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Republic of Moldova Country Procurement Assessment Report

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Currency Unit: Moldovan Lei (MDL)

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Government Fiscal Year = January 1 – December 31

AMRPPHA	Agency for Material Resources, Public Procurement and Humanitarian Aid
CCECC	Center for Combating Economic Crimes and Corruption
CCI	Chamber of Commerce and Industry
CG	Consultative Group
COA	Court of Accounts
CPAR	Country Procurement Assessment Report
CPS	Country Partnership Strategy
DA	Drug Agency
DFRC	Department of Financial Revision and Controls
EC	European Commission
EU	European Union
E-GP	Electronic Government Procurement
ESRP	Economic Stabilization and Recovery Plan
JSC	Joint Stock Company
MOCRCD	Ministry of Construction and Rural Development
MOE	Ministry of Education
MOH	Ministry of Health
MTEF	Medium Term Expenditure Framework
MVC	Minor Value Contracts
NAGP	National Agency for Government Procurement
NCB	National Competitive Bidding
OB	Open Bidding
OECD/DAC	Organization for Economic Cooperation and Development / Development Assistance Committee
OC	Oversight Committee
PEFA	Public Expenditure and Financial Accountability
PFM	Public Financial Management
PP	Procurement Plan
PPA	Public Procurement Agency
PPB	Public Procurement Bulletin
PPL	Public Procurement Law
RFQ	Request for Quotation
SRA	State Road Agency
SS	Single Source
UCE	Universal Commodity Exchange
UNCITRAL	United Nations Commission for International Trade Law
WTO	World Trade Organization

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PREFACE

Date and Basis of Report

This report is prepared based on interviews with public agencies, private companies, and civil society organizations conducted by a World Bank (WB) team during visits to Chisinau, Moldova, from November 26 to 27, 2009 (scoping mission), February 1 to 12, 2010 (main mission) and May 25 to 26, 2010 (final discussion mission). The assessment is also based on a detailed analysis of the laws, regulations, documents, data and other information collected by the WB team. A list of persons met is provided in **Annex 1** and the main documents reviewed including laws, regulations and various reports are listed in **Annex 2**.

Acknowledgements

The WB team acknowledges the excellent cooperation and assistance received from the Government of Moldova, especially the Public Procurement Agency, in the preparation of the report. The team also wishes to acknowledge extensive cooperation and support received from the officials and staff of the public agencies, private agencies, civil society organizations and EC representation in Chisinau with whom the team met during the assessment.

Martin Raiser, Country Director, Melanie Marlett, Country Manager and Devesh Mishra, Regional Procurement Manager offered invaluable guidance on the scope and overall direction of the assessment. Enzo De Laurentiis, Regional Procurement Manager (LCSPT), Lisa Miller, Sr. Counsel (LEGIA) and Asha Ayoung, Lead Procurement Specialist (OPCPR) acted as peer reviewers for the report and provided very useful comments.

WB Task Team

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EXECUTIVE SUMMARY

Public Procurement in Moldova

1. Starting immediately after its independence from the Soviet Union less than 20 years ago, the Government of Moldova has shown a strong commitment to reforming its public procurement system and has made rapid progress. The first public procurement law, based largely on the UNCITRAL Model Law, was enacted in April 1997 and provided a reasonably sound basis for public procurement. Shortly after the enactment of the law, the Government established the National Agency for Government Procurement (NAGP), charged with implementing procurement procedures on behalf of public entities. This highly centralized procurement system was put in place to address chronic problems of weak capacity, low compliance and weak enforcement.
2. Ten years later, a new Public Procurement Law (PPL) was introduced in April 2007 that brings Moldova's public procurement system closer to the EU system. The new law resulted in major changes in the conduct of public procurement by decentralizing the implementation of procurement procedures to public entities and establishing a new regulatory agency, the Agency for Material Resources, Public Procurement and Humanitarian Aid (AMRPPHA), which replaced NAGP.
3. Further institutional changes were introduced in November 2009 to more rigorously separate the regulation of public procurement from other activities of the Government, which resulted in abolishing AMRPPHA and establishing a new Public Procurement Agency (PPA) under the Ministry of Finance with the aim of ensuring close coordination across the entire public financial management system.

The Critical Juncture for Public Procurement

INSTITUTIONAL FRAMEWORK:

4. Since the enactment of the PPL in April 2007, the review and approval of award recommendations and contracts are still centralized and remain with the PPA, even though the conduct of public procurement was decentralized to public entities. The current centralized review and approval process has the following shortcomings:
 - i. **The process results in shifting the responsibility and accountability of public entities to the PPA.** In a fully decentralized public procurement systems, public entities are responsible and held accountable for their actions in conducting public procurement. In other words, approval of contracts by an authority like the PPA is not an internationally accepted practice, especially in member states of the EU, which Moldova aspires to be part of. In this practice, the decision is taken out of hands of the purchaser and given to an entity that has no technical expertise in conducting individual procurements and currently is answerable to no one. Complaints are made

- to the PPA (which now makes the ultimate decision in procurement) against actions taken by public entities that no longer have control of the ultimate decision.
- ii. **The process is considered a potential conflict of responsibilities because the PPA is also responsible for handling complaints related to those cases which have already been reviewed and approved by the PPA.** PPA’s dual responsibility in approving the procurement decisions and also in resolving the complaints related to those cases is not an internationally accepted practice. The PPA is implicated in the decision-making process and thus becomes both defendant and judge. Although the complaint review department of the PPA is a functionally independent unit within the PPA, it is not administratively independent from other units, and this apparent conflict in responsibilities may impose constraints in its freedom of action when handling complaints.
 - iii. **The process consumes most of the PPA’s limited staff time and resources.** The PPA reviews and approves about 23,000 contracts per year (more than 100 contracts per day), which means that it is simply unable to address the issues required to make a proper decision. The PPA can add very little value to the procurement process. If the public entity responsible for the procurement process is incapable of making the final decision in an informed way over a period of months based on technical input, then the value added by a centralized procurement decision that takes only minutes is uncertain. The approval process sometimes simply causes delays in some of the procurement transactions. It is getting much harder for the PPA to keep up with its current workload and responsibilities with the existing number of staff. The international practice is that the central public procurement agency focuses on preparation of secondary legislation, capacity building and similar functions where it can add more value in improving the whole public procurement system instead of dealing with individual procurement transactions.

5. In light of the above, the WB offers the following options for Government’s consideration.

Option 1: The PPA could immediately discontinue its current function of reviewing and approving of all contract awards.

6. This option would ensure complete decentralization of the public procurement function to the public entities and would be in line with international practice. It would also address concerns about the possible conflict of PPA’s responsibilities and enable it to handle and resolve complaints without any potential constraints. In parallel to the decentralization process, the necessary tools, including a complete set of secondary legislation, standard bidding documents, standard forms of contracts, manuals, and guidance notes should be made available to public entities to ensure consistent implementation of the Law.

7. What modern systems of procurement have done (even in those civil law countries which originally championed the centralized control approach, such as France, Belgium, Italy, and Germany) is to turn bidders into free policemen. Since they are closest to the procurement process and have a direct financial interest in the outcome, they are in the best position to identify and bring to the attention of the authorities any perceived breaches of the rules. In this way, only cases where wrongdoing is suspected need to be “controlled,” thereby

avoiding centralized approval where it is not needed and concentrating the focus and resources on those instances where there is real cause for concern.

Option 2: The PPA could continue with the responsibility of reviewing and approving contracts and phase out this function gradually in the next 3 to 5 years.

8. This option would eventually bring the public procurement system in line with international practices. The PPA could continue reviewing and approving contracts until the public entities are provided with necessary tools and have acquired the necessary capacity to take on the procurement decision function with full responsibility and accountability. This transition could be based on a series of milestones that include increased procurement responsibility commensurate with increased capacity and experience.

9. Should the Government choose this option, the next steps would include providing the complete set of regulations, standard bidding documents and forms of contracts, manuals, and guidance notes and continuing oversight while capacity is built, along with establishment of a temporary complaint review committee.

10. There are major deficiencies in the secondary legislation as most of the regulations referred to in the Public Procurement Law are not ready yet. Most of the necessary tools such as standard bidding documents, standard forms of contracts, manuals, and guidance notes are not up-to-date or not available at all, which makes it difficult for the public entities to implement the Law consistently and to properly conduct public procurement.

11. Public entities, especially at the regional and local level, have weak capacity in implementing the PPL, therefore continuation of review and approval by the PPA would ensure some kind of quality control over the procurements conducted by these public entities until they acquire capacity to properly conduct procurement. Alternatively, the PPA could introduce new thresholds for this approval requirement and approve only large-value contracts that exceed these thresholds, or approve only certain decisions such as the use of less competitive methods or of accelerated procedures, until the approval requirement can be totally phased out.

