPL provisions on the evaluation of proposals for consulting services give adequate importance to quality, and regulate how price and quality are considered, but the matter of when it is appropriate to base selection on technical, price, and quality considerations, as well as details of the evaluation process, could benefit from more complete treatment in the PPL. The Regulation and other materials do not address evaluation of consulting services proposals.

81. With regard to contract award decisions, the PPL (Article 45, as amended) requires a procuring entity to provide written notice of acceptance of the selected bid to all bidders within three (3) days after selection of the winning bid. The Regulation (Chapter 10, Section 10.1), however, seems to indicate a longer period. The PPL further requires a procuring entity to publish an announcement of the contract award in the PPB, but no timing for such publication is specified. The Regulation (Chapter 10, Section 11) states in that regard only that a procuring entity must publish information about a bidding process within ten (10) days from the date of contract signing. The PPL does not specify any notice to be sent to bidders not selected for contract award, but the Regulation (Chapter 10, Section 10.1) states that other bidders should be informed of the selection decision within three (3) days of the signing of the bidding results record by the selected bidder, which signing would occur (as per the Regulation) only after the selected bidder has received notice of its selection. Therefore, disappointed bidders may not learn of a selection decision until well after such a decision has been made, hampering their ability to bring a timely and meaningful procurement complaint.

82. **Recommendation:** *Provisions in the PPL regarding the evaluation of bids should be clarified to ensure that the evaluation of bids is carried out strictly and solely in accordance with the bid evaluation criteria as disclosed in the bidding documents. The implementing regulations (or procurement manual) should include more detailed evaluation methods for goods, works, and services, so as to guide procuring entities properly in developing evaluation criteria for their specific procurements. Provisions in the PPL and Regulation regarding notification of bid evaluation results should be*

clarified. Notice should be timely so as to permit bidders an opportunity to complain meaningfully.

83. **Electronic Government Procurement (e-GP):** Introduction of e-GP with a view to ensuring transparency of public procurement procedures was included in the Anti-Corruption Strategy for the years 2008-2012. While the GOT aims at adopting e-Procurement to strengthen the transparency and efficiency of public procurement, there currently is neither a clear concept nor a strategy in place for moving public procurement on-line. The Public Procurement Law allows the use of electronic means for public procurement, and the web portal “<http://www.goszakupki.tj/>” is a first step towards e-Procurement implementation in Tajikistan. The website discloses procurement-related information such as the Public Procurement Law, procurement notices, and contract award data. The portal is designed in English, Russian, and Tajik languages. The PPA leads the e-Procurement agenda and continues to learn from other countries about the opportunities and challenges of e-Procurement implementation. The PPA would like to introduce electronic procurement transactions beyond the currently available functionality of disclosing information and considers the automation of small rather than large procurements as the preferred starting point. Limited resources and lack of secondary legislation for e-Procurement prevent implementation.

84. **Recommendation:** *The GOT should prepare and introduce a strategy on e-GP, as well as a detailed regulation on the subject. Such strategy should provide a comprehensive roadmap for the continued adoption of e-GP and include action plans with clearly defined roles, responsibilities, and milestones. In order to strengthen institutional leadership and management capacity, appropriate resources should be allocated to pursue a proactive and strategic e-GP planning process.*

85. **Contract Implementation and Administration:** Chapter 6 of the PPL is devoted to public procurement contracts. It requires that: (i) Public procurement contracts shall be concluded based on the results of tendering in compliance with the relevant provisions of the Civil Code; (ii) Public procurement contracts shall be concluded in writing; (iii) Notice on conclusion of a contract specifying the name and address of the supplier/contractor and the contract price shall be provided to all bidders who submitted a bid within three (3) days of the conclusion of the contract; and (iv) Information on the cost of the contract will be submitted to the PPA within three (3) days from the date of the conclusion of the contract.

86. Amendments to public procurement contracts are regulated by PPL Article 76, which specifies that a contract shall not be modified to the extent that the modification would entail a change with regard to the content of the bid that was the basis of the award selection. Such amendments shall be considered invalid. Other broad changes to the contract appear to be permissible, which is a matter for further consideration, because material modifications (e.g., changes in contract scope) generally are discouraged in international practice.

87. According to PPL Article 77, a contract can be cancelled, upon the PPA’s agreement, because of a substantial change in the circumstances that existed at the time

of the conclusion of the contract, which was impossible to foresee at the time of conclusion of the contract and makes performance of the contract contrary to public interests. Such a termination shall take place no later than one (1) month from the moment the circumstances discussed above surfaced. If a contract is terminated under these circumstances, the parties to the contract shall be compensated for damages. This provision essentially reads like a government termination for convenience right as one would expect to find in international practice.

88. No contract management manual exists. However, a manual is being drafted in conjunction with UNDP. Contract management in Tajikistan is generally weak. Good practice relating to the assignment of contract management responsibility, processing of contract variations and the procedures to be followed, and contract record-keeping are not in place.

89. **Recommendation:** *The GOT should prepare and introduce a simple contract management manual covering goods, works, and services. Public officials should be trained in contract management. For this purpose, the GOT may consider using the contract management manual prepared by a consultant financed by the World Bank for Central Asia countries. Consideration should be given to limiting the scope of permissible contract modifications. The PPL and existing GCC for the procurement of consulting services generally address contract administration responsibilities, but gaps exist which should be filled, and certain other provisions could benefit from clarification. Consistency among related provisions of the PPL and the various GCC also should be ensured. GCC including provisions pertaining to contract administration matters should be prepared for the procurement of goods, works, and non-consulting services.*

90. **Contract dispute resolution mechanisms:** Claims arising under a contract are dealt with under PPL Article 78, which provides for amicable resolution or, absent such resolution, for recourse to economic court. However, arbitration generally is the manner of such review in international practice. In addition, contract disputes may be considered by the PPA in practice.

91. No GCC on contract disputes are included in the SBDs for the procurement of goods, works, and services. As such, the matter of dispute resolution under such contracts is unclear. While some of the existing GCC relating to the procurement of consulting services refer to recourse to court absent amicable resolution of a dispute, which seems to be consistent with the PPL, other GCC refer to recourse to arbitration under Tajik law. Such reliance on arbitration not only seems to be inconsistent with the PPL but also is surprising given that according to the Ministry of Justice, a Law on Commercial Arbitration is just now under preparation.

92. Arbitration is used infrequently in the country. Also, no provisions clearly exist for international arbitration in contracts with foreign providers of goods and services, which is an issue that should be considered. There also is no provision for review of disputes, prior to recourse to arbitration or to court, by an entity such as a disputes resolution board as is frequently used in international practice. Court decisions are enforced under the broader legislative framework, but there is no clear mechanism for

enforcement of arbitral decisions. Tajikistan is not a member of the New York Convention on enforcement of international arbitration awards.

93. **Recommendation:** *Matters pertaining to dispute resolution should be more clearly set out in the legislative framework, as well as in the GCC. Enforcement of the outcomes of dispute resolution processes should be ensured. Perhaps greater outreach could be done to foster an increased understanding of arbitration.*

94. **Private Sector:** Effective partnership mechanisms between public and private sectors seem to be lacking as it appears that the environment does not encourage open dialogue with the private sector and its various professional associations, including community service organizations (CSOs). Furthermore, the GOT currently does not have capacity-building programs for consulting firms, contractors, and suppliers. The GOT also does not have well established mechanisms for public/private partnerships.

95. Actually, there are no institutional mechanisms for dialogue or partnership between the public and private sectors, nor any consultations with the business community. The private sector should be seen as a development partner. Intensive outreach programs should be organized to build capacity with the private sector on how to participate in bidding. Because of the lack of a clear understanding of public procurement requirements, bidders often submit poor quality bids, many of which have to be rejected, thus reducing competition and leading to higher prices for the GOT.

96. **Recommendation:** *The PPA should establish a regular dialogue with the private sector to raise their awareness of public procurement requirements. The PPA also should organize training and outreach programs, including information seminars, for the private sector. A survey of the private sector should be carried out to help assess their constraints with regard to participation in government tenders. Based on the results of such surveys, the PPA should find solutions to eliminate the constraints.*

97. **Procurement Records:** The GOT requires that procurement records be maintained for three (3) years from the date of their creation regardless of procurement value. Also, records are often not maintained in accordance with the PPL requirements.

98. **Recommendation:** *The GOT should enforce the rules on record-keeping. Relevant staff should be trained in the subject.*

D. Integrity and Transparency of the Public Procurement System

99. **Efficiency of Complaints Mechanism:** Because decisions on procurement complaints (at any level) are not publicly available, we could not confirm whether such decisions are based on available information. However, reportedly, complaints to the PPA often are handled on an informal basis (i.e., through discussions with the procuring entity and the complainant to discuss the case prior to rendering a decision). In that regard, only two (2) formal complaints (from the same company) were submitted to the PPA in 2011, but a few other complaints were made via a hotline set up within the PPA.

We also were informed that complaints may be brought, informally, through meetings with the PPA Director and/or Deputy Director.

100. The PPL provides for direct recourse to file complaints in court, as well as a right to appeal lower-level reviewing entity complaint decisions in court. Courts have available to them enforcement authorities as under national law generally (e.g., Civil Code). Citizens also have a general right to bring violation of rights claims in court under the broader national legal framework. The PPA has limited staff to handle complaints, and these generally are handled directly by the Director and/or Deputy Director. Nonetheless, there was no indication that the PPA is not responding to complaints in a timely manner. General concerns regarding procuring entity capacity also would carry over into the area of complaints review at the procuring entity level.

101. Publication of decisions is not mandated under the PPL, and decisions are not published. Written decisions are provided to the complainants and procuring entities

102. Because decisions on complaints are not publicly available, we could not confirm whether such decisions are based on available information. According to what we were told, decisions on complaints are reasoned and formally written up (at least with regard to formal complaints), but it is not clear what level of detail is provided given that no decisions were available for review. However, there was no indication that participants in the complaint review process view the process as unfair. On the other hand, there appears to be general reluctance for bidders to avail themselves of the complaint process. In that regard, numerous statements were made to the effect that there simply are very few complaints given the practice and business environment in the country.

103. As noted above, the PPL provides for a right to further review of lower-level decisions, as well as for judicial review of complaints in the first instance. Judicial review is an important safeguard in seeking to ensure fairness and accountability.

104. The matter of enforcement authority for a failure to abide by a complaint decision is not addressed in the legislative framework, although judicial decisions may be enforced under the broader legal framework.

105. **Recommendation:** (i) *In addition to procuring entity-level and judicial review, ideally, an independent body should be established as a common forum for complaints regarding procurement processes and contract awards;* (ii) *To the extent that such level of the complaint review function is retained within the PPA, proper separation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest;* (iii) *The legislative framework's treatment of the complaints review process could benefit from redrafting to clarify the process and to address important issues that presently are not addressed;* (iv) *Publication of complaint decisions should be mandated in the PPL;* (v) *Matters pertaining to enforcement of and compliance with complaints decisions should be more directly addressed in the procurement legislation;* and (vi) *The PPA should facilitate educational programs on complaint review mechanisms for all interested parties.*

106. **Access to Procurement Information:** Procuring entities are required to publish tender notices in national and/or international mass media, and in the PPB through the PPA. Contract award information relating to contract awardees, including name, address and bid price, is required to be published in the PPB. However, because the only issue of the PPB was published in December 2010, in practice, tender notices are published only in local newspapers, and contract award notices are not published at all. The PPA website is available in three languages (Tajik, Russian and English). However, significant improvement regarding the available content is required to make this website fully functional. For example, most of the information is available only in Tajik, thus limiting the usefulness of the Russian and English versions of the website.

107. **Recommendation:** (i) Increase transparency through digitized collection of data, conduct and dissemination of analysis, and publication of reports on a unified procurement portal; and (ii) Make the PPA website more robust, such as through publication of more complete information.

108. **Procurement Reporting:** The current legislative framework does not clearly provide for a system for collecting and disseminating procurement information. Nor does the country have an institutionalized system for this purpose. No annual report on the performance of procurement is prepared and published. The PPB is available electronically on PPA's website (www.goszakupki.tj), which serves as a centralized bulletin board for posting procurement notices only. It seems that the PPA homepage is a platform or an electronic bulletin board, which is available for advertising public sector procurement. However, its availability needs to be better advertised, as access to it and its use is still limited to the main cities in Tajikistan. Furthermore, very little contract award information is published. Nor is information on complaints published. This system does not allow collection of procurement information/statistics based on the conducted tenders.

109. **Recommendation:** (i) The GOT should put in place a reliable system to collect and disseminate procurement information. The system should allow collection of annual procurement plans, procurement notices, publication of contract awards, prices of material and services, etc. It should also be used for the preparation and publication of a comprehensive annual report on public procurement; (ii) The regulations should include a mandatory requirement for procuring entities to publish contract award information on the PPA website; and (iii) Procuring entities also should be strengthened in collecting and maintaining data, and a system of reporting to the PPA should be introduced.

110. **Anti-Corruption Measures:** Tajikistan acceded to the UN Convention against Corruption in 2006. There is an Anti-Corruption Law that was introduced in 2005. In 2007, the Anti-Corruption Agency was created. In January 2008, the Anti-Corruption Strategy for the years 2008-2012 was adopted and a new anti-corruption strategy is under discussion.

111. The Anti-Corruption Strategy seeks to educate and increase the dialogue with civil society, NGOs, public associations, and the private sector on matters pertaining to anti-corruption efforts. In addition, the Anti-Corruption Law provides that the fight

against corruption is to be carried out with wide participation of the population, public associations and mass media. Efforts in this regard should be encouraged.

112. The full range of fraudulent and corrupt practices is presently not covered under the legislative framework, and descriptions of persons subject to punishment for “bad acts” may be too narrowly drafted to cover the range of potential “bad actors” who may engage in such practices. The legislation also could benefit from clarification as to the definitions, scopes of coverage, and responsibilities of the various state actors, including enforcement entities. In addition, the legislative framework would benefit from the inclusion of provisions that more directly link the PPL with anti-corruption legislation.

113. PPL Article 8 on Conflict of Interest, prohibits civil servants, except civil servants authorized to represent purchasing organizations, from: (i) influencing in any way the public procurement procedure in the interests of any party of procurement; (ii) participating as a supplier (a contractor) or act as their legal representative in procurement regulated by the PPL; and (iii) participating in decision-making on procurement procedures, if they are connected with any of the tendering participants by relation or otherwise, or if they are directly or indirectly interested in the results of the procurement being conducted.

114. Although the PPL Amendment arguably clarified the intended scope of application of this provision regarding government actors, it is still unclear that the relevant language adequately covers the full range of such actors in terms of potential conflict of interest situations. Additional prohibitions are further stated in PPL Article 8.

115. The Regulation (Chapter 10, Section 8.2), but not the PPL, requires tender commission members, experts, and other persons having access to bid information to submit a written statement declaring their impartiality. Recusal is required for any such person who learns upon opening of the bids that there are persons among the bidders whose proposals s/he will be incapable of reviewing impartially. Consideration should be given to including in the PPL a requirement for such persons, as well as key bidder personnel, to submit conflict-of-interest affidavits. It also should be considered whether the secondary legislation should include a code of ethics (or something similar), defining conflict-of-interest situations that procurement staff are more likely to experience.

116. PPL Article 83 stipulates that physical and legal persons shall bear responsibility for violation of the PPL in accordance with the legislation of Tajikistan. It does not make any reference to specific laws, such as the criminal code and anti-corruption law.

117. With respect to violations of anti-corruption-related obligations, the Anti-Corruption Law includes provisions addressing corruption infringements by state actors and their consequences, but these provisions could benefit from clarification and expansion. Notably, the Anti-Corruption Law does not address consequences for corrupt activities engaged in by non-state actors, which is a matter that should be addressed.

118. The legislative framework should more clearly obligate government officials to report actual or suspected corruption. Similarly, cases of irregularity should be referred

to the appropriate law enforcement agency for follow-up, and the numbers of referrals and their outcomes should be reflected in an annual report to be produced by the PPA, together with information as to compliance with procurement requirements.

119. While the Anti-Corruption Agency was established, in part, to eliminate duplication among state authorities, it seems that anti-corruption functions still are carried out by various agencies in practice. Clarity in this area is essential. Furthermore, the Anti-Corruption Agency should be enabled to carry out its functions more effectively, including its coordination of the GOT's efforts in the anti-corruption area.

120. A hotline for confidentially reporting fraudulent, corrupt, or unethical behavior has been established through the Anti-Corruption Agency; and an advertising campaign was undertaken to promote public knowledge of that hotline. It should be considered whether the system might benefit from adding into the anti-corruption legislative framework specific provisions on reporting mechanisms.

121. The Anti-Corruption Law addresses, but only in general terms, confidentiality and state protections regarding anti-corruption matters and persons (e.g., whistleblower protections). Additional protections and assurances of confidentiality are provided for, in the Law "On State Protection of Participants in Criminal Legal Proceedings" (Law on State Protection). However, these provisions could benefit from review and possible expansion. The broader anti-corruption legislative framework also should be clarified and aligned regarding such matters.

122. Although engaging in fraudulent and corrupt practices, and acting under a conflict of interest are punishable acts under the legislation specific to public procurement, such legislation (including the PPL) does not establish a clear requirement to include references to fraud and corruption, conflict of interest, and unethical behavior in tendering documentation. Nor does the PPL give precise instructions on how to incorporate such matters in bidding documents. Basic provisions on corrupt and fraudulent practices and conflicts of interest are included in the tender documents, but these could benefit from expansion. It also would be prudent for the PPL to mandate that procuring agencies conduct due diligence on bids received in order to identify non-compliance with the PPL tender rules and to identify red flags indicating fraudulent or collusive practices. Specific guidance could be provided in the secondary legislation

123. Procedural matters regarding debarment (inclusion on list of unreliable contractors) should be set forth in the PPL, or at least in secondary legislation. Grounds for exclusion from participation in public procurement should more broadly cover potential "bad acts" and "bad actors," and, conversely, potential opportunities for subjective exclusion should be minimized. The possible establishment of an independent entity to consider debarments should be contemplated. Provisions pertaining to unreliable contractor determinations and exclusions included in various legislative materials should be aligned. It is worth noting that the unreliable contractor determination process typically is not used in practice, and that no contractors presently are included on the list of unreliable contractors.

124. **Recommendation:** (i) The legislative framework should expand upon the division of labor among the institutions responsible for fighting corruption, and the roles and responsibilities of various actors in the anti-corruption system should be streamlined; (ii) The Anti-Corruption Agency should be enabled to carry out its role of curbing corruption in general, and corruption in public procurement in particular, more effectively, and in coordinating the GOT's efforts in this regard. More generally, the overall anti-corruption legislative framework (including procurement materials) could benefit from revision in order to define more clearly and more fulsomely cover the range of potential fraudulent and corrupt practices and potential actors involved in procurement matters, and to define completely and cover conflict-of-interest matters; (iii) The anti-corruption legislation should be reviewed, and revised as needed, to ensure conformity with UNCAC; (iv) The GOT should align the legal instruments comprising the overall anti-corruption legislative framework to fill gaps and ensure consistency among these instruments. The legislative framework should more clearly define responsibilities and accountabilities of government actors, and penalties for individuals and firms found culpable of fraudulent or corrupt practices. The legislation also should stipulate an obligation of government officials to report actual or suspected corruption; (v) Greater transparency is needed regarding enforcement of rulings and penalties; (vi) Take additional actions in fulfillment of the goals set forth in the Anti-Corruption Strategy; (vii) The legislative framework should more precisely set forth whistleblower protections and should more clearly provide that an individual complainant has the right to remain anonymous; (viii) The procurement legal framework should establish a clear requirement to include references to fraud and corruption, conflicts of interest, and unethical behavior in tendering documentation; (ix) The GOT should establish an independent and transparent process with respect to determinations as to debarment (inclusion on the list of unreliable contractors) and set forth the debarment process more fully in the legislative framework; (x) The GOT should further develop anti-corruption initiatives jointly with private sector and civil society, and should actively involve them in related national programs; (xi) The GOT should take measures to raise awareness within the private and public sectors about its anti-corruption activities; and (xii) The GOT should engage civil society to exercise social audit and control. Cooperation with civil society should be promoted and respected by the public. For this purpose, the GOT should consider establishing civil society councils representative of the Government, civil society and private sector.

125. **Enforcement of Rulings and Penalties and Audit Findings:** Little evidence is available regarding prosecution of and punishment for corrupt practices. The legislative framework should provide some guidance on what information will be disclosed and when. For example, it would be useful for the anti-corruption legislation to mandate disclosure of general information about cases, investigations, sanctions, whether administrative or criminal, e.g., through an annual report with an analysis of trends and patterns.

126. **Enforcement of Audit Findings:** There is strong follow-up on findings from Anti-Corruption Agency inspections, but this follow-up is mainly focused on the return of misused public funds. There is not much follow-up on internal auditors' findings. There also are no critical findings in the internal auditors' reports.

127. **Recommendation:** *The current mechanism of audit enforcement and follow-up should be amended to include appropriate follow-up on internal auditors and to streamline the follow-up on Anti-Corruption Agency inspections.*

128. **Code of Ethics in Procurement:** The Code of Civil Service Ethics (Code of Ethics) does not include provisions that are specific to civil servants involved in public financial management, including procurement. However, the Code of Ethics does include general obligations for civil servants (including procurement staff) to act ethically and impartially, and to maintain information in confidence. Although implied, express prohibitions on fraudulent and corrupt activities are not stated. Civil servants are also required to avoid conflicts of interest, but these provisions are not fully aligned with the procurement legislative framework. Remedies for breaches of obligations imposed under the Code of Ethics include personnel actions, disciplinary actions, as well as administrative and criminal actions in accordance with law.

129. Although implied, express prohibitions on fraudulent and corrupt activities also are not included among the restrictions on civil servants set forth in the Law on Civil Service. The Law on Civil Service requires an annual declaration of assets by civil servants, but there is no link to such requirement in the procurement legislative framework, and relevant provisions in the anti-corruption legislation could benefit from clarification. For example, the legislation should specify the types of income or forms of wealth that must be disclosed, the type or level of civil servants required to report, and whether family members are to be included in the disclosure. Remedies for failures to submit required declarations or for submitting false information include dismissal and other punishment in accordance with law. Consider whether the names of individuals who have not filed disclosures also should be made public after a stipulated period of time (e.g., three months). The legislation also should assign responsibility to an agency for receiving and reviewing disclosures.

130. **Recommendation:** *(i) The GOT should further strengthen the Code of Ethics and Law on Civil Service, and put in place mechanisms for its effective implementation; (ii) The GOT should include provisions that are specific to civil servants involved in public procurement in the legislative framework; and (iii) Civil servant restrictions and obligations should be aligned among the governing documents.*

CHAPTER III. RECOMMENDATIONS AND SUGGESTED ACTION PLAN

131. Based on the assessment findings, the following key recommendations and action plan are proposed for the GOT's consideration. More detailed specific recommendations addressing specific areas in the public procurement system that could benefit from further review and possible revision are stated within the body of the report, mainly in Chapter II and at the end of each Baseline Indicator in Annex C. The proposed action plan is prioritized into short-, medium-, and long-term actions. This draft report will be discussed with the GOT and a strategy will be developed for the implementation of the action plan. However, in order to ensure that all the key stakeholders are involved in continuous development of different aspects of the public procurement system, it is recommended that a public procurement performance improvement group be established by the GOT. This group should include representatives from the GOT (PPA, Treasury, Public Administration, Civil Service Institute, etc); private sector (consulting firms, construction industry and suppliers); and civil society. This Group should be charged with oversight and coordination of the development of public procurement activities.

132. In order to promote awareness and understanding of, and support for, the public procurement reform process, consideration may be given to holding a one-day workshop each for the public and private sectors and civil societies. Such a workshop could generate a better understanding of, and broader support for, the continuing public procurement reform process. It is proposed to hold this workshop in October 2012.

Key Recommendations and Action Plan

Recommendations	Timetable	Responsible Entity
<i>Legislative and Regulatory Framework</i>		
Review and revise the procurement legislative framework taking into consideration comments in this report to ensure that the various legislative instruments are comprehensive, coordinated, current and aligned with international good practices.	Medium to Long Term	PPA
Prepare implementing regulations detailing matters set out in the PPL. A Procurement Manual reflecting current legislation should also be prepared.	Medium to Long Term	PPA

Recommendations	Timetable	Responsible Entity
Prepare a comprehensive set of separate SBDs for goods, works and services, and make their use mandatory. SBDs should be consistent with current legislation.	Medium to Long Term	PPA
Address concerns regarding the PPA’s conflicting functions. In particular, the PPA either should not be involved in the actual conduct of procurement, or a separate department should be established to conduct procurement on behalf of other procuring entities until they are qualified and certified to conduct their procurement themselves.	Short to Medium Term	GOT/PPA
<i>Institutional Framework and Management Capacity</i>		
Prepare a strategy to improve the public procurement system, including establishing public procurement performance monitoring and evaluation indicators.	Short to Medium Term	PPA
Further strengthen the PPA to effectively and independently undertake the various functions that typically are performed by a procurement regulatory body.	Short to Medium Term	PPA/GOT
Carry out procurement capacity-building needs analysis and, based on the findings, prepare a national procurement capacity building strategy considering all the available public and private resources.	Medium to Long Term	PPA
Expedite efforts to increase procuring entity procurement capacity in order to increase the number of entities qualified to conduct procurement on their own.	Medium to Long Term	PPA
To increase decentralization, consider assigning procuring responsibility for some unqualified procurement entities to other affiliated procuring entities already qualified to conduct procurement on their own and take out that responsibility from the PPA.	Medium to Long Term	QC/PPA

Recommendations	Timetable	Responsible Entity
Consider establishing a centralized procurement department within an existing ministry or agency for the procurement of common used goods and services by the government. Such centralized procurement department should help achieve better economy of scale and utilize the scarce budget in a more efficient and effective manner; and in the meantime, reduce the opportunities for fraud and corruption. In addition this centralized procurement department may also conduct procurement on behalf of some unqualified procurement entities that are not qualified to conduct procurement on their own. This department would need capacity building on centralized procurement including framework agreements and contracts. The procurement of common used goods and services may start on a pilot basis for some goods and services and then roll-out.	Medium to Long Term	GOT
<i>Procurement Operations and Market Practices</i>		
Further integrate procurement planning with budget cycle.	Short to Medium Term	Procuring Entities/Treasury
Start the procurement planning process at least two to three months prior to the upcoming fiscal year.	Medium Term	Procuring Entities
Require procuring entities, as a condition for the initiation of tendering processes, to prepare and submit procurement plans to the PPA before January 31 every year for publication on the PPA website.	Short to Medium Term	MOF/Treasury
Prohibit initiation of procurement processes before budgetary funds have been secured.	Short to Medium Term	MOF/Treasury
Undertake professionalization of procurement and establish a separate professional stream for it, with separate job descriptions for procurement professionals.	Long Term	GOT/Civil Service Department
Establish an appropriate accreditation system and introduce quality control standards to be used for the evaluation of performance of procurement professionals.	Long Term	PPA
Design and deliver a procurement capacity building/awareness program that meets the needs of public officials at all levels of government, and private sector needs. Train both internal and external auditors in conducting procurement audits.	Short Term and Continuous	PPA

Recommendations	Timetable	Responsible Entity
Prepare and introduce a simple contract management manual covering goods, works and services. Design and deliver training to public officials on contract management.	Short to Medium Term	PPA
More clearly set out in the legislative framework and GCC matters pertaining to dispute resolution. Ensure enforcement of outcomes of dispute resolution processes.	Medium to Long Term	PPA
Prepare and introduce a strategy on e-GP, as well as a detailed regulation on the subject. Such strategy should provide a comprehensive roadmap for the continued adoption of e-GP and include action plans with clearly defined roles, responsibilities and milestones.	Medium to Long Term	PPA
<i>Integrity and Transparency of Public Procurement</i>		
To increase transparency in the use of public fund through procurement, establish a reliable system to collect and report/disseminate procurement information; prepare a comprehensive annual procurement report and make it public.	Short to Medium Term	PPA
Mandate internal auditors to conduct periodic public procurement audits.	Medium to Long Term	MOF
Organize more internal audit units within the budget organizations.	Medium to Long Term	MOF
Develop clear guidelines for both internal and external audit bodies in order to avoid duplication of work.	Medium to Long Term	MOF/ Chamber of Accounts
Conduct external audit of procurement in line with good international practices.	Medium to Long Term	Chamber of Accounts
Increase transparency through digitized collection of procurement data, analysis of such data, and publication of reports relating thereto on a unified procurement portal.	Medium to Long Term	PPA
Clarify roles and responsibilities of various actors in the anti-corruption system.	Long Term	GOT/ Anti-Corruption Agency

Recommendations	Timetable	Responsible Entity
More clearly define responsibilities and accountabilities of government actors, and penalties for individuals and firms found culpable of fraudulent or corrupt practices. Ensure greater transparency regarding enforcement of rulings and penalties.	Long Term	Anti-Corruption Agency
Revise the anti-corruption legislative framework to more clearly define and more fully cover the range of potential fraudulent and corrupt practices and potential actors involved in procurement matters, to more completely define and cover conflict of interest matters, and to align the various legal instruments.	Long Term	Anti-Corruption Agency
More precisely set forth in the legislative framework whistleblower and related protections.	Long Term	PPA/ Anti-Corruption Agency
Establish in the procurement legal framework a clear requirement to include references to fraud and corruption, conflicts of interest and unethical behavior in tendering documentation. Put in place an independent and transparent process with respect to determinations as to debarment (inclusion on the list of unreliable contractors), and more fully set forth the debarment process in the legislative framework.	Long Term	PPA/ Anti-Corruption Agency
Jointly with private sector and civil society, further develop anti-corruption initiatives and involve the private sector and civil society actively in national programs on the subject. Raise awareness among the private and public sectors about anti-corruption activities. Engage civil society to exercise social audit and control. For this purpose, establish civil society councils for all major sectors, including public procurement. Such councils should include representatives of government, private sector and civil society.	Long term	PPA/Civil Society
Further strengthen the code of conduct for civil servants and put in place mechanisms for its effective implementation. Include provisions in the code specific to civil servants who are involved in public procurement.	Long Term	PPA/Civil Service

ANNEX A: PEOPLE MET

Name	Position and Agency
Matlubhon Davlatov	First Deputy Prime Minister
Negmatjon Buriev	Senior Adviser to the President on Economic Policy
Odil Sangov	Executive Office of the President, Head of Department on Economics and Investments
Jabborov	Executive Office of the President, Head of Finance Department
Davlatoli Saidov	State Committee for Investments and State Property Management, Chairman
Shuhrat Rakhmatboev	State Committee for Investments and State Property Management, First Deputy Chairman
Bahrom Aliev	State Committee for Investments and State Property Management ,Acting Head of Procurement Department
Abdusamat Rajabov	State Committee for Investments and State Property Management ,Head of Department
Dilmurod Davlatov	Public Procurement Agency, Head
Ravshan Karimov	Public Procurement Agency, Deputy Head
Jamshed Salimov	National University, Head of Procurement Unit
Shabnamo Sultanova	Ministry of Labor and Social Protection, Procurement Specialist
Sharora Rahmatova	Ministry of Finance, Accounting Department
Umed Sharapov	Ministry of Finance, Head of the Internal Audit Department
Alamhon Naimi	Ministry of Finance, Deputy Head of the Budgeting Department
Khakimov Ismatullo	Central Treasury, Head
Rano Abdurahimova	Ministry of Melioration, Construction Department
Ahmadsho Mahsumov	Ministry of Justice, Head of organization of works department
Jonibek Kholikzoda	Ministry of Justice , Head of the Legislation Department
Mahmadyusuf Saifulloev	Ministry of Economy and Trade, Chief Specialist
Ashurmat Marupov	Ministry of Health, Head of Procurement Unit
Saidkulov Aliqul	Ministry of Health, Head of Audit department
Firuz Sabzaev	Ministry of Education, Head of Procurement Unit
Takhmina Saidova	Ministry of Energy and Industry, Procurement Specialist
Fattokh Saidov	Financial Control and Anti-Corruption Agency, Head

Rabiev Nematullo	State Agency on Construction and Architecture
Muatar Khaidarova	NGO “Society and Law”, Head
Robert Bindzynski	EU, Program Manager
Mansur Turaev	UNICEF, Admin/Supply Officer
Firuz Kataev	EBRD, Associate Banker
Alisher Karimov	UNDP, Project Manager
Anvari Vaisiddin	Vahdat Minicpality, Chairman
Eraj Zoirov	Vahdat Minicpality, Chief Architect
Rahmidin Halimov	Vahdat Minicpality, Procurement Specialist
Safarali Radjabov	Parliament’s Budget Committee, Chairman
Ashurbek Rasulov	Parliament’s Budget Committee, Member
Kalandar Azamov	Parliament’s Budget Committee, Advisor
Grez Kosimov	Civil Service Department, Director
Gavhar Sharofzoda	Civil Servants Institute, Rector
Khursheda Rahmatulloeva	FTI-3, Procurement Consultant
Farhod Abdullaev	FVWMP, Procurement Specialist
Umeda Khamrokulova	MIDP, Procurement Specialist
Mahmadamin Aminov	ELRP, Project Coordinator
Mashura Muhaidinova	ELRP, Technical Director
Rustam Ziyoyev	FTI-3, Consultant
Jahongir Mirzoev	NTC, Consultant
Bahodur Mengliev	NTC, 1 st Deputy Director
Bobohon Ismoilov	FTI-3, Project Coordinator
Zafar Nozimov	DWSP, Project Coordinator
Jomahmad Davlatov	LRCSP, Procurement Specialist
Azamat Khasanov	DWSP, Procurement Specialist
Farruh Azimov	EFSSIP, Procurement Specialist
Goib Davlatov	EFSSIP, Deputy Director
Sabogul Kurbanova	CAWMP, Procurement Specialist
Farhod Abdujabborov	Hydromet, Consultant
Marat Fairuzov	CBHP, Procurement Specialist
Nurkhon Hayatov	CBHP, Director
Dustov Saidakmal	Hydromet, Ex.Director
Karimov Az	LRCSP, Deputy Director
Ibrohimov Suhrob	LLC "Ruintan", Director
Rajabov Mahmadaamin	LLC "Shazod International", Director
Holikov Siroj	LLC "Zuhai", Director
Hakimov Aminjon	LLC "Vostok", Director
Sangov S.	LLC "Yokut", Chief Accountant
Azimov Abdukodir	LLC "Mirzoi Soleh", Director
Kurbonov Sukhrob	LLC "Lavozimotti tibbi", Director
Murodov Mukhammadjon,	PE"Муродов Мухаммад", Director
Boboev Saidumar	LLC"Нufari", Director
Haknazarov Umar	PE" Haknazarov Umar ", Director
Gairatov Sikandar	LLC "Shukrona 2010", Director
Buydokov Sayjafar	LLC "Ehson 2010", Director