12. Until the complete phase-out of this responsibility from PPA, the complaint handling responsibility should be taken away from the PPA and given to a temporary complaint review committee to avoid any possible or perceived conflict of interest for the next few years. Centralization of decision-making coupled with the role of judge in the same agency is not accepted by the international community and it is also incompatible with the EU Directives that appear to have been the model for the PPL.

Option 3: The PPA could continue to exercise this responsibility of reviewing and approving contracts.

13. If the Government decides that the PPA should continue the current system of centralized control, then the next steps would include massive staff increases, complete provision of regulations, standard bidding documents and contract forms and manuals, and establishment of a permanent complaint review body.

14. The PPA should be given significantly more resources by increasing the number of staff in order for the PPA to be able to cope with the current tasks and responsibilities and carry out its centralized approval function effectively. Currently, the PPA has 26 staff together with the Director and the Deputy Director and carries out an enormous number and variety of tasks including the review and approval of thousands of contracts. There is very little time left for drafting secondary legislation, preparing standard bidding documents and standard forms of contracts, handling complaints, maintaining a functional Public Procurement Bulletin, conducting training in the area of public procurement, and other properly centralized procurement functions. The PPA is fully consumed with the review and approval of about 100 contracts per day with its limited number of staff and it is obvious that there is insufficient time for these documents to be properly scrutinized. The data shows that while some contracts are approved on the same day, others waited for over a month for approval, resulting in delays in the procurement processes. The implications of continued centralized approval have led all modern systems to abandon this mechanism of control in favor of a bidder-driven complaints mechanism.

15. Central approval function takes up vast resources if done properly. It requires the review of each and every contract, regardless of whether there is any breach of the rules. This is expensive in terms of time and money since it involves large numbers of contracts. The review of more 100 contracts a day is an impossible task if the PPA is to do anything other than check that the correct forms are in place. Even experienced procurement specialists could not do more than skim that many award procedures in a day. The result is that there can be only a superficial control over the documentation. As a control mechanism, it is ineffective, but if the decision is made to do so, to carry out this task effectively there would need to be a massive increase in the number of staff of the PPA.

16. The necessary tools including a complete set of secondary legislation, standard bidding documents, standard forms of contracts, manuals, and guidance notes should be made available to the public entities to ensure consistent implementation of the Law.

17. The complaint handling responsibility should be taken away from the PPA and given to a truly independent complaint review body to avoid any possible conflict of interest due to duality of functions. Complaints must then also be made available against the decision of the PPA which would, in fact, be the final decision-maker in the procurement process.

LEGISLATIVE FRAMEWORK:

18. The PPL helped to bring Moldova's public procurement system closer to the EU system. The PPL covers the procurement of goods, works, services as well as consultancy services and it applies to all public sector entities and other legal entities governed by public law, though it also provides some exceptions that are reasonable and generally in line with international practices. It also clearly provides the types of procurement methods that may be used for public procurement. While the PPL provides a good basis for the public procurement system and properly draws the legal framework for a reasonably sound public procurement system, there is still room for improvement in the legislative framework; the main remaining challenge is to complete the necessary secondary legislation. The main areas that need to be improved in the legislative framework are as follows.

- i. **The PPL includes references to several regulations but most of them are not available yet, which limits proper implementation of the Law.** More specifically, the PPL defines 11 procurement methods (each to be used under certain circumstances) and refers to regulations to supplement the provisions in the Law by providing details for the application of these methods. However, only four of these methods can currently be used, because there is no regulation to make the other methods workable. There is a great need to apply some of these methods, for example framework contracts, which will simplify the procurement of simple goods and services and small value works contracts. The PPL should include clear conditions for use of each procurement method and selection method, and only details of the implementation of these procedures should be left to the regulations.
- ii. **The procurement through Universal Commodity Exchange does not fully ensure economy, efficiency and transparency in public procurement and includes procurement of goods other than commodities.** This method should be either abolished or the relevant regulation should be modified to change the scope of procurement through the Universal Commodity Exchange to exclude procurement of motor vehicles, which are not commodities.
- iii. **There is no provision in the PPL to provide guidance on how to consider price and quality in selection of consultants under various circumstances.** There should be clear provisions to define under which circumstances and how these criteria will be taken into account in evaluation.
- iv. **The PPL does not provide precise instructions on how to incorporate fraud and corruption related provisions in the bidding documents and contracts.** There should be clear provisions to instruct the procuring entities how to incorporate anti-fraud and anti-corruption measures in relevant procurement documents and provide for debarment when they are violated.
- v. **There is no provision in the PPL or in any regulation to define conflict of interest.** There should be clear provisions to define which situations will constitute a conflict of interest for the bidders. There is no provision in the PPL or in any regulation to restrict the submission of more than one bid per bidder.
- vi. **There is no provision in the PPL and no regulation on the participation of state-owned-enterprises in public procurement.** These enterprises currently compete with the private enterprises and this needs to be regulated by taking into account the difficulty of making fair comparisons between the offers made by state-owned enterprises and private enterprises.
- vii. **The PPL gives procuring entities the ability to procure only domestic goods and services,** though this provision is never used in practice. Such a restriction is not in line with internationally accepted practices and should be removed. Instead, the procuring entities should apply the domestic preference and other preferential margins defined in the PPL.
- viii. **The PPL does not make it explicit that the bids must be opened immediately after the bid submission,** though this seems to be done in practice.

- ix. **There is no provision in the PPL or in any regulation to ensure safekeeping of bids and confidentiality in the process** for procurement of goods and works, though the PPL includes similar specific provisions for selection of consultants.
- x. **The PPL does not make it explicit that aggrieved bidders should first submit their complaints to the procuring entity**, though this is generally the first step in practice. The PPL should be made clear to require bidders to file their complaints with the procuring entity before submitting complaints to the PPA. The complaint should be submitted to PPA if the bidder is not satisfied with the way the procuring entity handles and resolves their complaint. The PPL should also require publication of the decisions on the resolution of complaints as public information.
- xi. **The roles and responsibilities of PPA need to be revised in the PPL.** The PPL should provide clarity for assigning the correct roles to the correct bodies in order to avoid the problems highlighted in this report, i.e. lack of accountability of procuring entities when approval is made by PPA, potential conflicts between PPA's different responsibilities (policy, guidance, approval and complaint review), and the lack of adequate staffing levels to cover all assigned responsibilities. It is also a question of autonomy. While in terms of the complaints review mechanism, the system appears to comply, at least superficially, with the requirements of the OECD/DAC BLIs, the institutional arrangements nevertheless give rise to concern, notably as a result of the plurality of roles, the weakness and lack of autonomy of the current PPA with its reduced status and the low staffing levels given the number of complaints. These issues undermine the credibility of the PPA and inspire little confidence. Thus, while the formal scoring of the BLI appears satisfactory, these concerns mean a higher country fiduciary risk.

19. The WB offers the following options for Government's consideration to address the above deficiencies:

Option 1: Without any amendment to the PPL, the deficiencies may be addressed through (i) issuance of secondary regulations, (ii) issuance of formal procedures for filing complaints, (iii) publication of standard bidding documents and forms of contracts which will incorporate necessary provisions to address deficiencies and (iv) preparation of guidance notes and manuals to provide necessary tools for the use of public entities. Mandatory use of standard bidding documents and forms of contracts may address several of these concerns.

Option 2: The PPL may be substantially amended to precisely address all of the deficiencies listed above. This option will still require a complete set of secondary legislation and issuance of standard bidding documents and forms of contracts for proper and consistent implementation of the Law.

Summary of Findings and Agreed Action Plan

20. The public procurement system of Moldova has been assessed by using the OECD/DAC methodology based on four main pillars and twelve indicators. The main issues identified and recommended actions to address those issues are summarized in the main report. While ideally some of the recommendations might best be addressed through changes in the PPL, most of them can be resolved by preparing and putting to use secondary

legislation (regulations), guidance notes, standard bidding documents and contract forms with the support of intensive capacity-development programs.

21. The strategic options were presented to the Minister of Finance and the Public Procurement Agency by the WB team in May 2010 and the Minister has expressed his preference for the **Option 2** to address the deficiencies of institutional framework and **Option 2** to address the deficiencies of the legislative framework. The recommended action plan was discussed with the PPA together with EU Advisor to the PPA in detail during May 25 – 26, 2010 and then finalized in line with the preferred option. The agreed action plan together with the timetable and responsible agencies for each action is presented in **Annex 3**.