Kodirov Kiyomiddin	LLC "Sprut", Director
Soibnazarov Khojanazar	LLC "Ozarahsh", Director
Halimov Nahtullo	LLC "AKH Service", Chief Accountant
Changihonov Turahon	LLC "Daler Sohtmon", Director
Ibrohimov Ismat	LLC "Oriyon Ramz 2010", Director

ANNEX B: KEY MATERIAL REVIEWED

1. Constitution of the Republic of Tajikistan, 1994
2. Law on Normative Legal Acts, # 506 dated March 26, 2009
3. Law of the Republic of Tajikistan on Public Procurement, # 168 dated March 3, 2006
4. Government Decree on “Amendments to the Law of the Republic of Tajikistan on “Public Procurement of Goods, Works and Services”, # 652 dated December 30, 2011
5. Law of the Republic of Tajikistan on “Introduction of Amendments and Additions to the Law of the Republic of Tajikistan on ‘Public Procurement of Goods, Works and Services’”, #815 dated April 16, 2012
6. Strategy on Fight Against Corruption in the Republic of Tajikistan for 2008-2012, Approved by the Government Resolution #34 dated January 26, 2008
7. Law of the Republic of Tajikistan on Fighting Corruption, # 100 dated July 25, 2005
8. Law “On Agency on State Financial Control and Fight Against Corruption”, #374 dated March 20, 2008
9. Law “On Revision and Amendments to the Republic of Tajikistan Law “On Fighting Corruption”, # 772 dated December 26, 2011
10. Law on Civil Service, # 233 dated March 5, 2007
11. Law on State Budget for 2011, approved by the decree of Majlisi Namoyandagon # 231 on November 11, 2010
12. Law “On State Protection of Participants in Criminal Legal Proceedings”, #644 dated December 29, 2010
13. Law on Competition and Restriction of Monopolistic Activity at the Goods Market, #198 as of July 28, 2006
14. The Code of Civil Service Ethics Approved by Decree #.1343 by the President of Tajikistan as of June 2004
15. Government Decree On Public Procurement Agency for Goods, Works and Services Under Government of Republic of Tajikistan, # 228 dated May 3, 2010
16. Government Decree on Setting the Minimum threshold and Maximum Cap for Procurement in 2011, # 655 dated December 7, 2010
17. Government Decree “On Further Improvement of the Structure of Central Authorities of Executive Power of the Republic of Tajikistan”, #832 dated March 9, 2010
18. Government Decree «On Agency on State Financial Control and Fighting Corruption of the Republic of Tajikistan” # 143 dated January 10, 2007
19. Regulation on Public Procurement Procedure and Annexes thereto
20. Regulation “On Qualification Committee assigning status of a qualified procurement agency”. dated July 6, 2007
21. Regulation “On the Manner of Maintaining the Registry of Unreliable Suppliers”
22. Resolution No. 715 dated December 30, 2010, on amending the Resolution No. 319 dated July 1, 2007

23. Resolution No. 319 dated June 1, 2007, on the establishment of the Qualification Commission that qualifies and certifies a government agency to conduct its procurement by itself
24. Resolution No. 500 dated October 2, 2010, on approval of bid opening procedures for procurement of goods, works, and services, under public investment projects
25. Corruption in Tajikistan - Public Opinion - Report of UNDP “State Enhancement for Improved Governance” Project, Dushanbe – 2010
26. Standard Bidding Document for procurement of goods, works and services
27. Standard Request for Proposals, and various contract forms, for procurement of consulting services

ANNEX C: TAJIKISTAN OECD-DAC BASELINE INDICATORS (BLIs)

Pillar I: Legislative and Regulatory Framework

A sound governance system for public procurement begins with a solid legislative and regulatory framework. To measure that, Pillar I of the OECD-DAC/World Bank BLI assessment uses two performance indicators: (i) the existence of a legislative and regulatory framework for public procurement that achieves agreed-upon standards and complies with applicable obligations, and (ii) the existence of implementing regulations and documentation.

Indicator 1: Public procurement legislative and regulatory framework meets agreed standards and complies with obligations

For this indicator, the team reviewed the legal and regulatory instruments governing public procurement in Tajikistan, including the Constitution, Public Procurement Law (PPL), Regulations, Resolutions, Presidential Decrees and guidance materials, issued by various bodies within the Government of Tajikistan (GOT). The indicator’s purpose is to determine the structure of the regulatory framework governing public procurement, the extent of its coverage, and public access to relevant laws and regulations; the appropriateness of procurement methods; advertising rules and time limits; rules on participation; status of tender documentation and technical specifications; tender valuation and award criteria; requirements for submission, receipt, and opening of tenders; and effectiveness of the complaint resolution mechanism. The indicator’s eight sub-indicators are discussed below.

Sub-indicator	Current Procedures/Practices/Key Findings
1(a)—Scope of application and coverage of the legislative and regulatory framework	<p>Legislative Framework: The major legal instrument that regulates public procurement in Tajikistan is the Public Procurement Law, as amended (PPL), which generally has its basis in the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services. The GOT introduced a draft amendment to the PPL, by Decree, on December 30, 2011. On April 16, 2012, the resulting PPL amendment was issued by the President as Law #815, the “Law of the Republic of Tajikistan on “Introduction of Amendments and Additions to the Law of the Republic of Tajikistan on ‘Public Procurement of Goods, Works and Services’” (PPL Amendment). The PPL Amendment is effective from April 19, 2012, the date of its publication.</p> <p>The PPL is supplemented by Regulations, Resolutions,</p>

	<p>Presidential Decrees, and guidance materials; however, these are not comprehensive, coordinated or current. In addition, these secondary materials are used in some cases to address matters of critical importance that better should be addressed in the PPL, such as identifying the specific government entity that is to function as the Authorized Body on Public Procurement (Authorized Body) with responsibility for regulating public procurement matters in Tajikistan. There is no current Procurement Manual.</p> <p>The PPL does not contain a clear provision exempting procurement financed by International Financial Institutions (IFIs) from application of the PPL. In that regard, a provision should be included to the effect that if an international treaty is effective, then the procurement rules to be applied under that international treaty shall apply to all procurements thereunder. Such a provision would be consistent with the Constitution, which provides that “International legal acts recognized by Tajikistan are a constituent part of the legal system of the republic. In the case of a discrepancy between the laws of the Republic [of Tajikistan] and recognized international legal acts, the norms of the international legal acts are applied.” Including such a provision in the PPL would ensure greater clarity regarding the conduct of procurement under IFI-financed projects.</p> <p>No legal hierarchy is set forth in the PPL. The Constitution establishes itself as the supreme legal power and provides that the norms of the international legal acts are applied in the case of a discrepancy between the laws of the Republic and recognized international legal acts,” but the Constitution does not further elaborate on the legal hierarchy. Such hierarchy is, however, set forth in the Law on Normative Legal Acts.</p> <p>Scope of PPL (Coverage of subject matter and entities): The PPL spells out the major principles of the public procurement process. It identifies the scope of procurement covered under the PPL and the parties to which the PPL applies. In that regard, the PPL covers all public procurement, conducted in the territory of the Republic of Tajikistan, except for public procurement aimed at ensuring national defense, national security, State secrets, precious metals and stones. The PPL Amendment has added “public</p>
--	---

	<p>procurement for liquidation of consequences of natural disasters and other emergency cases in accordance with decisions of the GOT” as an exception to PPL coverage. The basis for this exception is unclear given that the PPL otherwise provides procedures for emergency procurement.</p> <p>The PPL covers the public procurement of goods, works and services carried out, in full or in part, through public funds of the Republic of Tajikistan. Consulting services are covered under the PPL, but the distinctions between the definitions of “consulting services” and “services” are unclear.</p> <p>Public funds mean sources of financing for public procurement provided out of:</p> <ol style="list-style-type: none"> a) State budget resources of all levels; b) Funds of institutions and other entities, established by the GOT, or by government authorities; c) Funds of State enterprises; d) Funds of joint-stock companies and enterprises with foreign investments where the State share amounts to above 50 percent; e) Earmarked State funds; f) Borrowed funds guaranteed and secured by the State or State-owned enterprises, grants; and g) Funds of state banks used for local purchases. <p>Entities eligible for qualification as procuring entities include:</p> <ol style="list-style-type: none"> a) Budgetary organizations, State bodies ,and State enterprises; b) Institutions and other entities, established by the GOT, or by government authorities; c) Utilities financed by local budgets; d) Bodies of local self-governance; e) Targeted foundations established at the expense of state budget; f) Joint-stock companies and joint ventures, in which more than 50 percent of shares or of collective investment fund belong to the State; g) Branches and/or representations of the above-mentioned individuals and legal entities; and h) State banks involved in local purchases.
--	---

	<p>The PPL (Articles 9 and 10) provides for gradual decentralization of procurement of goods, works and services to procuring entities. Regarding decentralization, the PPL provides for a Qualification Commission (QC) that is to consider each procuring entity's procurement capacity and capability to determine whether such entity should be (or should remain) accredited to do its own procurement, or whether the PPA should remain (or should become) responsible for conducting procurement on behalf of such entity. The QC that is to consider the procurement skills of a procuring entity was established by Resolution No. 319, which is dated July 1, 2007. However, the provision in the PPL relating to decentralization has not been fully implemented, and the actual conduct of public procurement continues to be centralized in the PPA. Since 2006, the QC has qualified only nineteen (19) procuring entities to conduct procurement on their own behalf. Notably, we were told that there have been cases where the relevant procuring entity has refused to sign a contract following a PPA-run procurement, for example, because of the price, which raises additional questions as to the efficiency of this practice. This indicates that the process of decentralization through qualification and certification is slow and needs to be accelerated through a more rigorous procurement capacity building plan. In addition, the team was informed that, although a ministry may be accredited to conduct its own procurement, the PPA still conducts procurement for some centers or agencies attached to such accredited ministry. It is not clear why the accredited ministry would not conduct procurement for all centers or agencies attached to it.</p>
1(b)—Procurement methods	<p>The PPL provides for the following methods for procurement of goods, works and non-consulting services:</p> <ul style="list-style-type: none"> • Bidding with unlimited participation; • Bidding with limited participation; • Request for quotations; • Single-source procurement; and • Electronic procurement. <p>The default nature of bidding with unlimited participation should be more clearly stated, because the current text implies that bidding with unlimited participation is to be used only if conditions for use of another method are not met (although this may be a matter of translation). In</p>

	<p>addition, to the extent that the PPL sets forth the conditions for use of such other methods, and requires written justification for a procuring entity's decision to use such other methods, it should be considered whether PPA approval of the selection of another procurement method always should be required prior to implementation of such other method as is the case under PPL Article 24(2), as amended.</p> <p>E-procurement is a means of procurement rather than a separate stand-alone method of procurement (except in the case of Electronic Reverse Auction (ERA), for example). E-procurement therefore should not be described as a procurement method.</p> <p>Although the PPL (Art. 23) and the Regulations refer to joint centralized procurement, framework contracts are not expressly contemplated under the PPL. Nor are procedures for centralized procurement, with a view to achieving economy of scales, set forth in the legislative framework.</p> <p>The PPL Amendment (PPL Article 27) also suggests that the Request for Quotations method might be available for use in special cases as established through approval of the Authorized Body. The basis for such use is not clear.</p> <p>The Regulation provides for a simplified procurement method that is not clearly contemplated in the PPL, which should not be the case. Available procurement methods should be only as provided for in the PPL. Moreover, although the simplified procurement proceedings provision of the PPL (Article 29) is directed only to procurement by rural communities (jamoats), the PPL Amendment (amendment to PPL Article 24(3)) implies that such proceedings may be used more generally by any procuring entity for any procurement that does not exceed the minimum threshold. This is a matter that could benefit from further clarification.</p> <p>International good practice generally restricts use of single-source procurement to very limited circumstances, such as: availability of goods/works/services from only one qualified source, catastrophic or natural disasters, standardization of equipment, and proprietary reasons. The language regarding use of single-source procurement in case of urgent need due to circumstances that the procuring entity</p>
--	---

	<p>could not foresee (PPL Article 28(2)(e)) may be broadly interpreted so as to create a potential for misuse by procuring entities. In some cases, restricted bidding rather than single-source procurement may be a more appropriate method. Also, the requirement for PPA prior approval to use this method does not appear to be efficient in emergency situations. It should be clear that poor procurement planning should not be used as a justification for the use of single-source procurement. It also appears that the broad language of PPL Article 28(2)(e) may be being used in practice to justify quick spending at the end of a fiscal year before the funding expires, which leads to uneconomic procurement processes lacking transparency, and which should not, in and of itself, be a proper justification for the use of single-source procurement.</p> <p>PPL Chapter 5 addresses procurement of consulting services. The PPL provides that the procurement of consulting services may be done through tendering with limited participation (short list), as well as single-source procurement, further noting that the following methods of selecting competitive proposals may be used, in specified circumstances, in the context of shortlisting:</p> <ol style="list-style-type: none"> i. Quality-and Cost-Based Selection (QCBS); ii. Quality-Based Selection; iii. Selection under a Fixed Budget; iv. Least-Price Selection; v. Selection Based on the Consultants' Qualifications. <p>The process of selection of individual consultants is dealt with under PPL Article 73. Selection of individual consultants shall be done on a competitive basis; provided that individual consultants may be selected without competition (according to the method of single-source selection) in specified circumstances and then only upon agreement of the Authorized Body.</p> <p>Procurement of consulting services should be more clearly set forth in the PPL. The consulting services provisions generally could benefit from clarification and reorganization within the PPL.</p> <p>The manner of establishing thresholds for the application of specific procurement methods is not clearly set forth in the</p>
--	---

	<p>legislative framework, including the PPL Amendment. The basis for using a quarterly indicator in establishing thresholds, as well as for requiring thresholds to be reset annually, also is unclear. Furthermore, to the extent that the PPL Amendment (e.g., amendments to PPL Articles 3, 27 and 70), is setting actual thresholds in the PPL rather than by regulation, such practice should be discouraged. Thresholds, which are subject to change, might be more efficiently regulated through secondary legislation.</p> <p>Fractioning of contracts to avoid application of the PPL should be expressly prohibited in the PPL, especially given that the team was told that such fractioning occurs to keep contract values below the threshold that would require use of more complex procurement methods. Although fractioning is prohibited under the Regulation, the PPL could benefit from clarification in this regard.</p> <p>Thresholds in monetary terms set up by the Government decree have been eliminated by the PPL recent amendment. Instead of using monetary terms "parameters for calculations" are being used now.</p> <p>Minimum thresholds for procuring goods: "equals to two thousand five hundred parameters for calculations". Approximately it is Somoni 10,000 (equivalent to about US \$2,100 based on the official exchange rate US \$1= Somoni 4.76).</p> <p>Minimum thresholds for procuring works/services: "equals to three thousand five hundred parameters for calculations". Approximately it is Somoni 14,000 (equivalent to about US \$2,941 based on the official exchange rate US \$1= Somoni 4.76)</p> <p>Maximum thresholds value for procurement: "five times the size of the maximum threshold amount" which is "twelve thousand five hundred parameters for calculations". Approximately it is Somoni 100,000 (equivalent to about US \$21,000.00 based on the official exchange rate US \$1= Somoni 4.76)</p>
1(c)—Advertising rules and time limits	PPL Article 31 specifies that invitations to tender shall be published in the PPB and also in national and/or international mass media. Publication on a website of free

	<p>access also should be mandated in the PPL. Furthermore, advertising should be required in all cases (save perhaps for single-source contracts) in order to achieve maximum transparency.</p> <p>However, the only issue of the PPB was published in December 2010. Thus, in practice, tender notices are published only in local newspapers, and contract award notices are not published at all.</p> <p>Time limits for the preparation and submission of bids are provided, with a minimum of three (3) weeks for unlimited and limited tendering per PPL Article 37.</p>
1(d)—Rules on participation	<p>The required contents of invitations to participate in tendering are set out in PPL Article 33 and Regulation Chapter 10, Section 1.2, (but not in identical terms). These requirements generally accord with international practice, but might also include the documents that will be required as part of the bid. No similar required contents are specified regarding requests for quotations.</p> <p>The PPL Amendment deleted the prior PPL Article 18 provisions on domestic preferences, the manner of application of which was unclear. PPL Article 18, as amended, simply includes a general statement to the effect that preferences granted to internal suppliers will be subject to rules approved by the GOT. We were told that this revision intends to address WTO GPA requirements, but the new provision does little to shed light on how such domestic preferences may be applied. In addition, there exists the potential for ambiguity as to the meaning of “internal supplier” given that the PPL Amendment deleted the related definition from PPL Article 3. Furthermore, with the blanket replacement of PPL Article 18, the PPL Amendment removed from the PPL the important principle that foreign bidders shall be allowed to participate on an equal basis with domestic bidders except for the application of a domestic preference, which principle previously was set forth in former PPL Article 18(5). Similarly, to the extent that some domestic preference may apply, such should be reflected in the bidding documents, evaluation and record, which appears to no longer be the case based on the PPL Amendment (amendments to PPL Articles 32, 42 and 46).</p>

	<p>Chapter 11(6) of the Regulation indicates that preferences favoring domestic contractors also may be permitted (but without clear parameters for their use) in connection with the possession of certificates—issued by authorities accredited by the GOT and applying Tajik standards—as to what is to be supplied under the contract. It is possible that this provision could be applied in such a way as to essentially discriminate against foreign bidders.</p> <p>As subsequently discussed, the requirement of submitting a tax declaration (no debts) as part of a bid is viewed as imposing a barrier on the participation of potential bidders, especially in light of the fact that such declaration can only be obtained two (2) to three (3) days before the bid submission deadline due to its limited validity of only one (1) week. To the extent that such is the case in practice, it might be considered whether such requirement with regard to bidder qualifications could be otherwise satisfied.</p> <p>The PPL is silent as to the conditions under which state-owned enterprises (SOEs) may participate as bidders in public procurement. SOEs should be allowed to participate in public procurement only if they are legally and financially autonomous, operate under commercial law, and are not dependent agencies of the procuring entity.</p> <p>The PPL likewise is silent on the matter of joint venture bidders. Joint venture members should be jointly and severally liable for procurement and contract performance matters, which is implied in the Regulation, and there should be no restrictions on the participation of foreign companies as joint venture members (e.g., there should be no requirements to affiliate with a local firm). There is a general reference to “collective bidders” in the Regulation, but its meaning is not clear.</p>
1(e)—Tender documentation and technical specifications	<p>PPL Article 34 and Regulation Chapter 10, Section 2.2 (less completely) address bidding documents and their contents. The required contents of bidding documents generally accord with international practice. However, PPL Article 34(2) provides that bidding documents for works and services shall specify the estimated cost for the contract, which, as the team was told, may negatively impact competition as bidders tend to bid prices that are close to</p>

	<p>the disclosed cost estimate.</p> <p>The SBD for the procurement of goods, works and non-consulting services requires the submission of documents that arguably could discriminate against foreign bidders where the submission of equivalent materials from relevant jurisdictions is not provided for in the SBD.</p> <p>The use of neutral specifications and international standards (where possible) is not provided for in the PPL. Nor is equivalency in terms of standards provided for in the PPL. Concerns were voiced as to the adequacy of technical specifications, and it was indicated that such specifications sometimes contain brand names. Also, Chapter 11 of the Regulation indicates that certification by entities accredited by the GOT and/or voluntary certification in accordance with Tajik standards may be required or used in assigning an evaluation preference. At a minimum, equivalency should be considered so as not to discriminate against foreign bidders.</p>
1(f)—Tender evaluation and award criteria	<p>While the PPL provides principles, it does not provide specifics of evaluation methods and processes. Rather, the PPL requires only that these be specified precisely in the bidding documents, which may lead to differences in application in practice. The team was informed that, in practice, evaluation of bids frequently is made within the same day, in the presence of bidders, using a very simple evaluation report format. Such practice calls into question whether the PPL is being properly followed.</p> <p>PPL Article 42 relates to evaluation and comparison of bids. The PPL does not, but should, specify that evaluation shall be done in strict accordance with the criteria stated in the PPL and bidding documents (along the lines of Regulation Chapter 10, Section 8.4), and that no other criteria shall be applied (along the lines of Regulation Chapter 10, Section 15.10 regarding prequalification).</p> <p>The PPL does not mandate the use of a pass/fail basis for determining qualifications. Nor does the PPL provide that criteria not evaluated in monetary terms shall be evaluated on a pass/fail basis, to the extent possible, with regard to the procurement of goods, works and non-consulting services.</p>

	<p>Moreover, the Regulation and other materials pertaining to the evaluation process indicate that a scoring/rating/ranking system is to be used in evaluating tenders. The PPL Amendment (specifically, the amendments to PPL Articles 34 and 42) also indicates that such a scoring system would be used, and even goes further in stating that criteria may be expressed in scores or percentages, and thus need not be expressed in monetary terms.</p> <p>Although PPL Article 42 provides that, with regard to procurement of goods, works and non-consulting services, contract award shall be made based on the lowest-evaluated, substantially-responsive tender, the Regulation and other materials pertaining to the evaluation process raise questions as to whether such basis for award is applied in practice, suggesting that a process more akin to a cost-technical tradeoff may be followed instead.</p> <p>The PPL provisions on the evaluation of proposals for consulting services give adequate importance to quality, and regulate how price and quality are considered, but the matter of when it is appropriate to base selection on technical, price and quality considerations, as well as details of the evaluation process, could benefit from more complete treatment in the PPL. The Regulation and other materials do not address evaluation of consulting services proposals.</p> <p>The PPL provides that a bid shall be rejected if the bid price exceeds the amount allocated for the procurement (Article 42)). However, rejection should not be automatic in such a case. The team was told that this, in fact, is done in practice. Nor should rejection be automatic in the event that a bid for construction works is 10% less than the allocated amount as now would be the case under the PPL Amendment (Article 42(6)). It is good to note that the PPL Amendment deleted the provision (in prior PPL Article 44) that a tender would be cancelled if the lowest-priced bid exceeded the amount allocated for the procurement.</p> <p>With regard to bid selection decisions, PPL Article 45(1), as amended, requires a procuring entity to provide written notice of acceptance of the selected bid to all bidders within three (3) days after selection of the winning bid. However, the Regulation (Chapter 10, Section 10.1) states that bidders</p>
--	---

	<p>who were not selected for award (disappointed bidders) should be informed of the selection decision within three (3) days of the signing of the bidding results record by the selected bidder, which signing would occur (as per the Regulation) only after the selected bidder has received notice of its selection. Any inconsistency between the PPL and Regulation in this regard should be rectified. The PPL further requires a procuring entity to publish an announcement of the selection in the PPB, but no timing for such publication is specified. The Regulation (Chapter 10, Section 11) states in that regard only that a procuring entity must publish information about a bidding process within ten (10) days from the date of contract signing. Therefore, the possibility still remains that disappointed bidders may not learn of a selection decision until well after such decision has been made, hampering their ability to bring a timely and meaningful procurement complaint. Moreover, the additional provision in Regulation Chapter 10, Section 10.1 that bid securities shall be returned to disappointed bidders at the same time as the notice of bid selection could leave the procuring entity without a valid bid for selection under PPL Article 45(5) in the event that the selected bidder fails to sign the contract or provide a required performance security. Although the PPL Amendment represents a positive step in seeking to provide notice of selection to all bidders simultaneously, the legislative framework could benefit from further revision to ensure that the notice provisions are clear and consistent across the governing documents.</p> <p>The PPL provides for confidentiality during the procurement process.</p>
1(g)—Submission, receipt, and opening of tenders	<p>The PPL (Articles 32 and 34) provides that procurement notices and bidding documents shall specify the date and time of bid submission, as well as bid opening in the case of bidding documents. PPL Article 41 provides that bids are to be opened “at the time and place specified in the bidding documents,” noting that the time of bid opening shall coincide with the bid submission deadline, which at least implies—but does not explicitly state—that bid opening shall occur immediately after bid submission (save for a reasonable interval for logistical considerations). The PPL provides that bidders or their representatives may be present at bid opening, and that the name, bid price and amount of</p>

	<p>bid security shall be promptly announced and shall be registered in the minutes of bid opening. It should be specified in the PPL that any discounts offered also should be read out at bid opening and recorded.</p> <p>There is no provision in the PPL that would require a procuring entity to reject and return late bids to the bidder unopened.</p>
1(h)—Complaints	<p>PPL Chapter 7 is devoted to Procurement Complaint Review Procedures. Specific aspects of the complaints review process are discussed in greater detail under Indicator 10 below. In broad terms, the PPL (Article 79), as amended, provides that participants in tendering proceedings may submit complaints directly to the procuring entity and/or to the PPA (as the Authorized Body) prior to conclusion of the procurement contract. Based on the language of the PPL Amendment (amendment to PPL Article 79(1)), it is unclear whether such a complaint could be submitted simultaneously to the procuring entity and the PPA, which could lead to the undesirable result of parallel proceedings. After a procurement contract has been concluded, complaints may be submitted to the PPA (as the Authorized Body) pursuant to PPL Article 79(1). Regulation Chapter 12 creates some ambiguity, however, as to whether a procuring entity also can consider complaints after a decision on the contract award has been made. Importantly, complaints also may be brought in court, but the team was told that there have been no court cases to date. We also understand that complaints may be made to Prosecutor’s Offices under the broader legal framework.</p> <p>As a general principle, entities responsible for reviewing complaints should be independent and should not be engaged in other functions that may pose conflicts of interest. Potential independence and conflict of interest concerns are implicated by the procuring entity-level complaint review process, but such process also permits a procuring entity the opportunity to itself revisit a decision that is the subject of a complaint. Moreover, complaint to a procuring entity is a review mechanism that is used in international practice. Where proper safeguards are in place, such mechanism may be an efficient method of resolution of complaints. However, such a system should be transparent and carefully tailored to provide for due</p>

	<p>process and independent decision-making.</p> <p>These same concerns are present with regard to PPA-level review given the PPA's role as a procuring entity when it acts in that capacity on behalf of procuring entities that have not been qualified to conduct procurement on their own behalf. Granting review responsibility to the PPA also may create a conflict of interest with its regulatory function. In addition, where the PPA acts as the procuring entity, it appears that one level of review contemplated under the PPL actually is not available to bidders, i.e., a bidder's only recourse other than filing a complaint in court would be the PPA.</p> <p>In addition, where a complaint is made against a procurement action of the PPA (acting on behalf of a procuring entity), the PPA's or court's decision on such complaint impacts on the procuring entity on whose behalf the procurement was conducted by the PPA. In other words, such procuring entity essentially would bear the burden for the PPA's procurement action in the event that a complaint against such action was found to be valid. Such a result may put the procuring entity in an untenable position.</p> <p>With respect to the actual process to be followed regarding complaints, the PPL could benefit from redrafting to more fully set forth the process, to address important issues that presently are not addressed, and to clarify certain other matters, such as: inclusion of a standstill period between the announcement of a contract award and contract signature; inclusion of a mandatory right to receive a debriefing; due process considerations; subject matter that can be protested, which should not be limited (i.e., all matters pertaining to the procurement and contract award process should be subject to review, which presently is not the case under PPL Article 79(3)); basis for rejection of a complaint; clarification as to whether higher-level and court review are limited to appeals from lower-level complaint decisions or also are available for review of complaints in the first instance. Ambiguities among the PPL and Regulation regarding the complaint review process also should be addressed. Also, the filing of a complaint should be allowed for both actual bidders and also potential bidders who may have decided not to compete for reasons that are the subject of the complaint. Publication of complaint</p>
--	---

	<p>decisions also should be mandated in the PPL.</p> <p>With regard to the inclusion of a standstill period between the announcement of a contract award and contract signature, it should be noted that this issue is implicitly addressed by the PPL Amendment. In that regard, the amendments to PPL Article 45(3) indicate that a contract should not be signed (subject to exception for request for quotations and single-source procurements) for three (3) days from the notice to bidders of the award selection. It should be considered whether a longer standstill period should be implemented. Presently, disappointed bidders would have only three (3) days after notice of a selection decision to submit a complaint prior to a contract being signed. There is a question as to whether such a limited period of time is adequate to allow a disappointed bidder to bring a timely and meaningful complaint. The basis for excluding request for quotations and single-source procurement from the application of a standstill period also is unclear. With specific regard to single-source procurement, there at least should be some opportunity for meaningful challenge to the selection of such procurement method (which would require a corresponding change to PPL Article 79(3) as noted above). To the extent that there may be some concern about requiring a standstill period where, for example, single-source procurement was used in response to an emergency situation, it may be considered to include a provision in the PPL to the effect that a standstill period may not be required where the procuring entity determines that urgent public interest considerations require the procurement to proceed without such standstill period, which determination should be justified in the procurement record.</p> <p>Furthermore, other language found in materials comprising the broader procurement legislative framework leaves room for question as to whether a standstill period prior to contract signing actually is provided for in the legislative framework.. The legislative framework should clearly and consistently address this issue.</p> <p>The PPL provides for a decision deadline of three (3) days at the procuring entity level. Per PPL Article 80, the procurement proceedings shall be suspended pending the decision, but only upon coordination with the PPA. The</p>
--	--

	<p>PPA shall issue its decision on a complaint within ten (10) days of receipt of the complaint, during which time the procurement procedure shall be suspended (PPL Article 81). Despite seemingly clear language in the PPL, however, the team was told by stakeholders that a suspension is not mandatory—and that agencies do not always suspend the procurement process even though the PPA advised that it sends notice of complaints to procuring entities to initiate suspension—pending decision on a complaint.</p> <p>Based on information learned during the team’s meetings, it appears that there is confusion in practice as to whether the complaint mechanisms set forth in the PPL represent consecutive or alternate venues for review. In other words, it is unclear whether each lower-level of review must be exhausted before a complaint can be brought to a higher-level review entity. The PPL should be clarified in this regard. It seems that the general understanding is that the intent of the PPL is to create consecutive levels of review, but that the PPA does review cases submitted to it in the first instance. The system also could benefit from educational programs in this area.</p> <p>Reportedly, no complaints have been brought to court. See also below comments under Indicator 10 regarding specific aspects of the complaints review process.</p>
--	--

RECOMMENDATIONS

1. Review and revise the procurement legislative framework to ensure that the various legislative instruments are comprehensive, coordinated and current. Also prepare a Procurement Manual.
2. Matters of critical importance should be addressed in the PPL rather than regulated through Presidential Decree or Resolution, which are more readily, and less transparently, changed.
3. Decentralization efforts, and procuring entity capabilities, should be increased. Procuring entities that are accredited should be in a position to conduct procurement for all agencies attached to it.
4. The definitions of “services” and “consulting services” could benefit from clarification.

5. A provision regarding application of International Finance Institutions (IFI) procurement procedures under IFI-financed projects should be included in the PPL.
6. The PPL should state, unambiguously, that bidding with unlimited participation is the default procurement method for goods, works and non-consulting services.
7. The PPL should more clearly set out the conditions for use of the various consultant selection methods, and should specify when it is appropriate to base selection on technical price and quality considerations.
8. Electronic public procurement should be noted as a means of, rather than a stand-alone method of, procurement.
9. It should be considered to include a method for framework contracts in the PPL.
10. The conditions for use of single-source procurement should be reviewed in light of international good practice, which generally restricts use of single-source procurement to very limited circumstances. There is need for consideration as to whether requiring PPA prior approval for use of the single-source method of procurement in emergency situations is necessary.
11. The application of thresholds for the use of specific procurement methods should be clearly set forth in the legislative framework.
12. The manner of use of domestic preferences might be more clearly set out in the legislative framework.
13. Conditions under which SOEs may participate as bidders in public procurement should be set out in the legislative framework.
14. Requirements for joint venture bidders should be set out in the legislative framework.
15. The legislative framework could benefit from further revision to ensure that notice provisions are clear and consistent across the governing documents.
16. As an overall observation, the PPL provisions on procurement methods might benefit from clarification to more precisely describe their conditions and procedures for use.
17. Procurement methods not specified in the PPL should not be provided for in the

Regulation.

18. Set forth clearly in the PPL a strict prohibition on fractioning.
19. In addition to procuring entity-level and judicial review, ideally, establish an independent body as a common forum for complaints regarding procurement processes and contract awards. Depending on where this body would be located, put proper separation of functions and safeguards in place to ensure independence and to minimize the potential for conflicts of interest.
20. With regard to the procuring entity-level complaint review process, proper safeguards, transparency, and due process measures should be put in place in order to ensure the independence of, and encourage public confidence in, this review mechanism.
21. The manner of conduct of the complaint review process should be formalized and set forth in greater detail. The legislative framework’s treatment of the complaints review process could benefit from redrafting to more fully set out the process, to address important issues that presently are not addressed, and to clarify certain other matters.
22. Publication of notice of complaint cases and publication of the decisions on complaints should be mandated in the PPL.
23. The PPA should facilitate educational programs on complaint review mechanisms for all interested parties.
24. Although no particular model is being endorsed hereunder, the review chapter (Chapter VIII) of the new UNCITRAL Model Procurement Law issued in 2011 may be a reference regarding review mechanisms generally.

Indicator 2: Implementing regulations and documentation

This indicator verifies the existence, availability, and quality of implementing regulations, operational procedures, handbooks, and standard tender documents complete with standard contract conditions. Higher-level legislation, the PPL for example, provides the framework of principles and policies that govern public procurement; while regulations, resolutions, orders, and instructions provide more-detailed explanations of the statutes, make them operational, and explain how they are to be applied in specific circumstances. This indicator has six sub-indicators, which are discussed in the following table.