The Remaining Challenges

22. In 2009, Moldova went through two parliamentary elections. The Constitutional Court of Moldova validated the results of the first elections but the Parliament failed to elect a president and new elections were held. As a result of the second parliamentary election, the Party of Communists that had been in office for eight years was replaced by the Alliance for European Integration, formed by four liberal democratic parties who now hold 53 out of 101 seats in Parliament. However, the new Parliament failed twice to elect a head of state and according to the Moldovan Constitution, the failure to elect a president after two rounds should lead to early parliamentary elections. Thus a third election is scheduled for November 2010. The acting president of Moldova set up a Special Commission to review and modify the Constitution in order to unlock the complex political process. The intention is to amend the Constitution through a popular referendum in August 2010 to allow the election of a president by popular vote, not in Parliament.

23. In the meantime the Government continues to hold full powers and exercise its mandate until a new Parliament is sworn in by the end of 2010. However, the prospect of elections in the fall of 2010 raises concerns with regard to the Government's readiness to implement long-term policy reforms.

24. The CPAR team believes that as long as there is political stability, the Government will be committed to continue to implement public procurement reform. The challenge is to maintain the momentum that the new Government gained in the general context both at the national level and in the international arena and channel it for the continuous implementation of procurement reform. The first step in reform would be the allocation of funding and staffing resources needed by the PPA as the lead agency in this area to implement the recommendations made in this report.

How to Move Forward

25. The WB will continue to remain engaged in assisting the Government of Moldova in implementing public procurement reform, specifically to carry out the recommendations of this report. It is clear that it is the Government's responsibility to implement the reform agenda, but the WB recognizes the Government's need for resources for timely and effective implementation of the action plan. Therefore, the WB will explore various alternatives including:

- Institutional Development Fund (IDF) Grant,

- “e-Moldova Project” which includes E-Government Procurement component to address many of recommendations,

- supporting some of the recommendations through ongoing or new Public Financial Management Projects or new Development Policy Operations.

26. The WB will also explore cooperating with other donors, based on Government’s own plan to identify other donors’ areas of involvement. An immediate opportunity is the Twinning Agreement being financed by EU funds. The recommendations of this CPAR will help the Government to negotiate a comprehensive scope for this agreement, which is expected to commence by the second half of 2010.

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I. BACKGROUND

A. Country Economic Context

1. Moldova is one of the poorest countries in Europe. It is landlocked, bounded by Ukraine on the east and Romania on the west. Like many other former Soviet Republics, Moldova has experienced economic difficulties. Since its economy was highly dependent on the rest of the Soviet Union for energy and raw materials, the breakdown in trade following the breakup of the Soviet Union had severe impacts, exacerbated by drought and civil conflict.

2. Moldova has made progress in economic reform since independence. The Government liberalized most prices, phased out subsidies, and privatized housing, government enterprises, agricultural state land, and other state-owned assets. However, as of early 2010, Moldova's economy has been in recession. The main sources of growth in previous years—remittances, imports, and foreign investment—were undermined by the global crisis, resulting in weaker domestic and external demand, fiscal imbalances, limited financial intermediation, and an increase in the level of poverty.

2004-08 Expansion

3. Economic growth in Moldova averaged 6 percent between 2004 and 2008, on the back of strong domestic and external demand. The massive inflow of migrant workers' remittances (averaging about 31 percent of GDP between 2004 and 2008) fuelled a rapid increase in consumption – household consumption rose in real terms by an average of 9.2 percent over the period (see Table 1). While increases in energy import prices and shocks to agricultural exports negatively affected the terms of trade, the increase in disposable income propelled growth in imports of goods and services, leading to a deterioration of the current account deficit from 4.3 percent of GDP in 2004 to 16.3 percent by the end of 2008.

Table 1: Main Macroeconomic Indicators, 2004 – 2008

	2004	2005	2006	2007	2008
Nominal GDP (MDL billion)	32.0	37.7	44.8	53.4	62.8
Real GDP (% growth)	7.4	7.5	4.8	3	7.2
Consumption (% growth)	0.3	15.5	10.9	5.8	9.5
Fixed Investment (% growth)	7.9	13.3	19.5	22.3	-0.9
Export (% growth)	8.3	18.5	-0.1	9.5	12.4
Import (% growth)	0.3	24.6	10.9	13.4	12.5
CPI (% eop growth)	12.4	11.9	12.7	12.5	12.7

Current Account Balance (% GDP)	-4.3	-9.5	-11.4	-15.3	-16.3
Remittances (% growth in USD)	49.8	31.7	28.8	26.8	26.5
Net FDI (USD Millions)	147.8	190.9	251.8	481.4	679.4
Budget Revenue (% GDP)	35.4	38.6	39.9	41.7	40.6
Budget Expenditures (% GDP)	34.6	37.0	39.8	42.0	41.6
Fiscal Balance (% GDP)	0.0	1.7	0.0	-0.2	-1.0
External Debt (% GDP)	70.3	65.9	66.6	67.9	59.9

Source: National Statistics, IMF, WB

4. Net Foreign Direct Investment (FDI) exceeded US\$600 million or 11 percent of GDP in 2008, compared to 3.5 percent of GDP in 2004. The Government maintained a tight fiscal policy stance with a modest deficit of 1 percent of GDP in 2008. Budget revenue performance was driven mainly by robust VAT on remittance-funded imports, while wage-heavy government expenditure was kept in line with the budget.

5. The strong economic growth associated with rising real incomes played a critical role in the rapid reduction in poverty. According to the poverty assessment report and recent poverty updates, poverty in Moldova fell from 30.2 percent in 2006 to 20.4 percent in 2008.

2009 Contraction

6. The global crisis led to a sharp decline in GDP, exposing the unsustainable nature of the remittance-financed and import-intensive economic growth. The effects of the global meltdown were felt in Moldova by the fall of 2008, as the recession hit its major trading partners—Russia, Ukraine, Romania and Western Europe—leading to sharp falls in remittances and export earnings. Remittances declined drastically, by more than a third by the end of June 2009, leading to a collapse in domestic and external demand.

7. The slowdown in investment, remittances and exports put pressure on the exchange rate. As foreign exchange inflows dried up and the Moldovan Lei came under devaluation pressures in late 2008, National Bank of Moldova (NBM) intervened in support of the Lei, resulting in loss in international reserves of 40 percent from the September 2008 peak to US\$1.1 billion by the end of March 2009. From April to the end of September 2009, the Lei depreciated gradually vis-a-vis the US dollar and the Euro by 4.9 percent and 14.5 percent respectively.

8. The recession widened the fiscal deficit. The fall in remittance-financed consumption and imports led to a major drop in VAT receipts, import duties and non-tax revenues, causing fiscal revenue to fall by 10 percent by September 2009. Against this loss in revenues, wage and pension spending and social payments fed increases in recurrent public expenditure of over 13 percent by September. Consequently the fiscal deficit increased from 1 percent of GDP in 2008 to an unprecedented 9 percent of GDP towards the end of 2009.

9. Moldova's economy has contracted in 2009 as the impact of the global meltdown weighed heavily on the real sector, putting downward pressure on prices. The 7.7 percent drop in GDP in January-September 2009 in comparison with the same period in 2008, can be linked to

the 24.3 percent fall in output in the declining industrial sector during January-September 2009 in comparison with the same period in 2008. Several sectors, including mining, agriculture and construction, have recorded declines in output ranging from 12 percent to 60 percent during January-September 2009, in comparison with the same period in 2008. Resulting job losses have pushed annual unemployment rates from 4 to 6 percent at the end of 2008, although with minimal effect on the growth of real (total) wages.

Policy Environment

10. The new Government appointed in the fall of 2009 has begun to implement comprehensive reforms that are expected to steer Moldova onto a very different path of economic management and international development relations. Immediately upon taking office in late September, Government took on the challenge of correcting for the impact of the global crisis on Moldova's economy. In October 2009, the Government launched the Economic Stabilization and Recovery Plan (ESRP). Under the ESRP, Government began implementing a comprehensive and detailed action plan of legal and administrative reforms to "de-regulate, liberalize and de-monopolize" the economy.

11. Government also began implementing an action plan for integration with Europe, "European Integration: Freedom, Democracy, Welfare 2009-2013", that aspires to make the Republic of Moldova eligible for EU accession "in a reasonable time". In response, the EU is proposing to include Moldova in the EU Eastern Partnership initiative.

12. In March 2010, the Moldovan Government and its international development partners convened for the Consultative Group (CG) Meeting: Moldova Partnership Forum, which was jointly hosted by the EC and the WB. The objectives were twofold: (i) to reach a common understanding of the challenges facing Moldova in light of the economic crisis and the Government's strategy for addressing them, and (ii) to ensure coordination and mobilization of external assistance to support Moldova in overcoming the severe effects of the current crisis. The discussions focused on four broad areas: (1) the Government's strategic priorities and political reform agenda, (2) the macroeconomic situation and the Government's structural economic and social reform agenda, (3) needs for external aid and strategies for enhancing aid effectiveness, and (4) the response from the donor community.

13. During the CG Meeting the Government presented their strategic document, "Rethink Moldova," which summarizes the Government's comprehensive vision of the country's short- to medium-term priorities and highlights financing needs in support of reforms in infrastructure, public services, business environment, public administration, strengthened judiciary and anti-corruption. Development partners expressed their strong support for the Government's strategies and indicated financial support totaling US\$2.6 billion over the next four years, of which 30 percent is in budgetary and balance-of-payments support.

B. WB Country Partnership Strategy and Public Procurement

14. The current WB Country Partnership Strategy (CPS) is dated December 23, 2008 and covers FYs09-12. The CPS aims to assist in laying the foundations of inclusive growth in Moldova by addressing three interrelated challenges: (i) improving economic competitiveness to support sustainable growth, (ii) minimizing social and environmental risks, building human capital and promoting social inclusion and (iii) improving public sector governance. These three

pillars of the CPS for FY 09-12 are consistent with the Government of Moldova's National Development Strategy for 2008-2011.

15. The CPS reflects a strategic transition from the previous Country Assistance Strategy through a two-step process. The first stage involves scaling up interventions and programs that are working well within the existing portfolio during FY09 and FY10. During the second stage, interventions will be defined in more specific terms for the remaining years of the CPS period. The Strategy foresees a lending program of two to three operations per year. Commitments will total approximately US\$45-50 million per annum, with the specific country allocation being determined annually through IDA's performance-based allocation system. The WB considered additional financing to existing operations within the current portfolio and support for projects with regional or global goods components.

16. It is agreed that the WB will work with other stakeholders, civil society and private sector to ensure that Government reform efforts are supported and deepened by greater demand for good governance. The Government of Moldova is committed to improve public sector governance by increased transparency and accountability in the management of public funds.

C. WB and Major Donors' Portfolio in Moldova

WB Portfolio

17. The WB portfolio comprises twelve active projects, of which two are GEF projects, with a total commitment of US\$228.23 million (see **Annex 4**). Two projects are scheduled to close by the end of FY10. Overall, the performance of the portfolio is satisfactory, with a 19.7 percent disbursement ratio. In FY09-FY10, additional financing was approved in energy, social, agriculture, private and health sectors for an aggregate amount of US\$78 million. Projects in the pipeline for FYs10-12 cover eight operations, including a Development Policy Lending operations series, totaling approximately US\$143 million. These operations will focus on social protection, Information and Communication Technologies (ICT), energy, agriculture and environment. Additionally, the WB administers 25 Trust Funds (see **Annex 4**).

Development Partnerships

18. Moldova receives development assistance from a growing range of multilateral and bilateral donors. In 2008, total donor assistance amounted to about US\$200 million and around US\$186 million were committed for 2009. During the Consultative Group Meeting held in March 2010, development partners made commitments to provide US\$2.6 billion to over the 2010-2013 period to assist the Government in implementation of the Economic Stabilization and Recovery Plan and to support the implementation of key reforms. Major donors that are currently active in the country include UNDP, EBRD, USAID/MCC, SIDA, EU, and Central European countries.

i) The United Nations Development Assistance Framework for 2007 - 2011 focuses on: (i) governance and participation, (ii) access to social services, and (iii) regional and local development.

ii) The EBRD country assistance strategy focuses on private sector development, including support to financial institutions and public infrastructure.

iii) Key priorities for USAID include improving the environment for private sector development, promoting strong communities and accountable democratic institutions, and helping control the most dangerous public health threats.

iv) Good governance is a major area of focus for SIDA, DFID, and the Netherlands among others. SIDA also supports energy efficiency and rural investment while DFID emphasizes public financial management, public administration reform, and social assistance. The Netherlands offered a grant to enhance the regulatory and supervisory framework for non-bank financial institutions.

v) In January 2010, the Government of Moldova and MCC signed a five-year economic development agreement granting US\$262 million to Moldova for investment projects in irrigation infrastructure, high-value agriculture production, and road rehabilitation.

vi) Central European countries, including Romania, Poland, the Czech Republic, Latvia and Lithuania, also provide assistance, mostly in the areas of capacity building and good governance.

vii) The EU country assistance strategy for 2007-11 emphasizes: (i) democratic development and good governance, (ii) regulatory reform and administrative capacity building, and (iii) poverty reduction and economic growth. EU budget support to Moldova over the last three years has covered Social Sector Assistance (2007: Euro 20 million as budget support and Euro 1 million as technical assistance support), Health Sector Reform (2008: Euro 42 million as budget support and Euro 4.6 million as technical assistance support), Water Sector Policy Support (2009: Euro 37 million as budget support and Euro 8 million as technical assistance support).

19. During the July 2009 monthly Development Partners meeting, the Government agreed with donors to start a division of labor process that will clarify the roles of development partners, reduce donor crowding in some sectors and ensure greater coordination and coherence among the development partner community, in order to support better the implementation of national objectives. The division of labor exercise will take some time to be completed. It is complementary to the implementation of the Government's regulation on foreign assistance, which establishes sector councils led by ministers that are intended to enhance coordination and coherence at the sectoral level and should also support the development of program-based approaches.

20. On March 18, 2010, the Government of Moldova and 21 of its Development Partners signed the Moldova Development Partnership Principles. The objective is to enhance aid effectiveness through Aid Harmonization and Coordination to improve Moldovan living standards, reduce poverty, and achieve Millennium Development Goals and the Government's objectives of closer association and economic integration with the EU.

D. The CPAR Process

The Previous CPAR

21. The previous CPAR dated June 2003 identified strengths and weaknesses of the public procurement system and recommended actions to improve the system. The recommendations can be grouped under three major headings: (i) legislative reform, (ii) institutional reform and (iii) improvements in procurement procedures and practices. Some of the main findings may be summarized as follows:

- While the 1997 procurement law provides a reasonably sound basis for public procurement, it contains weaknesses that have a negative effect on the conduct of procurement and will need to be amended to align it with the WTO Agreement on Government Procurement. Its implementation is further undermined by the absence of implementing regulations.
- Procurement practices are often inconsistent with the procurement law and weaknesses in the law permit improper practices.
- While the National Agency for Government Procurement is seen as providing a valued service to procuring entities and is progressively extending its coverage, its reach is limited at the local government level.
- The Agency is not being held accountable for the performance of its regulatory and oversight functions. Because it is one of the bodies that makes the Government's decisions on procurement, it cannot act independently when reviewing bid protests.
- Procuring entities lack the capacity to conduct procurement effectively and in accordance with the procurement law, and there is political interference in procurement decision-making.

22. Some of the key recommendations may be summarized as follows:

- The current procurement law should be amended to address the key deficiencies identified and the Government should enact a comprehensive set of implementing regulations to underpin the law.
- The position of Executive Director of National Agency for Government Procurement should be filled immediately. The Agency should be held more accountable for the performance of its functions.
- New institutional arrangements should be made for the independent review of bid protests.
- It is necessary to build public sector capacity for public procurement.

What Has Been Achieved

23. Since the 2003 CPAR, the WB has continued to support the Government's efforts in this area with analytical work and technical assistance under the following instruments:

- An IDF Grant for Development of Public Procurement Infrastructure (TF-53416) to support implementation of a proposed reform program for the National Agency for Government Procurement in a timely and effective manner (2004- 2008);
- Two Public Expenditure and Financial Accountability (PEFA) Assessments in 2006 and July 2008; and
- A Corruption Vulnerability Scan for Moldova in May 2008.

24. Based on the recommendations of the 2003 CPAR and follow-up activities, the Government took several actions in the area of public procurement, including:

- Enactment of the PPL (April 2007),
- Establishment of AMRPPHA (April 2007),
- Establishment of Oversight Committee (OC) to monitor public procurement activities and ensure compliance with the PPL (May 2008),

- Self-assessment of the national public procurement system using OECD/DAC Methodology (October 2008),
- Performance Audit by Court of Accounts, first of its kind for public procurement (May 2009), and
- Decision to restructure AMRPPHA and establish the PPA (November 2009).

25. The PPL that was enacted on April 13, 2007 (Public Procurement Law No. 96-XVI), made substantial improvements in the legislative framework, brings public procurement in line with international standards and practices, and addresses many of the weaknesses identified during the 2003 CPAR. The positive aspects include decentralization of procurement function to spending entities, a greater degree of separation of responsibilities within public procurement, and increased transparency. The new law is oriented towards the EU Directives model. The institutional arrangements concerning the PPA as a central body were finalized by Government Decision No. 747, dated November 24, 2009, and published on November 27, 2009, which placed the PPA under the Ministry of Finance.