Sub-indicator	Current Procedures/Practices/Key Findings
---------------	---

<p>2(a)—Implementing regulations define processes and procedures not included in higher-level legislation.</p>	<p>The PPL is supplemented by the Regulation, as well as numerous Resolutions, Presidential Decrees, and other guidance that govern public procurement-related matters, but these are not comprehensive, coordinated, or current. In addition, these secondary implementing regulations often are used to address matters of critical importance that better should be addressed in the PPL, most notably perhaps the specific identity of the Authorized Body.</p> <p>There are no regulations on the participation of state-owned enterprises in public procurement. Nor are there any regulations relating to procurement of commonly used goods.</p>
<p>2(b)—Model tender documents for goods, works, and services are available.</p>	<p>PPL Article 34 establishes the required contents of bidding documents. However, there is no provision in the PPL clearly mandating the issuance of Standard Bidding Documents (SBDs) and their use by procuring entities, although the Authorized Body is tasked with the development and publication of SBDs that are to be subject to mandatory use (PPL Article 20). Nor is there a complete set of SBDs covering various types and methods of procurement. A single SBD exists for the procurement of goods, works and non-consulting services, but this SBD does not include a standard contract form. There also is a Standard Request for Proposals, and various contract forms, for the procurement of consulting services. The use of these SBDs and forms is not mandatory.</p>
<p>2(c)—Procedures for prequalification are sound.</p>	<p>Prequalification is not used generally in public procurement in Tajikistan.</p> <p>Although the PPL provides for prequalification procedures, and a prequalification document exists, the PPL is lacking in guidance as to when (i.e., under what circumstances) the prequalification procedure is to be used. Additional lack of clarity regarding prequalification arises from the existence of secondary implementing regulations setting out basic parameters regarding the use of pre-selection based on qualifications. The relationship of these secondary implementing regulations to the conduct of a prequalification process is unclear.</p> <p>The PPL also does not state that qualification is to be evaluated on a pass/fail basis. Nor does the PPL specify that qualification criteria should be limited to meet</p>

	procurement-specific needs. Care also should be taken not to conflate eligibility and qualification criteria.
2(d)—Procedures for contracting services and other requirements in which technical capacity is a key criterion are suitable.	<p>The PPL does not specify when to use QCBS and is essentially silent as to when it is appropriate to base selection on technical price and quality considerations. In that regard, the PPL only generally provides for conditions under which selection based exclusively on technical capacity is appropriate (and there is potential for confusion regarding Articles 68 and 71).</p> <p>Procedures for assessment of technical capacity and for combining price and technical capacity under different circumstances are described generally in the PPL, but no specific methodologies are stated, which may be a matter that could be addressed in implementing regulations.</p>
2(e)—User’s guide or manual for contracting entities is available.	A User’s Guide is available to procuring entities. The User’s Guide is intended to help entities handle their own procurement consistent with the requirements of the PPL. However, the User’s Guide does not reflect the current procurement legislative framework.
2(f)—General Conditions of Contract (GCC) for public sector contracts cover goods, works, and services that are consistent with national and, when applicable, international requirements.	An SBD exists for the procurement of goods, works and services, but this SBD does not include a standard contract form. As such, there are no General Conditions of Contract (GCC) for such procurement. There are various contract forms and GCC for the procurement of consulting services (e.g., time-based, lump-sum, individuals). These GCC are broadly consistent with international requirements, but certain gaps in coverage have been observed. For examples in that regard, please see the comments under Sub-indicator 8(a) below. Also, the use of defined terms is not comprehensive or consistent across the GCC, which leaves room for potential inconsistencies in application and interpretation. Furthermore, like provisions included across the GCC are not always consistent, which again leaves room for potential inconsistencies in application and interpretation.

RECOMMENDATIONS

1. There should be in place a consolidated, coordinated, and comprehensive set of implementing regulations detailing matters set out in the PPL. A Procurement

- Manual/User’s Guide reflecting current legislation should be prepared/updated.
2. The GOT should prepare a comprehensive set of separate SBDs for goods, works, and services (non-consulting and consulting services), and should make their use mandatory.
 3. The GOT should prepare General Conditions of Contract (GCC) consistent with related provisions in the PPL for the procurement of goods, works, and non-consulting services, and address gaps in the existing GCC for the procurement of consulting services. Certain provisions also could benefit from clarification.
 4. The PPL should clarify and expand upon the procedures for prequalification, as well as the evaluation criteria.
 5. The GOT should take care not to conflate eligibility and qualification criteria.
 6. Under procurement of consulting services, procedures for use and assessment of technical capacity, and price should be more clearly set forth in the legislative framework.

Pillar II. Institutional Framework and Management Capacity

Pillar II examines how the procurement system defined by a country’s legal and regulatory framework operates in practice when filtered through the institutions and management systems of public sector governance.

Indicator 3: The public procurement system is mainstreamed and well integrated into the system of public sector governance

This indicator examines the procurement system to determine (a) its suitability to discharge legally prescribed obligations without gaps or overlaps; (b) whether necessary links exist with other sectors of government affecting procurement; (c) whether procurement operations are constrained by other external institutional factors; and (d) whether the managerial and technical capacity of the system are adequate for procurement without unnecessary cost or delay. In assessing the integration of the procurement system with other parts of government, attention is given to the financial management system because of its complementary role in the process, from budget preparation and planning to Treasury operations for payment. This indicator has four sub-indicators, which are discussed in the table below.

Sub-indicator	Current Procedures/Practices/Key Findings
3(a)—Procurement planning and associated expenditures are	Article 12 of the PPL requires procuring entities to prepare and submit a procurement plan to the PPA for the next fiscal year in a prescribed form approved by the PPA.

<p>included in the budget formulation process and contribute to multiyear planning.</p>	<p>Furthermore, procuring entities are required to prepare annual expenditure programs on procurement and prepare a schedule for each tender.</p> <p>Procurement planning at the national level, in Oblasts, in Rayons, and at local levels begins with the commencement of the budget formulation process. However, procurement planning during budget formulation, as well as after budget allocation, is weak.</p> <p>The team was advised that, after the Ministry of Finance (MOF) informs the procuring entities of their approved budget allocation, the procuring entities do not prepare procurement plans for the fiscal year on a timely basis. As a result, procurement is not conducted in a timely manner. More frequently, because of the lack of procurement planning and timely availability of funds, procurement is delayed. Because budgetary allocations that are not used by the end of the fiscal year (i.e., December 31) are no longer available, procuring entities in the last quarter of the year rush to conduct procurement that may lack of economy, efficiency and transparency, which then leads to higher prices of goods, works and services for the GOT.</p>
<p>3(b)—Budget law and financial procedures support timely procurement, contract execution, and payment.</p>	<p>The budget process includes a strategic budget-planning phase, resulting in preparation of a medium-term expenditure framework (MTEF) with a planning of expected expenditures for the next three (3) years. At the medium-terms planning phase, an aggregate program and economic classifications are used. The national budget is approved by the Parliament on an annual basis. Once the annual budget is approved, procuring entities develop the detailed financing plans for the budget year and coordinate with the Ministry of Finance. Financing plan information is helpful in the centralized treasury information system.</p> <p>Procurement plans are developed by the procuring entities autonomously and there is no information system in place to capture them. Procurement planning follows budget planning, and annual procurement plans are developed on the basis of approved financing plans and budget allocations. However, the practice of using procurement plans in budget formulation, and after the approval of budgetary allocation, is not followed.</p>

	<p>There is no provision in the budget cycle for multi-year procurement contracts. As a result, long-term contracts, especially for construction works, are awarded and initiated in a given fiscal year without any assurance of funding the completion of such contracts in the ensuing fiscal years. This leads to undesirable practices of continuing contract execution only as funds become available, which may lead to substantial delays.</p>
<p>3(c)—No initiation of procurement actions occurs without existing budget appropriations.</p>	<p>PPL Article 10, in the context of qualifying a procuring entity to conduct procurement by itself, says that prior to beginning a procurement a procuring entity must have documents from the Treasury and/or servicing bank certifying the availability of funds assigned for public procurement. It is not clear to what extent this requirement is applicable to all (e.g., qualified and unqualified) procuring entities. In the past, there have been cases at local levels when budget appropriation was confirmed even though actual funds were not available. Thus, the procurement could not be initiated.</p>
<p>3(d)—Systematic completion reports are prepared to certify budget execution and to reconcile delivery with budget programming.</p>	<p>No systematic procurement completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.</p>

RECOMMENDATIONS

1. The procurement planning process should start at least two months prior to the upcoming fiscal year. There must be a link to MTEF and annual budget. This would allow the procuring entity to develop a more realistic expenditure cycle so that competitive procurement methods and efficient use of public funds are ensured.
2. Require procuring entities to prepare and submit procurement plans to the PPA before January 31 every year for publication on the PPA website. No procurement should be allowed before such plans have been prepared, submitted to the PPA, and published.

3. Procuring entities should put in place a monitoring system to ensure that procurement included in procurement plans is carried out in a timely manner.
4. There is need for improvement in the budget formulation and execution processes from the procurement point of view, including provision of funds for multi-year contracts.
5. The PPL should include an explicit statement that no procurement action shall be initiated without an existing budget appropriation. Ensuring availability of funds before issuing tender notices is a good practice and should be continued. Tenders initiated without prior confirmation of the availability of budget funds should be declared null and void.
6. Integrate the procurement system with the financial management/budgetary system to provide information on implementation status of signed contracts.
7. The GOT should require the preparation of completion reports to certify budget execution and to ensure that deliveries reconcile with budget programs.
8. The GOT should consider multi-year budget planning.

Indicator 4: The country has a functional normative/regulatory body

This indicator deals with the existence of oversight and regulatory functions within the public sector, the independence of regulation, performance effectiveness, and the degree of coordination between responsible organizations. The four sub-indicators are discussed and scored below.

Sub-indicator	Current Procedures/Practices/Key Findings
4(a)—The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.	<p>As currently constituted, the Authorized Body is established as part of the legislative framework and is assigned defined functions. Article 20 of the PPL includes the functions of the Authorized Body. No specific entity is identified as the Authorized Body in the PPL. The PPA has been so designated by government decree. There is some concern that leaving identification of the Authorized Body to be dealt with by decree or resolution may create the possibility that the specified Authorized Body could be more readily changed than would be the case if the specific Authorized Body were to be designated in the PPL. In general, a more intensive legislative process is required to change a law than to revise a resolution or decree.</p> <p>In March 2010, the GOT issued a decree (Government Decree "On Further Improvement of the Structure of</p>

	<p>Central Authorities of Executive Power of the Republic of Tajikistan", dated March 9, 2010) that abolished the then PPA and established a new PPA (the abolished PPA was under the Ministry of Economic Development and Trade). The decree provides for a maximum of thirty-eight (38) employees (excluding service personnel), although the maximum number of staff arguably should not be so regulated and instead should be left for decision based on need. Four (4) staff members from the Ministry of Economic Development and Trade transferred to the PPA.</p>
<p>4(b)—The body has a defined set of responsibilities that include but are not limited to a set of eight identified functions.</p>	<p>The PPL (Article 20) defines the role of the Authorized Body. Pursuant to PPL Article 20, as amended, the PPA, as the Authorized Body, is responsible for:</p> <ul style="list-style-type: none"> a) Development of normative legal acts stipulated by the PPL for functioning of the public procurement system, which includes procurement procedures and proceedings, awarding of contracts and making of payments according to them; b) Coordination and regulation of the activities of procuring entities on carrying out procurement of goods, works, and services with government funds; c) Monitoring of procuring entity compliance with the legislation of the Republic of Tajikistan on public procurement; d) Review of complaints and protests on compliance with legislation on public procurement, issuing decisions within its competence. e) Development and publication of standard bidding documents, subject to mandatory use by all procuring entities in preparation of corresponding bidding documents for their actual procurement; f) Consulting on application of public procurement legislation; g) Arranging training, and retraining of public procurement specialists; h) Using administrative measures in relation to rule-breakers of public procurement, procuring entities that do not implement the decision of the authorized body; i) Implementation of public procurement of goods, works, and services above the minimal threshold on behalf of the procuring entities that do not meet qualification requirements to conduct their own procurement.

	<p>The above function (h) was added by the PPL Amendment, but its scope and manner of implementation is not entirely clear.</p> <p>Notably, the decree designating the PPA as the Authorized Body (Government Decree On Public Procurement Agency for Goods, Works and Services Under Government of Republic of Tajikistan, # 228, dated May 3, 2010) assigns more functions to the PPA than the functions assigned to the Authorized Body in the PPL.</p> <p>Overall, the PPA is an independent body in line with good international practice. There are, however, questions relating to potential conflicts of interest arising from the various functions assigned to the PPA as discussed elsewhere herein.</p>
<p>4(c)—The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with its responsibilities.</p>	<p>The Director of the current PPA reports to the President of Tajikistan. The PPA is staffed with thirty-eight (38) key personnel and has a central office in Dushanbe and five regional offices. The PPA’s involvement in the actual conduct of procurement does not allow it to perform fully its regulatory functions, including oversight and support.</p> <p>Granting broad areas of responsibility to the PPA also may create conflicts of interest, in particular with the PPA’s regulatory function, and certainly involves the PPA in procurement operations.</p>
<p>4(d)—The body’s responsibilities should be clearly defined and separated to avoid conflict of interest and direct involvement in execution of procurement transactions.</p>	<p>While the PPA’s responsibilities are clearly defined in the PPL, these responsibilities are not adequately separated so as to avoid conflicts of interest, especially with respect to the PPA’s conduct of procurement (on behalf of procuring entities), regulatory, complaint review and unreliable contractor determination responsibilities, which conflict to the extent that a regulatory entity ideally shall not also have responsibilities related to procurement-specific operations. The PPA still conducts public procurement for government agencies that are not certified as qualified procuring entities by the QC. However, it is anticipated that PPA’s involvement in the actual conduct of procurement for procuring entities will gradually diminish as more procuring entities are qualified and certified to undertake their procurement themselves.</p>

RECOMMENDATIONS

1. The Authorized Body should be identified, and its functions should be fully set forth, in the PPL rather than in a government decree.
2. The PPA should be further strengthened to undertake effectively and independently functions that are normally performed a procurement regulatory body such as:
 - i. Providing advice to contracting entities;
 - ii. Drafting amendments to the legislative and regulatory framework;
 - iii. Monitoring compliance of contracting entities with regard to implementation of the PPL and its regulations;
 - iv. Collecting information about public procurement from contracting entities, analyzing this information and include it in a consolidated annual procurement report and send it to the GOT, as well as publishing it for the public to increase transparency;
 - v. Developing and instituting a strategy for enhancing the implementation of public procurement in the country; and
 - vi. Developing and monitoring a training and capacity-building program to improve the capacity of procurement officers in the public and private sectors.
3. Concerns regarding the PPA's conflicting functions should be addressed. In particular, the PPA ideally should not be involved in the actual conduct of procurement. As an interim step, a separate department with adequate staff and resources could be established to conduct procurement for other procuring entities until they are qualified and certified to conduct procurement themselves. This objective can be achieved only through the introduction of a vigorous procurement capacity-building program.
4. The PPA should prepare a capacity-building program, and the GOT should implement it to increase the capacity of procurement officers and facilitate decentralization.
5. Complaint handling ideally should be managed by a separate independent body. To the extent that a complaint review function is retained within the PPA, proper separation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest.

Indicator 5: Existence of institutional development capacity

The objective of this indicator is to assess the extent to which the country has systems to support and monitor the performance of the entire system, and to formulate and

implement improvement plans. This requires, among other things, information systems, a capacity for analysis, feedback mechanisms, and planning capacity to carry out improvements. It is very important that responsibilities are clearly assigned and are being performed.

Sub-indicator	Procedures/Practices/Key Findings
<p>5(a)—The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award data.</p>	<p>The current legislative framework does not clearly provide for a system for collecting and disseminating procurement information.</p> <p>Nor does the country have an institutionalized system for this purpose. No annual report on the performance of procurement is prepared and published. The Public Procurement Bulletin (PPB) is available electronically on the PPA's website (www.goszakupki.tj)</p> <p>The PPA website is used for the publication of information on invitations to bid, but very little contract award information is published, let alone information as to complaints received and handled. It seems that the PPA homepage is a platform or an electronic bulletin board, which is available for advertising public sector procurement. However, its availability needs to be better advertised, as access to it and its use is still limited to the main cities in Tajikistan, due to overall limited internet access throughout the country. Moreover, this system does not allow collection of procurement information/statistics based on the conducted tenders.</p>
<p>5(b)—The country has a sustainable strategy and procedures for collecting and monitoring national procurement statistics.</p>	<p>No sustainable strategy for collecting and monitoring national procurement statistics exists. There is no procurement statistical data collection in place. Information is collected and maintained only manually. The PPA collects information from procuring entities in a form of reporting. Based on the information gathered in this manner, the PPA manually calculates tender numbers, amounts, etc. for the purpose of preparing Annual Reports. Analysis of the collected information is weak. As such, procurement statistics are not reliable.</p>
<p>5(c)—A sustainable strategy and training capacity exists to provide skills enhancement, advice, and assistance to enable government and private</p>	<p>No capacity-building and training strategy exists, but the PPA provides some procurement training to public officials. However, the PPA does not have the necessary capacity to fulfill all the procurement training needs of the country. The country has 1,300 procuring entities at the central level and more than 5,000 at the local level, and there is a growing construction industry and supply side.</p>

sector participants to understand procurement rules and regulations and how they should be implemented.	The process of decentralization of procurement to procuring entities at all levels of government is rather slow, in part because of the lack of sustainable and adequate procurement capacity-building mechanisms. Outreach to the private sector on the subject is also limited.
5(d)—Quality control standards are disseminated, and used to evaluate staff performance and promote capacity development.	Procurement is not professionalized in the country, and no quality control standards exist that are specific to public officials involved in procurement. However, quality control standards applicable to public officials do exist and these are used for evaluating the performance of civil servants generally. No program for certification of procurement specialists has been prepared and implemented.

RECOMMENDATIONS

1. The regulations should include mandatory requirement for procuring entities to publish contract award information on the PPA’s website, and for the PPA to prepare annual procurement reports and make the reports public by a certain date each year.
2. Procuring entities also should be strengthened in collecting and maintaining public procurement information. A system for reporting to the PPA should be introduced.
3. The PPA should put in place a reliable system to collect and disseminate procurement information.
4. The system should allow collection of annual procurement plans, procurement notices, contract awards, etc. Such information also should be used for the preparation and publication of annual reports on public procurement.
5. The PPA should carry out a capacity building needs assessment and, based on the findings, prepare a sustainable national procurement capacity-building strategy that considers all available public and private resources, such as the existing school of advanced training for civil servants, universities, colleges, private sector training institutes, chambers of commerce, etc.
6. A procurement help desk should be established at the PPA.
7. The GOT should undertake to professionalize procurement and should introduce quality control standards applicable to procurement staff to be used for the evaluation of performance of procurement practitioners, including a procurement testing and accreditation system.

Pillar III. Procurement Operations and Market Practices

In order to use the market as one means of judging the quality and effectiveness of the system in implementing procurement procedures, the team held interviews with contractors and suppliers. The information contained in the indicators below is based on the information collected through these interviews.

Indicator 6: The country's procurement operations and practices are efficient

This indicator looks at the efficiency of procuring entity operations and practices. In summary, this means that the operational practices result in timely contract awards at competitive market prices as determined by effective and fair implementation of procurement procedures.