26. The 2003 CPAR included an agreed action plan with short-, medium- and long-term actions for public procurement reform in Moldova. The assessment team for this 2010 CPAR reviewed the current status of those actions and noted that most of the actions had been implemented by the Government. The progress made on each action as of March 2010 is presented in **Annex 5**.

Objectives of the 2010 CPAR

27. The primary objective of this CPAR is to assist Government in defining the next phase of procurement reform by (i) providing the Government with an assessment of the progress made on public procurement reform since the earlier report; (ii) reviewing and commenting on the findings of the self-assessment conducted by the Government using OECD/DAC methodology; (iii) developing an action plan to implement the next stage of reform and assist the Government in prioritizing these actions; and (iv) undertaking a general assessment of the institutional, organizational and other risks associated with the procurement process, including identification of factors that will affect WB-financed projects. Its secondary objective is to support the ongoing dialogue with the Government on public financial management (PFM) reform aimed at securing more efficient and effective use of public sector resources.

Scope of the Tasks and Priority Areas

28. The CPAR team's first visit to Moldova took place on November 26-27, 2009, to discuss the scope of CPAR. The WB team met with various officials from the Agency for Material Resources, Public Procurement and Humanitarian Aid (AMRPPHA) and from the Policy and Aid Coordination Department of the Government Office. The PPA, which had just been established under the Ministry of Finance, expressed its support as the main counterpart agency for carrying out the CPAR, including the review of the self-assessment conducted by the Government using OECD/DAC methodology.

29. Based on the feedback received from the Government during the scoping mission, the priority areas and tasks to be covered in the CPAR were defined as follows:

- Assess progress since the 2003 CPAR, including status of action plan;

- Review and comment upon the results of the self-assessment conducted by the Government using OECD/DAC methodology to measure progress in procurement reform in the areas of: (a) legislative and regulatory framework, (b) institutional and management capacity, (c) procurement operation and market practices, and (d) integrity and transparency of public procurement based on the four pillars of the latest OECD/DAC Base Line Indicators tools. This task included a review of the 2007 PPL and related secondary legislation in order to identify significant departures from best practices.
- Review in depth and analyze procurement operations and practices in the health, education and transport sector and present cases/examples to underpin the recommendations.
- Support Government's efforts on E-Government and public sector reform, including design and implementation of e-procurement (E-GP). Address issues concerning the development of E-GP including: (i) laws and regulations, (ii) E-GP strategy and action plan, (iii) human resources development, (iv) private sector development, and (v) Internet connectivity.
- Support ongoing PFM dialogue under the Public Financial Management Technical Assistance Project and Public Administration Reform Project regarding primary fiduciary concerns in providing direct budget support to the Government to ensure that: (i) funds reach the budget, and (ii) they are managed with due regard for economy and efficiency as part of country's overall budget resources. This assessment included overall fiduciary risk assessment including risks associated with the current WB portfolio.

The Methodology Followed

30. Working in close cooperation and with input from PPA, the assessment utilized OECD/DAC Base Line Indicators tool to review the legislative and regulatory framework, institutional and management capacity, procurement operation and market conditions, and integrity and transparency of the public procurement system. Parallel to this, the assessment reviewed and commented upon the results of the self-assessment conducted by the Government. The CPAR team met with (i) the PPA to assess its functions including providing advice to procuring entities, drafting amendments to the procurement legislation, monitoring procurement activities and collecting statistical information on public procurement, providing training to procuring entities, and handling complaints; (ii) three ministries with large procurement budgets (health, education and transport) to conduct an in-depth review of current procurement practices, including contract management and administration, and to better understand their implementation of the existing procurement legislation; (iii) private sector contractors, suppliers, and chambers of commerce to seek their views and perception of public procurement including effectiveness of complaint handling mechanisms; (iv) internal and external control units of the procuring entities, including the Court of Accounts and the Centre for Combating Economic Crimes and Corruption, to assess effectiveness of existing decision-making and control mechanisms; (v) donors, especially the EU, to integrate the work being done by them; (vi) academics, training institutions, universities, professional associations to explore the possibility of cooperation in training and capacity building.

Coordination with other International Donors during CPAR Process

31. The EU is supporting a Twinning Project whose overall objective is to strengthen Moldova's public administration through further development, improvement and reinforcement

of the public procurement system within the Moldovan public finance system. This project aims to (i) optimize the internal organizational structure and working procedures of the PPA, including transferred knowledge on the use of modern administrative methods; (ii) improve efficiency and cost-effectiveness in the work of agency by improving functional structure with more efficient distribution of assignments among the staff and proper delegation of authority and responsibility; (iii) bring the legislative framework for public procurement into line with EU legislation and best practices; (iv) prepare general standard procedure requirements applied by the leading contracting authorities designed to reduce potentially corruptive practices in contract awards; (v) introduce structures and procedures for regular, timely dissemination of easily available information to actors in the field, including a new Guide on Public Procurement based on the current PPL, in order to improve knowledge of existing legislation and standard procedures; and (vi) support the establishment of an e-procurement system, primarily to allow the use of electronic communication for speedy transmission of tender documentation to potential bidders.

32. Towards the end of 2009, the Government received offers from the public procurement agencies of five EU countries (Germany, France, Poland, Romania and Lithuania) to implement the Twinning Project. In early 2010, after reviewing the presentations, they selected the Romanian Public Procurement Agency. The findings and recommendations of the CPAR will provide input to the PPA in finalizing the scope and components of the Twinning Agreement.

33. The WB team has worked closely with the EU Delegation in Chisinau, which agreed to coordinate its efforts with the WB in the area of public procurement and take into consideration the 2010 CPAR findings and recommendations in finalizing its assistance. A number of procurement-related conditionalities are proposed for inclusion in the new budget support operation planned by EU for 2010. Ongoing negotiations of these conditions between the EU and Government will be concluded around mid-2010.

II. ASSESSMENT, FINDINGS AND RECOMMENDATIONS

A. Methodology

34. The WB CPAR team used the OECD-DAC Methodology (Version 4, July 17, 2006) for assessing the national procurement system of Moldova. This widely used tool is based on the following four pillars, each of which is supported by baseline indicators and sub-indicators. This methodology and its scoring are used only for the purposes of preparing the Country Procurement Assessment Report, and not for the purpose of a Use of Country Systems assessment, which also uses the same methodology.

Pillar I: Legislative and regulatory framework

Pillar II: Institutional framework and management capacity

Pillar III: Procurement operations and market practices

Pillar IV: Integrity and transparency of public procurement systems

35. The OECD-DAC methodology assigns scores of 0 to 3 to each area of performance. A zero assigned to an indicator or sub-indicator indicates failure to meet the standard. A score of 1

indicates an area where substantive work is needed to meet the standard. A score of 2 indicates less than full achievement, with improvements needed. A score of 3 indicates full achievement of the standard.

36. The Government of Moldova appointed a working group that completed the self-assessment by October 2008, with the help of two consultants, one international and one national. The working group was comprised of representatives from the Government Office, Ministry of Finance, Ministry of Economy, Court of Accounts, Ministry of Health, Ministry of Education and Youth, and Agency for Material Resources, Public Procurement and Humanitarian Aid, and of representatives from the private construction, pharmaceutical, and information technology sectors.

37. The CPAR team discussed the findings of this self-assessment with the PPA and other relevant agencies. The results of WB team’s own assessment taking into account the results of the self-assessment for each pillar are presented below. As indicated under each sub-indicator, there is a broad consensus between many of the self-assessment scores and those arrived at by the WB team. On the other hand, some of the WB’s scores are lower than the self-assessment scores. In few other cases, the WB team’s assessment resulted in higher scores.

B. Pillar I. Legislative and Regulatory Framework

Indicator 1. Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.

Sub-Indicators	Self Assessment Score	WB Assessment Score
1(a) – Scope of application and coverage of the legislative and regulatory framework	2	2
1 (b) – Procurement methods	2	3
1(c) – Advertising rules and time limits	2	3
1(d) – Rules on participation	3	2
1(e) – Tender documentation and technical specifications	3	3
1(f) – Tender evaluation and award criteria	2	2
1(g) – Submission, receipt and opening of tenders	2	2
1(h) – Complaint	3	2

Sub-indicator 1(a) - Scope of application and coverage of the legislative and regulatory framework

38. The Law on Public Procurement No. 96 – XVI of 13.04.2007 (PPL) is the governing law in the area of public procurement. It covers the procurement of goods, works, services as well as advisory (consultant) services. The legal framework—the PPL and secondary legislation in the

form of acts—is published. The precedence of the Law over Regulations is also accepted under Moldovan Law.

39. Subject to exceptions of Article 4, the PPL applies to all public procurement by all public sector contracting authorities, which include public authorities and legal entities governed by public law (and associations of such Authorities) for contract values, exclusive of VAT, not less than MDL 20,000 (US\$1,600 equivalent) for procurement of goods and more than MDL 25,000 (US\$2,000 equivalent) for procurement of works and services. Procurement for contract values below these thresholds is conducted in accordance with the Regulation on Minor Value Public Procurement (Government Decision No. 148 of February 14, 2008).