Sub-indicator	Procedures/Practices/Key Findings
6(a)—The level of procurement competence among government officials within an entity is consistent with their procurement responsibilities.	<p>There is a general lack of procurement competence among public officials involved in procurement. This is the result of the absence of a sustainable institutionalized procurement capacity-building strategy and program.</p> <p>PPL Articles 11 and 12 address the structure and functions of a procuring entity's subdivision on procurement. PPL Article 13 requires the procuring entity to establish a tender commission for each procurement, with the tender commission's functions as defined under PPL Article 14. The tender commission shall be comprised of qualified specialists in the procurement subject and a procurement specialist. Per the PPL Amendment (amendments to PPL Article 10), certified procurement specialists also may be required in order for a procuring entity to be qualified to conduct procurement on its own behalf. These requirements for certified procurement specialists may be challenging considering the lack of procurement training opportunities for public officials.</p>
6(b)—The procurement training and information programs for government officials and for private sector participants are consistent with demand.	<p>There is no systematic training or information program for either the public or private sector. The current procurement training arrangements are not consistent with the demand of both the public and private sectors. Furthermore, the absence of adequate training provision in the country is slowing down decentralization of procurement to procuring entities, because the means they need to qualify for decentralization are not available to them.</p>
6(c)—There are	PPL Article 46 requires procuring entities to maintain the

<p>established norms for protecting records and documents related to transactions and contract management.</p>	<p>following record of procurement proceedings:</p> <ol style="list-style-type: none"> i. Description of the subject of procurement for each lot; ii. Names and addresses of the suppliers/contractors who submitted bids, proposals, or quotations; iii. Requirements of the suppliers/contractors while concluding procurement contracts; iv. Price and other main conditions of each bid/proposal; v. Summary of evaluation, comparison, and grounds for selection of the submitted bids/proposals; vi. When all bids/proposals are rejected, grounds for such rejection; vii. When the procurement contract is not concluded as the result of procurement procedures, a statement to that effect and the grounds therefor; viii. When using procedures other than tendering with unlimited participation, the grounds therefor; ix. The grounds for using prequalification proceedings; x. A summary of any request for clarification of prequalification or bidding documents, and the responses thereto. <p>These records are required to be maintained for three (3) years from the date of their creation.</p> <p>Procurement records should be maintained regardless of procurement value as now is reflected in the PPL Amendment (amendment to PPL Article 46(2)).</p>
<p>6(d)—Provisions exist for delegating authority to others who have the capacity to exercise responsibilities.</p>	<p>According to PPL Article 10, only procuring entities that meet specified qualification requirements, as determined by the QC, may conduct procurement on their own behalf. The PPA, as the Authorized Body, is mandated to conduct procurement on behalf of all other procuring entities. To date, only nineteen (19) procuring entities have been certified as qualified procuring entities to conduct their own procurement. The qualification requirements specified in PPL Article 10 require that, to be so qualified, the procuring entity:</p> <ol style="list-style-type: none"> i. Possesses professional and technical competence, experience and reputation, financial resources, equipment and other material, and technical facilities needed for the implementation of procurement proceedings in accordance with the

	<p>PPL’s requirements;</p> <ul style="list-style-type: none"> ii. Has in its structure a special subdivision or officials with Certificate of Procurement Specialist responsible for conducting procurement proceedings; iii. Has qualified specialists on procurement sectors for formation of tender commissions for each tendering to be conducted; iv. Shall not be insolvent or bankrupt, and its property shall not be under judicial control, its activities shall not be managed by the court or a person appointed by the court, its commercial activity shall not be suspended, and it is not at the stage of judicial proceedings; v. Has fulfilled its obligations to pay taxes and other compulsory payments in the Republic of Tajikistan; vi. Is headed by persons (heads of procuring entity) who were not convicted for forcing to commit bribery, or any criminal offense related to their professional activities (and in case of their conviction, the term of conviction shall be expired or cancelled by decision of the country in accordance with Article 77 of the Criminal Code of Tajikistan prior to the procurement procedures); vii. Is not debarred from procurement proceedings, its name is not included in the PPA’s Registry of unreliable (unfair) procuring entities due to flagrant violations of the procurement procedures and causing damage to suppliers/contractors as well as for untimely payments and other substantial mistakes in administration of procurement contracts; viii. Has, prior to the beginning of the procurement, documents from the Treasury and/or servicing bank certifying availability of funds, assigned for public procurement; ix. Has the legal capacity to conclude procurement contracts. <p>As noted above, PPL Articles 11 through 14 require a procuring entity to entrust the organization of procurement to a designated subdivision, and also require the procuring entity to establish a tender commission for each tendering process. It is understood that experts also are used in the conduct of evaluations, as necessary.</p>
--	--

	In terms of delegation of authority for decision-making or approval based on specific procurement thresholds, the PPL and procurement-related decrees and regulations, as well as regulations relating to the civil service, appear to be silent. The task team understands that only Ministry and Agency Directors and Deputy Directors have authority to sign procurement contracts and that there is no further delegation of authority relative to procurement/contract value.
--	--

RECOMMENDATIONS

1. The GOT should professionalize procurement and establish a separate stream for it. This action needs to be supported with separate job descriptions (to include mandatory qualification/experience/competency requirements, career structures and salary scales for procurement professionals, and, in due course, an appropriate accreditation system).
2. The GOT should design and deliver a procurement capacity-building/awareness program that meets the needs of public officials at all levels of government, as well as those of the private sector.
3. The GOT should enforce the rules on record-keeping, and relevant staff should be trained in the subject.
4. The GOT should expedite decentralization of public procurement to procuring entities at all levels of government through conducting a rigorous capacity building and certification program.
5. The legislative framework could benefit from the revision of provisions addressing delegations of authority and decision-maker accountability.

Indicator 7: Functionality of the public procurement market

This indicator assesses the market response to public procurement needs for goods, works, and services in the context of the general economic climate, private sector development and policies, the existence of financial institutions, the government's attractiveness as a business partner, and the kinds of goods or services required for public projects.

Sub-indicator	Procedures/Practices/Key Findings
7(a)—There are	Effective partnership mechanisms between the public and

<p>effective mechanisms for partnerships between the public and private sectors.</p>	<p>private sectors seem to be lacking. In that regard, it seems that the environment does not encourage open dialogue with the private sector and various professional associations, including community service organizations (CSO). Furthermore, the GOT currently does not have capacity-building programs for suppliers/ contractors.</p> <p>Actually, there is no institutional mechanism for dialogue or partnership between the public and private sectors, and there are no consultations with the business community. The private sector should be seen as a development partner. Intensive outreach programs should be organized to build capacity among the private sector on how to participate in public procurement processes. Presently, because of the lack of a clear understanding of public procurement requirements bidders often submit poor quality bids, many of which have to be rejected, thus reducing competition and leading to higher prices for the GOT.</p> <p>The country already has a law on concessions, and currently is preparing a draft law on Public Private Partnership (PPP) with the main objective of developing infrastructure. Currently there are no PPP contracts.</p>
<p>7(b)—Private sector institutions are well organized and able to facilitate market access.</p>	<p>Private sector institutions are improving in their organization and in facilitating market access. Nevertheless, competition for large contracts still is concentrated with a relatively small number of firms. There are chambers of commerce, but no associations of contractors or consulting firms.</p>
<p>7(c)—There are no major systemic constraints (e.g., inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market.</p>	<p>Especially at the central level and in major cities, bidders have no constraints in terms of credit, contracting practices, etc. However, difficulties do exist at local levels.</p> <p>Based on the team’s meetings with private sector representatives, the following major constraints were recorded:</p> <ul style="list-style-type: none"> • Price usually is used as the only evaluation criteria; • The requirement of submitting a tax declaration (no debts) as part of a bid. Such declaration can only be obtained two (2) to three (3) days before the bid

	<p>submission deadline due to its limited validity of only one (1) week);</p> <ul style="list-style-type: none"> • Unfair payment conditions (in most cases, payment is done upon availability of the funds from the budget) involving delays in payment of up to six (6) months; and • Restrictive technical specifications, which, in many cases, use brand names.
--	--

RECOMMENDATIONS

1. The PPA should establish a regular dialogue with the private sector in order to raise their awareness of public procurement requirements, and the PPL should consult with the private sector on issues that impact procurement reform and training of the private sector.
2. The GOT should promote the formation of associations of contractors and manufacturers and associations of consulting firms with a view to promoting improvement in the private sector and the consulting services.
3. A survey of private sector should be carried out to help assess constraints. Based on the results of such survey, the PPA should take steps to remedy the identified constraints.
4. The PPA should establish a training program to build capacity within the private sector.

Indicator 8: Existence of contract administration and dispute resolution provisions

For this indicator, the team reviewed current contract administration procedures and interviewed some procuring entities to assess their administrative practices.

Sub-indicator	Procedures/Practices/Key Findings
8(a)—Procedures are clearly defined for undertaking contract administration responsibilities, including inspection and acceptance procedures, quality control	<p>Chapter 6 of the PPL is devoted to public procurement contracts. It requires that:</p> <ol style="list-style-type: none"> i. Public procurement contracts shall be concluded based on the results of tendering in compliance with the relevant provisions of the Civil Code; ii. Public procurement contracts shall be concluded in writing; iii. Notices on the conclusion of a contract, which

<p>procedures, and methods to review and issue contract amendments in a timely manner.</p>	<p>specify the name and address of the supplier/contractor and the contract price, shall be provided to all bidders who submitted a bid within three (3) days of the conclusion of the contract;</p> <p>iv. Information on the cost of the contract will be submitted to the PPA within three (3) days from the date of the conclusion of the contract.</p> <p>A procuring entity may request a supplier/contractor to submit a performance security.</p> <p>Amendments to public procurement contracts are regulated by PPL Article 76, which specifies that a contract shall not be modified to the extent that the modification would entail a change regarding the content of the bid that was the basis of the award selection. Such amendments shall be considered invalid. Other broad changes to a contract appear to be permissible.</p> <p>According to PPL Article 77, a contract may be cancelled, upon the PPA's agreement, because of a substantial change in the circumstances that existed at the time of the conclusion of the contract, which was impossible to foresee at the time of conclusion of the contract and makes performance of the contract contrary to public interests. Such a termination shall take place no later than one (1) month from the moment such circumstances became known. If a contract is terminated under these circumstances, the parties to the contract shall be compensated for damages. This provision essentially reads like a government termination for convenience right as one would expect to find in international practice.</p> <p>No contract management manual exists, but the task team was informed that such a manual is being drafted in conjunction with United Nations Development Programme (UNDP). Contract management in Tajikistan is generally weak. Good practices relating to the assignment of contract management responsibility, processing of contract variations and the procedures to be followed, and recordkeeping are not in place.</p> <p>No GCC are included in the SBDs for the procurement of goods, works and non-consulting services. The GCC for the procurement of consulting services are broadly</p>
--	--

	<p>consistent with international requirements, but certain gaps in coverage have been observed. Examples of areas that should be more directly addressed in the GCC include matters such as intellectual property rights, termination for convenience of the Government, suspension, assignment, warranty, governing law, etc. Also, the use of defined terms is not comprehensive or consistent across the GCC, which leaves room for potential inconsistencies in application and interpretation. The GCC also generally could benefit from clarification.</p>
<p>8(b)—Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disagreements arising during contract performance.</p>	<p>Claims arising under a contract are to be dealt with under PPL Article 78, which provides for amicable resolution or, absent such resolution, for recourse to economic court. However, arbitration generally is the manner of such review in international practice. In addition, the task team was informed that, in practice, contract disputes may be considered by the PPA.</p> <p>Again, no GCC are included in the SBDs for the procurement of goods, works and non-consulting services. As such, the matter of dispute resolution under such contracts is unclear. While some of the GCC relating to the procurement of consulting services refer to recourse to court absent amicable resolution of a dispute, which seems to be consistent with the PPL, other GCC refer to recourse to arbitration under Tajik law. Such reliance on arbitration not only seems to be inconsistent with the PPL but also is surprising given that we were advised by the Ministry of Justice that a Law on Commercial Arbitration is under preparation. It also appears that arbitration is used infrequently in the country. Also, no provisions clearly exist for international arbitration in contracts with foreign providers of goods and services, which is an issue that should be considered. There also is no provision for review of disputes, prior to recourse to arbitration or to court, by an entity such as a disputes resolution board as frequently is used in international practice, in particular, in larger works contracts.</p> <p>We also understand that contract disputes may be resolved, informally, by the PPA.</p>

8(c)—Procedures exist to enforce the outcome of the dispute resolution process.	The task team was advised that court decisions are enforced under the broader legislative framework, but there is no clear mechanism for enforcement of arbitral decisions. Tajikistan is not a member of the New York Convention on enforcement of international arbitration awards. No enforcement authority exists where contract disputes are informally resolved by the PPA.
---	---

RECOMMENDATIONS

1. The PPA should prepare and introduce a simple contract management manual covering goods, works, and services (consulting and non-consulting).
2. Public officials who are involved in contract management and supervision should be trained in contract management and supervision.
3. Timely payments shall be assured and the schedule of payments shall be an integral part of any contract. When payments are late, procuring entities should pay interest penalties for the period of delay.
4. Consideration should be given to limiting the scope of permissible contract modifications.
5. The PPL and the existing GCC for the procurement of consulting services generally address contract administration responsibilities, but existing gaps should be closed, and certain other provisions could benefit from clarification. In addition, consistency among related provisions of the PPL and the various GCC, as well as among the GCC themselves, also should be ensured. GCC including provisions pertaining to contract administration matters should be prepared for the procurement of goods, works and non-consulting services,.
6. Although existing GCC relating to the procurement of consulting services provide for arbitration, it is understood that arbitration is not frequently used in the country. Perhaps greater outreach could be done to foster an increased understanding of arbitration.
7. To the extent that it would not be otherwise inconsistent with Tajik law, it also might be considered whether arbitration, rather than court action, should be the preferred method of disputes resolution. Intermediate review mechanisms, such as disputes resolution boards, also might be considered, especially with respect to larger works contracts.
8. Enforcement of the outcomes of dispute resolution processes should be ensured.

Pillar IV. Integrity and Transparency of the Public Procurement System

Pillar IV covers four indicators that are considered necessary for a system that operates with integrity, has appropriate controls to support implementation in accordance with the legal and regulatory framework, and has appropriate measures to address potential corruption. It also covers important aspects of the procurement system that incorporate stakeholders in the control process. Aspects of the procurement system and governance environment are defined and structured to contribute to overall integrity and transparency of operations.

Indicator 9: The country has an effective control and audit system

The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. This indicator has five sub-indicators, which are discussed in the table below.

Sub-indicator	Current Procedures/Practices/Key Findings
<p>9(a)—A legal framework and the organization, policy, and procedures for internal and external control and audit of public procurement operations are in place and provide comprehensive coverage.</p>	<p>Internal control and audit of public funds are conducted by GOT authorities on site, and centrally by the Department of Internal Audit within the Ministry of Finance. In addition, there are five (5) ministries that have formed their internal audit units accordingly. Although all these bodies conduct periodic review of financial transactions, none of them conducts specific audits of public procurement operations. The EU has been working with the GoT to develop a strategy for improving internal control and audit. Most internal auditors were trained at universities under the former Soviet accounting curricula. Usually internal audit staff are not periodically reassigned to other units.</p> <p>External control and audit of public funds is mainly focused in the hands of the Anti-Corruption Agency, which essentially acts as a kind of “super” agency with control over even the scope of work of internal auditors. The Anti-Corruption Agency also conducts some degree of public procurement review during its regular inspections. However, the process is mainly focused around price quotations and further selection of a contract awardee. The Anti-Corruption Agency shares its 2 year plans with the Internal Audit Department of the Ministry of Finance that according to it makes revisions of its annual plans. The idea is to avoid double inspection of the same budget agency by these two auditors. None of these auditors produce any procurement related reports separately, their main objective is to ensure efficient and effective spending</p>

	<p>of budget funds. However, some procurements related information is certainly mentioned in the reports.</p> <p>The GOT came to realize that it needed an agency different from the Anti-Corruption Agency to be responsible for the audit of state bodies, and reporting to the Parliament and the President. As a result, the Chamber of Accounts was just recently established, with a mandate to help the GOT to improve performance and foster efficient and effective use of public resources through professional audit of public funds based on international standards. However, this institution is in its very initial organizational stage. The President has just sent his candidates on the positions of the Chairmen and his Deputy to the Parliament. It is expected that they will be approved by the Parliament in September 2012. CA is in its very initial stage and most probably it will take several years to establish the minimum requirements for this CA.</p>
<p>9(b)—Enforcement and follow-up of control framework findings and recommendations provide an environment that fosters compliance.</p>	<p>There is definitely strong follow-up on the findings of Anti-Corruption Agency inspections. But such follow-up mainly focuses on the return of any observed misused public funds. There is not much follow-up on the findings of internal auditors, but these generally are viewed as dependent opinions. As such, there are no critical findings in the internal auditors' reports.</p>
<p>9(c)—Internal control systems provide timely information on compliance to enable management action.</p>	<p>Information is provided within a reasonable time period, enabling management to take actions to avoid future non-compliance.</p>
<p>9(d)—Internal control systems are sufficiently defined for performance audits to be conducted.</p>	<p>Although internal control systems presently are sufficiently defined for both internal and external auditors to perform their duties, the system would benefit from further, more precise definition.</p>
<p>9(e)—Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that foster compliance.</p>	<p>Auditors are not adequately informed about procurement requirements and control systems.</p>

RECOMMENDATIONS

1. Internal auditors should be mandated to conduct periodic public procurement audits pursuant to future amendments to existing legislation.
2. More internal audit units should be organized within budget organizations.
3. The GOT should develop clear guidelines for both external and internal audit bodies to avoid duplication of work.
4. Conduct external audits in line with good international practices and should include procurement.
5. Amend the current mechanism of enforcement and follow-up to include appropriate follow-up on internal auditors and to streamline the follow-up on Anti-Corruption Agency inspections.
6. Amend internal control systems to correspond to good international practice in internal controls.
7. The PPA should develop and oversee the conduct of a training program in public procurement to both external and internal auditors.