40. The Law also applies to procurements that contracting authorities subsidize by more than 50 percent. However, the Law does not currently apply to other entities such as utilities that are entrusted to perform public procurement. Article 12(4) of the PPL provides that such entities may, by way of decision, be qualified as contracting authorities for the purposes of the Law where they operate in monopoly situations, but this article has not been implemented, with the result that coverage is not complete.

41. The PPL and adopted regulations are published and easily accessible to the public at no cost. These are also available on the PPA website (tender.gov.md) in the Romanian language but no documents appear to be available in English at present. The website is not fully up to date, because no full-time staff is assigned to this task.

42. The WB team agrees with the self-assessment score.

Sub-indicator 1(b) — Procurement methods

43. The PPL clearly provides the types of procurement methods that may be used for public procurement. Article 33.1 of the PPL identifies these methods as (a) open (public) bidding, (b) closed bidding (bidding with prequalification), (c) framework contract, (d) competitive dialogue, (e) negotiations, (f) procurement from single source, (g) request for price quotations, (h) dynamic purchasing system, (i) electronic auction, (j) procurements for social housing construction schemes, and (k) procurements through Universal Commodity Exchange. These procurement methods are established at an appropriate hierarchical level along with the associated conditions under which each method may be used.

44. Article 33.2 of the PPL clearly states that open bidding shall be the basic procedure for public procurement; other methods may be used solely under conditions expressly provided in the Law. Article 69.1 of the PPL states that public procurements may not be fragmented to apply a different procurement method.

45. Articles 2.3 and 19.1 provide the threshold values for international competitive procurement and international advertisement requirements. Procurement for contract values, exclusive of VAT, exceeding MDL 2.5 million (US\$200,000 equivalent) for procurement of goods and services, and MDL 99 million (US\$7.92 million equivalent) for procurement of works are required to be advertised in the Official Journal of the European Community.

46. While the purchase of commodities must necessarily be done in ways other than open tender, procurements through the Universal Commodity Exchange (UCE) does not really address this need. According to Annex 1 of Government Decision No. 329 relating to UCE, the goods to

be procured through UCE include transport means and mechanisms such as motor vehicles, which are not commodities. In order to make this method consistent with international practices, the scope should be revised to exclude vehicles.

47. The WB team finds that the legal framework meets all criteria under this sub-indicator and gives a full score of 3.

Sub-indicator 1(c) — Advertising rules and time limits

48. The PPL mandates public advertising as specified in Article 19. Publication is required in the Agency's Bulletin, which is published twice a week in printed form and on its website, and also in the Official Journal of the European Community for procurements above the thresholds mentioned above. With regard to the national advertisements, the Bulletin length is limited to a maximum of 60 pages. Notices sometimes need to be compressed and it is not always possible to publish all of the information required by the Law, although sufficient information is generally retained to enable potential bidders to determine their ability and interest in bidding. With regard to international notices, advertisements are not published in the Official Journal of the European Community because Moldova is not yet a member of EU.

49. The minimum time limits between the date of publication of notices and the date of submission of tenders are shorter than those specified in the EU Procurement Directives upon which the PPL is modeled but are nonetheless set at no less than 40 calendar days, to be determined on the basis of the complexity of the procurement and taking into account international bidders, with the possibility of extension.

50. The WB team thinks that the legal framework meets all criteria required under this sub-indicator and gives a full score of 3.

Sub-indicator 1(d) — Rules on participation

51. Qualification criteria, as described under Article 16 of the PPL, are based on the bidders' ability to perform the contract and reflect the broad categories of participation requirement accepted in international systems, i.e. financial capacity, technical ability, availability of skilled staff and equipment and other capacities necessary for adequate execution of the contract. The PPL is not particularly detailed on the individual criteria to be applied, preferring to rely on bidding documents for specific criteria, but the broad categories are clearly and adequately enumerated. Where pre-qualification is used (i.e. for closed tender), it is carried out on a pass/fail basis.

52. The PPL provides for domestic preference, which shall not exceed 15 percent (Article 44.6) and is applicable only to the extent that it does not conflict with international laws to which Moldova is a party (Article 6.i). There is a provision in Article 15.1 that appears to give contracting authorities the ability to procure only domestic goods and services, but the Agency states that this clause is redundant and never used and that it is, in any event, subject to conformity with the PPL, including Article 6(i).

53. Foreign suppliers are able to participate in procurement. The extent of the rights they enjoy to enforce the provisions of the PPL depends, however, on whether Moldovan companies enjoy similar rights in their country of origin. The PPL thus introduces a general reciprocity

clause under Articles 15.2 and 15.3 similar to that which is applied under the WTO's Government Procurement Agreement.

54. Article 44.6 provides provisions for set-asides that limit competition. A preferential margin of 20 percent of the bid price found to be the best is granted to bids offering the products of the enterprises owned by the Association of the Blind, the Association of the Handicapped, the Association of the Deaf, the production facility of the National Psychiatric Hospital or the penitentiary system institutions, and to bids offering agricultural products and foodstuffs that are ecological or in the period of transition to the ecological production processes.

55. There is no regulation on the participation of state-owned enterprises in public procurement.

56. Article 17 foresees a list of qualified suppliers (the "white list"), but this is for information purposes only and does not restrict participation of suppliers not appearing on the list. Article 18 provides for a list of prohibited suppliers (the "black list") that will be restricted from participation in public procurement. According to PPA, the suppliers are included in the black list following judgments affecting their probity made by the courts, the competition authority or the anti-corruption authority. They are included in the list by the PPA whose decision to include them is subject to appeal.

57. Due to lack of any regulation on the participation of state-owned enterprises, the WB team gives a score of 2.

Sub-indicator 1(e) — Tender documentation and technical specifications

58. Article 35 of the PPL sets out the content of the invitation to participate in open bidding in a way that enables bidders to respond to the requirements of each procurement. The content of the bidding documents is not specified in the PPL, but Article 37 requires the preparation of standardized bidding documents by the Government so that all of the procuring entities use the same documents providing the same minimum content. Articles 27.4 and 27.5 of the PPL provide for neutral specifications and equivalence with international or national standards.

59. The WB team agrees with the self-assessment score.

Sub-indicator 1(f) — Tender evaluation and award criteria

60. The evaluation criteria are relevant and required to be precisely specified in advance in the bidding documents. As described in Article 45, the award criterion is to choose "the most economically advantageous tender," wording borrowed from the EU legislation. As a result, the criteria are not always quantified in monetary terms or assessed on a pass/fail basis, and in fact evaluation must be based on a weighted score. In the PPL, the weighting is also prescribed to some extent: price must account for not less than 80 percent of the score in procurement of goods and works (Articles 45.a and 45.b) and not be less than 40 percent for services (Article 45.c). In the case of consulting services, Article 62 allows adequate importance to be given to the quality and regulates how price and quality are considered. While PPL provides principles, it does not provide specifics of evaluation methods or processes, but requires that they be provided in the request for proposal.

61. During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process (Article 44.9).

62. The WB team agrees with the self-assessment score.

Sub-indicator 1(g) — Submission, receipt and opening of tenders

63. The modality of submitting bids and receipt of bids is adequately regulated by Article 39. Public opening of bids is regulated by Article 43 and provides for opening of all bids at the date, time and place specified in the bidding documents. The PPL does not explicitly indicate that the bids must be opened immediately after the bids submission deadline, but the practice is to open bids on the same day of the bid submission deadline and usually within 30 minutes of the deadline for bid submission. Records of proceedings for bid openings are required to be maintained and available for review.

64. The confidentiality of bids is maintained prior to bid opening and the non-disclosure of specific sensitive information is guaranteed by Article 70.3. Additionally, Article 64 of the PPL requires that the procuring entities ensure confidentiality of the bid evaluation and negotiations process for the selection of consultants for advisory services. There are, however, no specific provisions on the safekeeping of bids for procurement of goods and works.

65. The WB team agrees with the self-assessment score.

Sub-indicator 1(h) — Complaints

66. Any supplier who believes that the contracting authority has infringed the bidder's lawful rights, inflicting actual or potential damage on the bidder, may challenge the authority's choice of the procurement procedure or its contract award decision. The complaints review mechanism is regulated by Articles 71 to 74. No initial complaint to the procuring entity is provided for in the Law, but it is understood that this is the first step in practice. Even if a complaint is not filed with the procuring entity, the PPL provides for review by a review body independent of the procuring entity, which is subject to appeal.

67. However, the designated review body is the PPA, which is not completely autonomous and remains dependent to some degree on the Ministry of Finance (the Government), a situation which may affect the confidence of aggrieved bidders. The Agency is also responsible for preparing secondary legislation and guidance, reviewing bid evaluation reports, and approving and registering all contracts, and these operational responsibilities may well impose some constraints on its freedom of action in respect of complaints.

68. Article 71.2 lists the subjects which may not be reviewed by the PPA, which are (a) the choice of the procedure for the selection for advisory services, (b) restrictions on the participation in the procurement procedure for domestic goods and services, (c) the decision to reject all bids, and (d) the lack of a reference to the PPL or other laws and regulations regarding the procurements procedure, or the lack of a note regarding the right of appeal.

69. The PPA has the authority to grant remedies as provided in the PPL. If PPA fails to issue a decision within the established term or if the bidder is not satisfied with the decision, the bidder

may appeal the PPA’s decision in the competent administrative court as stipulated in Article 73.10.

70. The PPL establishes timeframes for issuance of decisions by the procuring entity and the PPA. The bidders are required to submit a complaint within 10 calendar days after they become aware of the circumstances for the grounds of the appeal and the PPA will not examine complaints submitted beyond this period. If the dispute is not settled amicably within 10 calendar days after filing of the complaint, the PPA shall issue a substantiated decision within 20 calendar days after the submission of the complaint to the PPA and the decision will be communicated to the complainant within 3 working days.

71. Due to the lack of any provisions regarding an initial complaint to the procuring entity, WB team assigns a score of 2.

Indicator 2. Existence of Implementing Regulations and Documentation

Sub-Indicators	Self Assessment Score	WB Assessment Score
2(a) – Implementing regulation that provides defined processes and procedures not included in higher level legislation.	2	1
2(b) – Model tender documents for goods, works and services.	2	2
2(c) – Procedures for pre-qualification.	3	3
2(d) – Procedures suitable for contracting for services or other requirements where technical capacity is a key criterion.	2	2
2(e) – User’s guide or manual for contracting entities.	1	1
2 (f) – General Conditions of Contracts for public sector contracts covering goods, works and services consistent with national requirements and when applicable, international requirements.	2	2

Sub-indicator 2(a) — Implementing regulations that provide defined processes and procedures not included in higher legislation

72. The PPL provides for the adoption of regulations to supplement its provisions. However, not all the regulations foreseen in the PPL have been adopted, including some required to make procurement methods workable. In addition, since the adoption of the amended PPL in 2007, the large volume of regulations that were already in place has not been updated, mainly due to lack of staff.

73. A further novelty brought about by the recent revision to the status of the PPA is that regulations will now be proposed by the Policy Formulation Department of the Ministry of Finance, rather than by the Agency itself, although in practice it is still the Agency that is likely to prepare the drafts. This additional step in the adoption process may have implications for timing and delay in issuance of regulations.

74. Due to incomplete or outdated regulations, the WB team gives a lower score of 1.

Sub-indicator 2(b) — Model tender documents for goods, works, and services

75. There are some sample bidding documents for goods, works and services for the different procedures (open, single source and procurement from UCE) but these are not complete or up to date. Those that were prepared before the 2007 PPL have not yet been updated, with the exception of the sample documents for design services.

76. Some sample forms of contracts are currently available, but these also need to be completed and updated. The contract forms are usually drawn up by the procuring entities themselves, which may create confusion and inconsistency, although they must comply with the essential requirements for contracting which are set out in various places in the PPL. The existing bidding documents do not include the form of contracts as their integral part.

77. The WB team agrees with the self-assessment score.

Sub-indicator 2(c) — Procedures for pre-qualification

78. Articles 48 and 49 of the PPL define the pre-qualification procedure used for closed bidding and sets out the conditions under which it applies and the process to be followed. Closed bidding may be used for procurement of goods, works and services that are complex in nature or available to a large number of firms operating in the market. The Article does not explicitly specify pass/fail criteria for the qualification but indicates that only those criteria provided in the pre-selection/pre-qualification documents may be applied. The Article does not limit the number of firms to be prequalified, as is the case in the EU legislation from which the PPL is derived. In practice, the pass/fail test is used according to the experience of PPA.

79. The WB team agrees with the self-assessment score.

Sub-indicator 2(d) — Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion

80. Article 62 of the PPL sets out the evaluation criteria to be applied in the case of procurement of advisory (consultant) services. Article 45.c also states that the price element should be given a weight of no less than 40 percent and the maximum quality rating will generally be 60 percent, so that selection based on quality alone is not possible. Article 63 provides that selection may be based on quality alone with negotiations taking place with the bidder achieving the highest quality score. There is, however, no indication when it may be appropriate to use the procedure of Article 63. The lack of guidance is the result of the absence of any regulations or standard request for proposal documents for consultancy services and no clear procedures and methodologies catering for different circumstances.

81. The WB team agrees with the self-assessment score.

Sub-indicator 2(e) — User's guide or manual for contracting entities

82. There is no unique procurement manual and no requirement to create one. There are a number of regulations and guidance notes which, taken together, provide relevant information for use by procuring entities, and some procuring entities have developed their own internal manuals.

83. The WB team agrees with the self-assessment score.

Sub-indicator 2(f) — General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements

84. There are few standard forms of contracts, but they are not part of the sample bidding documents for procurement of goods, works and services consistent with national and international requirements. Procuring entities are currently responsible for adopting the forms of contracts and for preparing their own contracts and all do so. It cannot be guaranteed that all or any of these conform to internationally acceptable standards but they are required to comply with the essential requirements set out in the PPL, which may also create confusion and inconsistency.

85. Article 28 of the PPL provides that bidding documents may also be prepared in one of the internationally accepted languages, in addition to the national language, if the nature of the procurement implies involvement of foreign bidders or resources or technologies, or the estimated cost of the procurement exceeds thresholds for international advertisement.

86. The WB team agrees with the self-assessment score.

C. PILLAR II. Institutional Framework and Management Capacity

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

Sub-Indicators	Self Assessment Score	WB Assessment Score
3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multi-year planning.	3	2
3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment.	2	1
3(c) – No initiation of procurement actions without existing budget appropriations.	3	2
3(d) – Systematic completion reports are prepared for certification for budget execution and for reconciliation of delivery with budget programming.	3	2

Sub-indicator 3(a) — Procurement planning and associated expenditures are part of the budget formulation process and contribute to multiyear planning.

87. The Moldovan budget process includes a strategic budget planning phase resulting in the development of a medium-term expenditure framework (MTEF) with a planning horizon of three years. The MTEF is developed at an early stage of the annual budget preparation process during the first quarter of the year. Sector expenditure strategies serve as the basis for MTEF development. At the medium-term planning phase, an aggregate program and economic

classifications are used. The national budget is approved on an annual basis and the MTEF feeds into the annual budget preparation process through the MTEF document included in the annual budget documentation submitted to Parliament for approval. Once the annual budget is approved, budget entities develop detailed month-by-month financing plans for the budget year on the basis of the detailed economic classification and coordinate them with the Ministry of Finance. Financing plan information is held in the centralized treasury information system, however most budget entities do not have access to the system even in view-only mode.

88. Expenditures subject to procurement are reflected in several groups of economic classification. Procurement plans are developed by the budget 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, but the use of procurement information in budget formulation is limited. The use of procurement information for developing MTEF projections, budget requests and, later, financing plans is in most cases limited to reflection of needs under multi-year procurements related to capital construction.

89. Since the use of procurement information in budget formulation is limited, the WB team gives a lower score of 2.

Sub-indicator 3(b) —Budget law and financial procedures support timely procurement contract execution, and payment.

90. In compliance with existing budget execution procedures, commitments for expenditures subject to procurement are generated through registration of signed contracts in the centralized treasury system managed by the state treasury offices. The procedures prescribe a specific timeframe for such registration only for low-value contracts (less than MDL 20,000 or US\$1,600 equivalent for procurement of goods and less than MDL 25,000 or US\$2,083 equivalent for procurement of works and services), which must be registered in the treasury system within 15 days after contract signing. Statistics on the timing of registration of larger value contracts is unavailable. Contracts that require approval of the PPA are accepted for registration only upon submission of the proof (official stamp) of such approval. Following contract registration, commitment is created only for the amount required to cover the portion of the contract to be performed within the current fiscal year, because the contract registration module of the treasury information system does not have the capacity to register multi-year commitments. As most budget entities do not have direct access to the treasury system and the procurement process is not supported by an electronic information system, contracts and supporting documentation are submitted to the treasury for registration in hard copy form.

91. Invoices are submitted by the budget entities to the treasury for payment. There are no published business standards that prescribe a timeframe for processing of invoices by the treasury. The timing of processing by the treasury is effectively determined by availability of cash in the treasury accounts. Normally, budget funds are released to the budget entities in equal monthly installments and sometimes adjusted considering the needs of the budget entities, seasonality and other factors, which puts some limitations on spending and delays payments at the beginning of the year.