Indicator 10: Efficiency of the appeals mechanism

Sub-indicator	Current Procedures/Practices/Key Findings
<p>10(a)—Decisions are based on available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.</p>	<p>Because decisions on procurement complaints (at any level) are not publicly available, it could not be confirmed whether such decisions are based on available information. The task team was told, however, that complaints to the PPA often are handled on an informal basis (i.e., through discussions with the procuring entity and the complainant to discuss the case prior to the PPA rendering a decision). In that regard, the task team was told that only two (2) formal complaints (from the same company) were submitted to the PPA in 2011, but that a few other complaints were made via a hotline that has been set up within the PPA. The task team also was informed that complaints may be brought, informally, through meetings with the PPA Director and/or Deputy Director.</p> <p>The matter of enforcement authority for a failure to abide</p>

	<p>by a complaint decision is not addressed in the legislative framework.</p> <p>The PPL provides for direct recourse to file complaints in court, as well as a right to appeal lower-level reviewing entity complaint decisions in court. Courts have available to them enforcement authorities as under national law generally (e.g., the Civil Code). Citizens also have a general right to bring violation of rights claims in court under the broader national legal framework.</p> <p>See also above comments under Sub-indicator 1(h) with regard to Indicator 10 generally.</p>
<p>10(b)—The complaint review system has the capacity to handle complaints efficiently and the means to enforce the remedy imposed.</p>	<p>The PPA has limited staff to handle complaints, and these generally are handled directly by the Director and/or Deputy Director. Nonetheless, there was no indication that the PPA is not responding to complaints (which are few in number) in a timely manner.</p> <p>General concerns regarding procuring entity capacity also would carry over into the area of complaints review at the procuring entity level.</p> <p>See also above comments under Sub-indicator 10(a) regarding enforcement.</p>
<p>10(c)—The system operates fairly, with balanced decisions justified by available information.</p>	<p>As noted above, because decisions on complaints are not publicly available, it could not be confirmed whether such decisions are based on available information. According to what we were told, decisions are reasoned and formally written up (at least with regard to formal complaints), but it is not clear what level of detail is provided given that no decisions were available for review. However, we received no indication that participants in the complaint review process take the view that the process is unfair.</p> <p>On the other hand, we were told that there is general reluctance for bidders to avail themselves of the complaint process. In that regard, numerous statements were made to the effect that there simply are very few complaints given the practice and business environment in the country.</p> <p>As also noted above, the PPL provides for a right to further review of lower-level decisions, as well as for judicial</p>

	<p>review of complaints in the first instance. Judicial review is an important safeguard in seeking to ensure fairness and accountability.</p> <p>See also above comments under Sub-indicator 10(a).</p>
10(d)—Decisions are published and made available to all interested parties and to the public.	Publication of decisions is not mandated under the PPL, and decisions are not published. We were advised that written decisions are provided to the complainants and procuring entities.
10(e)—The system ensures that the complaint review body has full authority and independence for resolution of disputes.	As noted regarding Sub-indicator 1(h) above, independence and conflict-of-interest concerns are implicated with respect to review by the procuring entity and by the PPA. However, the authority of procuring entities and the PPA to decide procurement complaints is established under the legislative framework, and appears to be recognized in practice. The right to court review is an important consideration regarding the existence of authority and independence in the complaint review process.

RECOMMENDATIONS

1. Matters pertaining to enforcement of and compliance with complaints decisions should be more directly addressed in the procurement legislation.
2. The complaint review mechanisms should operate with greater transparency, such as through publication of decisions, which should be mandated under the PPL.
3. In addition to procuring entity-level and judicial review, ideally, an independent body should be established as a common forum for all complaints and challenges with regard to procurement processes and contract awards. However, if a decision at the time of revising the PPL is made that the complaint review function is to be retained within the PPA, proper separation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest.
4. Procuring entities and the complaints review body should be provided with adequate resources to allow them to handle complaints efficiently.

Indicator 11: Degree of access to information

This indicator deals with how relevant, available, and comprehensive information about the public procurement system is.

Sub-indicator	Current Procedures/Practices/Key Findings
<p>11(a)—Information is published and distributed through available media with support from information technology when feasible.</p>	<p>Procuring entities are required to publish tender notices in national and/or international mass media and in the Public Procurement Bulletin (PPB). Contract award information relating to the contract awardee, including its name, address and bid prices, also is required to be published in the PPB. However, the only issue of the PPB was published in December 2010. Thus, in practice, tender notices are published only in local newspapers, and contract award notices are not published at all.</p> <p>The PPA website currently is available in three languages (Tajik, Russian and English). However, significant improvement with regard to the available content is required in order to make this website fully functional. In the Russian and English versions of the website, most of the content links do not provide the expected information, which actually is available only in Tajik.</p> <p>The PPL provides for the procurement of goods, works and services through electronic procurement, subject to the electronic procurement system being authentic, reliable and ensuring confidentiality of information. No electronic procurement system is in place, however.</p> <p>Introduction of Electronic Government Procurement (e-GP) as a measure to ensure transparency of public procurement procedures was included to the GOT's Anti-Corruption Strategy for the years 2008-2012. As of now, however, the GOT does not have a strategy to introduce e-GP that sets out a program of introducing e-GP on a step-by-step basis, and tackling necessary changes relating to internet penetration and the challenges of communication across the country.</p> <p>Implementation of e-GP is critical for making procurement processes more efficient and transparent, which in turn should lead to a more effective use of public resources. It also would help to minimize opportunities for corruption and malpractice.</p>

RECOMMENDATIONS

- i. Transparency should be increased through the digitized collection of data, the

- conduct and dissemination of analysis of such data, and publication of reports on a unified procurement portal.
- ii. The GOT should prepare and introduce a strategy on e-GP, as well as a detailed regulation on the subject. Such strategy should provide a comprehensive roadmap for the continued adoption of e-GP and should include action plans setting out clearly defined roles, responsibilities and milestones.
 - iii. In order to strengthen institutional leadership and management capacity, appropriate resources should be allocated to pursue a proactive and strategic e-GP planning process.

Indicator 12: The country has ethics and anti-corruption measures in place

This indicator assesses the nature and scope of the anti-corruption provisions in the procurement system. This indicator has seven sub-indicators, which are discussed below.

Sub-indicator	Current Procedures/Practices/Key Findings
<p>12(a)—The legal and regulatory framework for procurement, including tender and contract documents, includes provisions against corruption, fraud, conflict of interest, and unethical behavior; it sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.</p>	<p>Tajikistan acceded to the UN Convention Against Corruption (UNCAC) in 2006. Tajikistan’s Law “On Fight Against Corruption” (Anti-Corruption Law) was adopted in 2005. In January 2008, the GOT adopted the “Strategy on Fight Against Anti-Corruption” (Anti-Corruption Strategy) for the years 2008-2012. The task team was informed that an anti-corruption strategy for the next several years presently is under discussion.</p> <p>In 2007, the Agency on State Financial Control and Fight Against Corruption was created by Presidential Decree No. 143 (Anti-Corruption Agency). The responsibilities of, legal basis for, and organizational and administrative matters pertaining to the Anti-Corruption Agency are set forth in the Law “On Agency on State Financial Control and Fight Against Corruption” of 2008. The main tasks of the Anti-Corruption Agency, as summarized in the Anti-Corruption Strategy, are prevention, suppression and detection of corrupt offenses, as well as inquest and investigation of corruption, and the conduct of state financial control.</p> <p>The Anti-Corruption Agency was established, in part, to “eliminate duplication of functions and powers of state authorities” and was entrusted with functions of various GOT agencies that previously carried out anti-corruption</p>

	<p>activities. In practice, however, it seems that such functions still are carried out by various agencies in addition to the Anti-Corruption Agency. The division of labor among such agencies is not clear. This appears to be the case even though the coordination of such activities is assigned to the Anti-Corruption Agency and the conduct of statistical monitoring is assigned to the Public Prosecutors Office. In addition, the GOT has established the National Anti-Corruption Coordinating Council to provide a forum and dialogue among public institutions involved in anti-corruption efforts.</p> <p>The Anti-Corruption Strategy further provides that the Anti-Corruption Agency is to carry out the development and implementation of legal policy relating to anti-corruption, and the adjustment of normative legal acts with a view to regular modification of anti-corruption legislation. Notably, the Anti-Corruption Strategy specifically identifies the PPL among the laws that should be reviewed. With regard to legislative review more generally, the task team was informed that the Ministry of Justice, together with the Anti-Corruption Agency, have prepared a draft analysis of normative legal acts relating to anti-corruption matters, which analysis seeks to identify any gaps in the legal framework, among other things.</p> <p>1. As a general observation, it should be ensured that the anti-corruption legal framework (including procurement-related legislation) comprehensively and consistently reflects core principles, as well as best international practices. For example, while the anti-corruption legislation (as well as the PPL) prohibits corrupt acts such as bribery, broader areas of fraud and corruption and other prohibited acts (such as collusion, coercion, fraud, and obstructive practices) are not clearly covered. As such, the full range of fraudulent and corrupt practices is not covered under the legislative framework. Also, the anti-corruption legislation's description of persons subject to punishment for "bad acts" may be too narrowly drafted to cover the broad range of potential "bad actors" who may engage in fraudulent or corrupt practices. The Anti-Corruption Strategy specifically notes in this regard that the term "official" as included in relevant laws has been interpreted in different ways. Although such matters may be otherwise addressed, such as in the Law on Competition and Restriction of Monopolistic Activity at the Goods</p>
--	---

	<p>Market (#198 as of July 28, 2006), the anti-corruption legislative framework should encompass all forms of corruption, including those that occur between private parties, or should at least cross-refer to prohibitions on certain behavior contained in other laws. In addition, the legislative framework would benefit from the inclusion of provisions that more directly link (even by way of cross-reference) the PPL with anti-corruption legislation, which would call attention to the punitive consequences of corrupt behavior in procurement.</p> <p>Although engaging in fraudulent and corrupt practices, and acting under a conflict of interest, are punishable acts under the legislation specific to public procurement, such legislation (including the PPL) does not establish a clear requirement to include references to fraud and corruption, conflict of interest and unethical behavior in tendering documentation. Nor does the PPL give precise instructions on how to incorporate such matters in bidding documents. Basic provisions on corrupt and fraudulent practices and conflicts of interest are included in the tender documents, but these could benefit from expansion. It also would be prudent for the PPL to mandate that procuring agencies conduct due diligence on bids received in order to identify non-compliance with the PPL / tender rules and to identify red flags indicating fraudulent or collusive practices. Specific guidance could be provided in the secondary legislation.</p> <p>To a certain extent, both the PPL and anti-corruption legislation conflate fraudulent and corrupt practices and conflicts of interest. These subjects generally should receive separate treatment under the legislative framework.</p> <p>With specific regard to conflicts of interest, the Anti-Corruption Strategy specifically calls for the improvement of legal regulation on prevention of conflicts of interest by civil servants. In that regard, while Article 10 of the Anti-Corruption Law addresses matters pertaining to conflicts of interest, it does not fully cover such matters.</p> <p>The same is true of the PPL. For example, PPL Article 8, Conflict of Interest, prohibits persons who have authority to represent a procuring entity from:</p>
--	--

	<ul style="list-style-type: none"> i. Influencing in any way the public procurement procedure in the interests of any party of procurement; ii. Participating as a supplier (a contractor) or acting as their legal representative in procurement regulated by the PPL; iii. Participating in decision-making on procurement procedures, if they are connected with any of the tendering participants by relation or otherwise, or if they are directly or indirectly interested in the results of the procurement being conducted. <p>Although the PPL Amendment arguably clarified the intended scope of application regarding government actors (the prior PPL language spoke to civil servants, but with notable exceptions), it still is not clear that the revised language adequately covers the full range of such actors in terms of potential conflict of interest situations. Additional prohibitions are further stated in PPL Article 8, but these too could benefit from elaboration. For example, government employees with influence over procurement should be prohibited from obtaining employment with suppliers (contractors) participating in government contracts for a set period of time after they have completed their employment with the government (i.e., revolving door restrictions).</p> <p>The Regulation (Chapter 10, Section 8.2), but not the PPL, requires tender commission members, experts and other persons having access to bid information to submit a written statement declaring their impartiality. Recusal is required for any such person who learns upon opening of the bids that there are persons among the bidders whose proposals s/he will be incapable of reviewing impartially. Consideration should be given to including in the PPL a requirement for such persons, as well as key bidder personnel, to submit conflict of interest affidavits. It also might be considered whether the secondary legislation should include a code of ethics (or something similar), defining conflict of interest situations that procurement staff are more likely to experience (e.g., in their relations with bidders).</p> <p>Article 83 of the PPL stipulates generally that physical and legal persons shall bear responsibility for violation of the PPL in accordance with the legislation of Tajikistan. It</p>
--	---

	<p>does not make any reference to specific laws, such as the Criminal Code or Anti-Corruption Law.</p> <p>With respect to violations of anti-corruption-related obligations by state actors, Article 5(3) of the Anti-Corruption Law provides that disciplinary action may be taken by heads of relevant organizations. Chapter 3 of the Anti-Corruption Law also includes specific provisions addressing corruption infringements by state actors and their consequences. Depending on the nature of the violation, the consequences range from disciplinary action to administrative action to criminal action. Potential remedies also include recovery of illicit amounts and invalidation of acts resulting from corrupt activity. Chapter 3, however, could benefit from clarification with regard to matters such as the agency(ies) responsible for reviewing cases and determining penalties, available disciplinary actions and administrative penalties, and maximum and minimum penalties.</p> <p>Notably, the Anti-Corruption Law does not address consequences for corrupt activities engaged in by non-state actors. In that regard, as well as more generally, the Anti-Corruption Law should be amended to encompass all forms of corruption and to cover public and private persons, business organizations and persons acting as agents who offer or receive material or non-material advantages. In addition, enforcement should not be limited to transactions involving public officials, but also should cover transactions among private parties. The Anti-Corruption Law also could benefit from clarification as to the definitions, scopes of coverage and responsibilities of the various state actors, including enforcement entities.</p> <p>Regarding the debarment (inclusion on list of unreliable contractors) sanction, matters such as the due process to be afforded accused contractors, the nominal period of ineligibility to participate, guidelines regarding the variety and severity of sanctions, and conditions for (and public notice of) release from ineligibility should be set forth in the PPL, or at least in secondary legislation (e.g., regulations). To the extent that the Regulation “On the Manner of Maintaining the Registry of Unreliable Suppliers” (Unreliable Contractor Regulation) may include provisions relating to such matters, these provisions could benefit from clarification and elaboration. Also, grounds</p>
--	--

	<p>for exclusion should more broadly cover potential “bad acts” and “bad actors.” Potential opportunities for subjective exclusions should be minimized. Establishment of an independent entity to consider debarments also should be considered. In that regard, the PPL Amendment (amendments to PPL Article 20) seems to directly assign responsibility for such decisions to the Authorized Body, in addition to its procuring entity and regulatory functions. Also, the scope and manner of implementation of such function is not entirely clear, as noted above.</p> <p>Provisions pertaining to unreliable contractor determinations and exclusions included in the PPL and the Unreliable Contractor Regulation also should be aligned as certain ambiguities exist (e.g., questions as to whether a court ruling is required for exclusion as is suggested in the Unreliable Contractor Regulation but not the PPL; and the period of exclusion, which is variously indicated as a mandated three years or “up to” three years). Along the same lines, internal inconsistencies within the PPL in this area should be rectified. For example, the conditions relating to debarment stated in PPL Articles 16 and 19 have been more closely, but are not yet fully, aligned by the PPL Amendment. Clarification as to the relationship between what appear to be one-off debarments or exclusions under PPL Article 19, which is an unclear practice by itself, and inclusion on the unreliable contractor list under PPL Article 21 also would be beneficial. It also is worth noting that the task team was told that the unreliable contractor determination process typically is not used in practice, and that no contractors presently are included on the list of unreliable contractors.</p>
<p>12(b)—The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found culpable of fraudulent or corrupt practices.</p>	<p>As previously noted, while the Anti-Corruption Agency was established, in part, to eliminate duplication among state authorities, it seems that such functions still are carried out by various agencies in practice. While there may be good reasons to assign specific tasks to separate agencies with particular competencies, there also is a risk that a fragmented system may lead to overlap in functions and/or inconsistencies in their application. At the same time, there is a risk that a fragmented system actually could create gaps in the system to the extent that a lack of clarity in roles and responsibilities potentially could leave certain activities uncovered. Clarity in this area therefore is essential. Furthermore, the Anti-Corruption Agency</p>

	<p>should be enabled to more effectively carry out its functions, including coordination of the GOT's efforts in the anti-corruption area.</p> <p>With respect to accountabilities, the legislative framework should more clearly stipulate an obligation of government officials to report actual or suspected corruption. Similarly, cases of irregularity should be referred to the appropriate law enforcement agency for follow-up, and the numbers of referrals and their outcomes should be reflected in an annual report to be produced by the PPA as the procurement regulatory body, together with information as to compliance with procurement requirements generally (e.g., such as through procuring entity internal audits provided to the PPA).</p> <p>See also above comments under Sub-indicator 12(a).</p>
12(c)—Evidence exists of enforcement of rulings and penalties.	<p>Little evidence is available of prosecution and punishment for corrupt practices. The legislative framework should provide some guidance on what information will be disclosed and when. For example, it would be useful for the anti-corruption legislation to mandate disclosure of general information about cases, such as investigations, sanctions, whether administrative or criminal, etc. This could be accomplished, for example, through an annual report with an analysis of trends and patterns.</p> <p>The task team was informed that no contractors presently are included on the list of unreliable contractors.</p>
12(d)—Special measures exist to prevent and detect fraud and corruption in public procurement.	<p>In accordance with the Anti-Corruption Law, the Anti-Corruption Agency, and bodies of the Public Prosecutors Office, internal affairs and national security, as well as tax and customs bodies, bodies on drug control and military bodies carry out detection and investigation of corruption offenses in the Republic of Tajikistan within the limits of their competence. As previously noted, the responsibilities of these various entities should be more clearly defined and coordinated.</p> <p>As stated in the Anti-Corruption Strategy, one of the main tasks of the Anti-Corruption Agency is the prevention, suppression and detection of corrupt offenses. The Anti-Corruption Strategy also sets out top priority preventative measures, such as increased transparency regarding fiduciary matters (including public procurement), increased accountability for participants in fiduciary processes, and</p>

	removal of “bad actors” from participation in public procurement. While the Anti-Corruption Strategy sets forth laudable goals, such measures are yet to be fully developed and implemented.
12(e)—Stakeholders (the private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behavior.	Private sector and civil society involvement in anti-corruption activities of the GOT is minimal. However, the Anti-Corruption Strategy seeks to educate and increase the dialogue with civil society, NGOs, public associations and the private sector on matters pertaining to anti-corruption efforts. In addition, the Anti-Corruption Law provides that the fight against corruption is to be carried out with wide participation of the population, public associations and mass media.
12(f)—The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	<p>A hotline for confidentially reporting fraudulent, corrupt, or unethical behavior has been established through the Anti-Corruption Agency. The task team was advised that an active advertising campaign was undertaken to promote public knowledge of such hotline. More broadly, it should be considered whether the system might benefit from adding into the anti-corruption legislative framework specific provisions on reporting mechanisms.</p> <p>The Anti-Corruption Strategy calls for strengthening confidentiality protections for sources of information, as well as for witnesses and persons who inform on corruption offenses. In that regard, Article 4 of the Anti-Corruption Law includes only general references to personal safety and legal guarantees accorded to persons assisting in fighting corruption. Article 6 of the Anti-Corruption Law addresses, but only in general terms, confidentiality and state protections regarding such matters and persons (i.e., whistleblower protections). It would be useful to further: (i) define the types of disclosures that would be protected (e.g., by relating these to specific criminal offenses and by requiring that the complainant “must have a reasonable belief” that the allegation is true); (ii) clarify what protection would be extended (the current provisions are quite broad); and (iii) name the government institutions that can provide for protected disclosures.</p> <p>Certain of these matters are addressed, and additional protections and assurances of confidentiality are provided for, in the Law “On State Protection of Participants in</p>

	<p>Criminal Legal Proceedings” (Law on State Protection), which was adopted in 2010. However, the grounds for the availability of such protections seem to pertain only in the context of criminal proceedings and only where there are genuine threats of bodily or property harm. It should be considered whether additional circumstances (such as administrative proceedings) and broader potential harms (such as threats to a person’s livelihood) also should be covered, especially considering the context in which anti-corruption allegations may arise. It also should be considered whether the protection, or at least some initial protection, should be more automatic than the processes to obtain protection set forth in the Law on State Protection indicate presently would be the case. Also, the broader anti-corruption legislative framework should be clarified and aligned regarding all such matters.</p>
<p>12(g)—Codes of conduct/ethics codes cover participants in public financial management systems and also provide for disclosure of those in decision-making positions.</p>	<p>The Code of Civil Service Ethics (Code of Ethics) does not include provisions that are specific to civil servants involved in public financial management, including public procurement. However, the Code of Ethics does include general obligations for civil servants (including procurement staff) to act ethically and impartially, and to maintain information in confidence. Although they are implied, prohibitions on fraudulent and corrupt activities are not expressly stated. Civil servants also are required to avoid conflicts of interest, but these provisions are not fully aligned with the procurement legislative framework. Remedies for breaches of obligations imposed under the Code of Ethics include personnel actions, disciplinary actions, and administrative and criminal actions in accordance with law. Although they are implied, prohibitions on fraudulent and corrupt activities also are not expressly included among the restrictions on civil servants set forth in the Law on Civil Service.</p> <p>Regarding disclosures, the Anti-Corruption Strategy calls for improvement relating to obligations of civil servants to submit declarations of assets and significant gifts or benefits, and states that it is necessary to establish disciplinary responsibility for civil servants for delayed and incomplete declarations of assets. In that regard, the Anti-Corruption Law (Article 8) requires persons holding state positions (although the extent of such coverage is unclear) to submit annual declarations of income to</p>

	<p>relevant tax bodies. Remedies for failures to submit required declarations or for submitting false information include dismissal and other punishment in accordance with law. The Law on Civil Service also requires an annual declaration of assets by civil servants (although the extent of such coverage again is unclear).</p> <p>Despite these important steps in regulating this area of concern, there is no link to such disclosure requirements in the procurement legislative framework. Relevant provisions in the anti-corruption legislation also could benefit from clarification in this area. For example, the type or level of civil servants required to report should be specified, and it should be considered whether the names of individuals who have not filed disclosures should be made public after a stipulated period of time (e.g., three months). The legislation also could benefit from clarification as to reporting obligations and assignment of responsibility to an agency for receiving and reviewing disclosures. The legislative framework also could be strengthened by adding a requirement for all state actors to submit statements as to conflicts of interest.</p>
--	---

RECOMMENDATIONS

1. The legislative framework should expand upon the division of labor among the institutions responsible for fighting corruption; for example, by defining the jurisdiction and powers of the responsible entities and clarifying coordination arrangements.
2. The procurement legal framework should establish a clear requirement to include references to fraud and corruption, conflicts of interest and unethical behavior in tendering documentation. More generally, the overall anti-corruption legislative framework (including procurement materials) could benefit from revision in order to more clearly define and more fulsomely cover the range of potential fraudulent and corrupt practices and potential actors involved in procurement matters, and to more completely define and cover conflict of interest matters. In addition, fraudulent and corrupt practices and conflicts of interest, which both the PPL and the anti-corruption legislation conflate, should be treated separately. The anti-corruption legislation should be reviewed, and revised as needed, to ensure conformity with UNCAC.
3. The legal instruments comprising the overall anti-corruption legislative framework also should be aligned to fill gaps and ensure consistency among these

- instruments. In the context of PPL violations, reference should be made to specific laws relating to sanctions for such violations.
4. An independent and transparent process should be put in place with respect to determinations as to debarment (inclusion on the list of unreliable contractors), and the debarment process should be more fully set forth in the legislative framework.
 5. Streamline the roles and responsibilities of various actors in the anti-corruption system, or at least more clearly defined and assigned, in order to ensure that there is clarity and full coverage with respect to responsibilities and accountabilities of Government entities in this area. At the same time, avoid unnecessary overlap in functions. To these ends, the legislative framework should include more information about the division of labor among the institutions responsible for fighting corruption (e.g., by naming the institutions, defining their jurisdiction and powers, and clarifying coordination arrangements).
 6. Enable the Anti-Corruption Agency to carry out more effectively its role of preventing corruption in general and corruption in public procurement in particular, and in coordinating the GOT's efforts in this regard.
 7. The legislative framework should more clearly define responsibilities and accountabilities of government actors, and penalties for individuals and firms found culpable of fraudulent or corrupt practices.
 8. The legislation also should stipulate an obligation of government officials to report actual or suspected corruption.
 9. Greater transparency is needed regarding enforcement of rulings and penalties. For example, the legislative framework should provide some guidance on what information will be disclosed and when.
 10. While the Anti-Corruption Strategy sets forth laudable goals with regard to preventing and detecting fraud and corruption, such measures are yet to be fully developed and implemented. Additional actions should be taken in fulfillment of such goals.
 11. Jointly with the private sector and civil society the GOT should further develop anti-corruption initiatives, and the GOT should actively involve the private sector and civil society in national programs on the subject. The GOT should take measures to raise awareness among the private and public sectors of the GOT's anti-corruption activities. The GOT should engage civil society to exercise social audit and control. Cooperation with civil social should be promoted and respected by the public.

12. The legislative framework should more precisely set forth whistleblower protections and should more clearly provide that an individual complainant has the right to remain anonymous.
13. The GOT should further strengthen the Code of Ethics and Law on Civil Service, and should put in place mechanisms for their effective implementation.
14. Additional provisions should be included in the legislative framework, which are specific to civil servants involved in public procurement.
15. The GOT should align civil servant restrictions and obligations among the governing documents.

ANNEX D: CONDITIONS ON NATIONAL COMPETITIVE BIDDING (NCB) PROCEDURES

(to be part of Financing Agreement)

I) Under WB-financed Operations

The procurement procedure to be followed for National Competitive Bidding shall be the tendering with unlimited participation procurement method set forth in the Law of the Republic of Tajikistan “On Public Procurement of Goods, Works and Services”, # 168 dated March 3, 2006 (as amended by Law #815, the “Law of the Republic of Tajikistan on “Introduction of Amendments and Additions to the Law of the Republic of Tajikistan on ‘Public Procurement of Goods, Works and Services’” dated April 16, 2012) (“the PPL”); provided, however, that such procedure shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of the “Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers” (January 2011) (the “Procurement Guidelines”) (as required by paragraphs. 3.3 of the Guidelines) and the following paragraphs additional provisions:

Participation in bidding

1. Eligibility: Eligibility of bidders to participate in a procurement process and to be awarded an Association-financed contract shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Association for reasons other than those provided in Section I of the Procurement Guidelines.
2. Domestic Preference: No domestic preference may be applied in bid evaluation on the basis of bidder nationality, the origin of goods, services or labor, and/or preferential programs.
3. Bidding Documents: Procuring entities shall use the appropriate standard bidding documents acceptable to the Association, which documents shall be prepared so as to ensure economy, efficiency, transparency, and broad consistency with the provisions of Section I of the Procurement Guidelines. Until a modified version of the Recipient’s standard bidding documents has been approved by the Association, the Association’s sample NCB bidding documents for the Europe and Central Asia Region shall be used.
4. Bid Validity: The bid validity period required by the bidding documents shall be sufficient to account for any period that may be required for the approval and registration of the contract as contemplated in the PPL. An extension of bid validity, if justified by exceptional circumstances, may be requested in writing from all bidders before the original bid validity expiration date, provided that such extension shall cover only the minimum period required to complete the

evaluation, award a contract, and/or complete the registration process. No further extensions shall be requested without the prior written concurrence of the Association.

5. Qualification: Qualification criteria shall be clearly specified in the bidding documents. All criteria so specified, and only such specified criteria, shall be used to determine whether a bidder is qualified. Qualification shall be assessed on a “pass or fail” basis, and merit points shall not be used. Such assessment shall be based entirely upon the bidder’s or prospective bidder’s capability and resources to effectively perform the contract, taking into account objective and measurable factors, including: (i) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (ii) financial position; and where relevant (iii) capability of construction and/or manufacturing facilities

Prequalification procedures and documents acceptable to the Association shall be used for large, complex and/or specialized works contracts. Verification of the information upon which a bidder was prequalified, including current commitments and the bidder’s capability with respect to personnel and equipment, shall be carried out at the time of contract award. In the procurement of goods and works where prequalification is not used, the qualification of the bidder who is recommended for award of contract shall be assessed by post-qualification, applying the qualification criteria stated in the bidding documents.

6. Guarantees: Guarantees shall be in the format specified in the bidding documents. The bid guarantee shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested.
7. Bid Submission and Bid Opening: Prospective bidders shall be given at least thirty (30) days from the date of publication of the invitation to bid or the date of availability of the bidding documents, whichever is later, to prepare and submit bids. Bids may be delivered by mail or by hand. Bids shall be opened in public immediately after the deadline for their submission. The minutes of bid opening shall be signed by the members of the bidding committee immediately after bid opening. A copy of the bid opening minutes shall be promptly provided to all bidders who submitted bids, and to the Association with respect to contracts subject to the Association’s prior review. No bids shall be rejected at bid opening.
8. Bid Evaluation and Award of Contracts: Bidders shall not be allowed to be present during bid evaluation, and no information relating to the evaluation of bids shall be disclosed to bidders until the bidders are notified of the contract award.

Evaluation criteria shall be clearly specified in the bidding documents. Evaluation of bids shall be made in strict adherence to the criteria specified in the bidding documents. All bid evaluation criteria other than price shall be quantifiable in monetary terms. Merit points shall not be used, and no minimum point or percentage value shall be assigned to the significance of price, in bid evaluation. Bidders shall not be eliminated on the basis of minor, nonmaterial deviations. Contracts shall be awarded to the qualified bidder whose bid has been determined: (i) to be substantially responsive to the bidding documents; and (ii) to offer the lowest-evaluated cost.

A bidder shall not be required, as a condition for award, to undertake obligations not specified in the bidding documents or otherwise to modify the bid as originally submitted.

9. Cost Estimates: Cost estimates shall be confidential and shall not be disclosed to prospective bidders. No bids shall be rejected on the basis of comparison with the cost estimates and/or budget ceiling without the Association's prior written concurrence.
10. Rejection of Bids and Re-bidding: No bids shall be rejected solely because they fall outside a pre-determined margin or "bracket" of prices. All bids (or the sole bid if only one bid is received) shall not be rejected, the procurement process shall not be cancelled, and new bids shall not be solicited without the Association's prior written concurrence.
11. Contract Modifications: With respect to contracts subject to the Association's prior review, the Borrower shall obtain the Association's no objection before agreeing to: (i) a material extension of the stipulated time for performance of a contract; (ii) any substantial modification of the contract scope of services or other significant changes to the terms and conditions of the contract; (iii) any variation order or amendment (except in cases of extreme urgency) which, singly or combined with all variation orders or amendments previously issued, increases the original contract amount by more than 15 percent; or (iv) the proposed termination of the contract. A copy of all contract amendments shall be provided to the Association.
12. Fraud and Corruption: The bidding documents and contract as deemed acceptable by the Association shall include provisions stating the Association's policy to sanction firms or individuals, found to have engaged in fraud and corruption as defined in the Procurement Guidelines.
13. Inspection and Audit Rights: In accordance with the Procurement Guidelines, each bidding document and contract financed out of the proceeds of the Financing

shall provide that bidders, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers, or suppliers, shall permit the Association to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Association. Acts intended to materially impede the exercise of the Association's inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Procurement Guidelines.

II) Under ADB-financed Operations

General

1. The procedures to be followed for national competitive bidding shall be those set forth in Law of the Republic of Tajikistan on Public Procurement of Goods, Works and Services effective on 3 March 2006 with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of ADB's Procurement Guidelines.

Eligibility

2. The eligibility of bidders shall be as defined under section I of ADB's Procurement Guidelines published by ADB in April 2010, as amended from time to time; accordingly, no bidder or potential bidder should be declared ineligible to ADB-financed contracts for other reasons than the ones provided by section I of ADB's Guidelines. Bidders must be nationals of member countries of ADB, and offered goods, works and services must be produced in and supplied from member countries of ADB.

Prequalification

3. Normally, post-qualification shall be used unless explicitly provided for in the loan agreement/procurement plan. Irrespective of whether post qualification or prequalification is used, eligible bidders (both national and foreign) shall be allowed to participate.

Bidding Period

4. The minimum bidding period is twenty-eight (28) days prior to the deadline for the submission of bids.

Bidding Documents

5. Procuring entities should use standard bidding documents for the procurement of goods, works and services acceptable to ADB.

Preferences

6. No domestic preference shall be given for domestic bidders and for domestically manufactured goods.

Advertising

7. Invitations to bid shall be advertised in at least one widely circulated national daily newspaper or freely accessible, nationally-known website allowing a minimum of twenty-eight (28) days for the preparation and submission of bids. Bidding of NCB contracts estimated at US\$500,000 equivalent or more for goods and related services or US\$1,000,000 equivalent or more for civil works shall be advertised on ADB's website via the posting of the Procurement Plan.

Bid Security

8. Where required, bid security shall be in the form of a bank guarantee from a reputable bank.

9. Bid Opening and Bid Evaluation

- (i) Bids shall be opened in public.
- (ii) Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated bidder.
- (iii) Bidders shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.
- (iv) No bidder shall be rejected on the basis of a comparison with the employer's estimate and budget ceiling without ADB's prior concurrence.
- (v) A contract shall be awarded to the technically responsive bidder that offers the lowest evaluated price and who meets the qualifying requirements set out in the bidding documents.
- (vi) No negotiations shall be permitted.

Rejection of All Bids and Rebidding

10. Bids shall not be rejected and new bids solicited without ADB's prior concurrence.

Participation by Government-owned enterprises

11. Government-owned enterprises in the Republic of Tajikistan shall be eligible to participate as bidders only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

Right to Inspect/Audit

12. A provision shall be included in all NCB works and goods contracts financed by ADB requiring suppliers and contractors to permit ADB to inspect their accounts and records and other documents relating to the bid submission and the performance of the contract, and to have them audited by auditors appointed by ADB.

13. Fraud and corruption

- (i) The Borrower shall reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question.
- (ii) ADB will declare a firm or individual ineligible, either indefinitely or for a stated period, to be awarded a contract financed by ADB, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, an ADB-financed contract.