92. Under normal circumstances when no cash shortage exists, invoices are usually paid within a couple of days. When cash rationing is necessary, the sequence and timing of invoice payments are determined by payment priorities defined by provisions included in the budget

legislation. Expenditures for goods and services that make up the bulk of expenditures subject to procurement are not among the top priorities in such situations. In 2009-2010, payment delays of a month or longer was not uncommon. In case of payment delays, penalties are paid from the budget funds in conformity with the contract provisions.

93. Since the commitment of budget funds takes longer than one week, there is no published business standard for processing of invoices, and payments may be delayed, the WB team gives a lower score of 1.

Sub-indicator 3 (c) —No initiation of procurement actions without existing budget appropriations

94. Article 19.2 of the PPL stipulates that procurement actions can only take place “upon approval of the respective procuring entity’s budget.” The existing budget execution procedures assure that this legislative provision is observed, as procurement plans are developed on the basis of detailed financing plans coordinated with the Ministry of Finance. Treasury control of funds availability at the moment of the contract registration provides an additional enforcement mechanism. If any procurement process starts without budget appropriation and the contract is submitted to PPA for approval, the PPA may approve the contract as it does not check the availability of funds. Such cases can only be caught at the Treasury when the contract is sent for registration. Should the control reveal that the financing plan does not envisage sufficient funds to cover the cost of the contract, contract registration is denied, and the contract is annulled.

95. Such outcomes cannot be fully excluded, as there is no electronic system in place supporting the procurement process, budget entities do not have direct access to the treasury information system, and there is typically a time lag between the contract signing and contract registration in the treasury system. If there were an electronic system in place to support the procurement process and an electronic exchange of information between the procurement system and the treasury system, the enforcement mechanism could be simpler.

96. Due to lack of a system interfacing procurement and financial management systems, the WB team gives a lower score of 2.

Sub-indicator 3(d) —Systemic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.

97. Budget entities are responsible for contract execution and for acceptance of final delivery of goods, works and services procured. Physical documentation is required because there is no information system in place to support the procurement process, much less a procurement information system integrated with the financial management and budgetary systems. Acceptance documents and invoices for final payment are submitted to the treasury in hard copy in a timely manner on completion of the majority of large contracts. In case of capital investments, acceptance documents are reviewed by the capital investment division of the MOF prior to authorizing the final payment. As submission of an invoice for final payment is usually conditioned by acceptance of delivery of goods, works and services, information on completion of majority of large contracts is submitted in a timely manner. The treasury system, however, does not capture any information other than the payment amounts and the fact of contract completion.

98. Due to lack of integration between the procurement and financial management and budgetary systems, the WB team gives a lower score of 2.

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

Sub-Indicators	Self Assessment Score	WB Assessment Score
4(a) – The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.	3	3
4(b) – The body has a defined set of responsibilities.	3	3
4(c) – The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should sufficient and consistent with the responsibilities.	3	2
4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	3	3

Sub-indicator 4(a) — The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.

99. There is a normative or regulatory body within the Government which is specified in the legal and regulatory framework. The current normative body is the PPA subordinated to Ministry of Finance and established through the Prime Minister’s decision. The PPA implements the state’s policy in the area of public procurement and ensures regulation, supervision, control, and coordination in the field of public procurement. It had two predecessors: (i) under Moldova’s first public procurement law of April 1997, a National Agency for Government Procurement (NAGP) was established and (ii) the April 2007 Law on Public Procurement established an Agency for Material Resources, Public Procurement and Humanitarian Aid (AMRPPHA). In November 2009, AMRPPHA was restructured and the PPA was established as a specialized administrative authority subordinated to the Ministry of Finance.

100. The WB team agrees with the self-assessment score.

Sub-indicator 4(b) —The body has a defined set of responsibilities.

101. The defined set of responsibilities includes but is not limited to the following: providing advice to contracting entities, drafting amendments to the legislative and regulatory framework and implementing regulations, monitoring public procurement, providing procurement information, managing statistical databases, reporting on procurement to other parts of Government, developing and supporting implementation of initiatives for improvements of the public procurement system, and providing implementation tools and documents to support training and capacity development of implementing staff.

102. PPA has been given these responsibilities under Article 7 of the PM Decision on the establishment of PPA. The PPA also performs other tasks such as reviewing and approving bid evaluation reports, approving signed public procurement contracts, and examining and resolving complaints related to public procurement activities.

103. The process of approval and registration for contracts by the PPA deserves special mention. The PPA reviews and approves almost all contracts placed by the procuring entities, except for minor value contracts (MVCs), and requests for quotation (RFQs) without publication for goods and services below the current threshold of below MDL100,000 excluding VAT (US\$8,000 equivalent). RFQs below the threshold are registered by the district councils who then submit summary reports to the PPA on a quarterly basis. According to the applicable thresholds for RFQ, contracts for goods and services below this threshold do not require publication in PPB. This approach was taken to release the district and rural authorities from the obligation to come to the PPA from all over the country to register every small contract award. The threshold for an RFQ without publication for works may be up to MDL500,000 excluding VAT (US\$40,000 equivalent), but whether goods, services or works, only those RFQs that fall below MDL100,000 are registered by district councils, while those above are submitted for registration to the PPA.

104. For contracts placed under Open Bidding (OB), procurement through Universal Commodity Exchange (UCE) and Single Source (SS), the procuring entities submit both the report on bid evaluation and the signed contract. The report on bid evaluation is a shorter version of the bid evaluation minutes prepared by the working group (bid evaluation committee), prepared according to the approved templates (Government Decision No. 245 dated March 4, 2008 for goods and services; templates for works are those approved by the former Ministry of Construction Rural Development). The contracts are normally signed by the procuring entities and the suppliers/contractors right after the signature of the bid evaluation minutes, and then attached to the report on bid evaluation and submitted to the PPA for approval, within a maximum of five days from the contract signature (Article 67 of the PPL). The signed contract becomes effective only after the PPA has approved and placed its stamp on the face of the contract.

105. In contrast, contracts placed under RFQ are not submitted for registration, and only the report on bid evaluation is registered by the PPA or district council, as appropriate.

106. Although the purpose of the registration process is to promote accountability and ensure compliance with the procurement rules set out in the PPL, in reality this process has tended to shift the responsibility away from the procuring entities and towards the PPA. Because PPA personnel are quite limited in number and some have limited qualifications and experience, it is practically impossible for the PPA to efficiently implement all of its obligations under the PPL. Although the PPA is doing its best to enforce the PPL by conducting training and drafting new regulations, it still spends the bulk of its time reviewing thousands of contracts delivered for approval from hundreds of procuring entities. The PPA processed over 21,000 contracts in 2008 and as many as 23,000 in 2009. This activity continues to dominate PPA staff workload, along with the examination of complaints and other routine activities. There is little time left for policy development, strategy implementation and capacity building, or for drafting regulations for different procurement methods, standard bidding documents and templates.

107. In terms of the duration of PPA's reviews and their quality, given the volume—on average 100 reports and contracts a day—and the limited number of staff, it is obvious that there is insufficient time for documents to be properly scrutinized, irrespective of staff qualifications. The data collected for over 100 contracts examined for this assessment in three sectors indicated that while some contracts are cleared on the same day, others took over a month.

108. Another major concern is the potential conflict in holding dual responsibility for approving contracts and handling complaints arising from the same. While PPA's Complaint Review Department is a functionally independent unit, it is not administratively a separate entity.

109. The WB team agrees with the self-assessment score.

Sub-indicator 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 the responsibilities.

110. The PPA is administered by a director appointed by the Minister of Finance. There is also a deputy director, appointed by the Minister of Finance and directly subordinated to the director. It has three departments, dealing with (i) procurement procedures, (ii) complaint reviews and (iii) administrative and financial matters.

111. According to Article 11 of the PPL, the PPA's budget is comprised of (i) own income resulting from its own activities such as publication of Public Procurement Bulletin, (ii) allocations from state budget and (iii) other additional resources. Currently, PPA fully depends on the allocation from state budget and does not have financial autonomy.

112. Prior to the November 2009 restructuring, PPA was an independent legal entity reporting directly to the Government, but it is now subordinated to Ministry of Finance and therefore reporting at a lower level within the governance structure. The purpose of this change in placement was to help ensure close coordination of all public financial management functions including planning, budgeting and public procurement. It is still too early to tell whether the PPA is reporting at the right level within the Government.

113. The restructuring of PPA also resulted in substantial salary reductions for PPA staff, which has made it more difficult to keep experienced and qualified staff within the Agency and has resulted in high staff turnover. It is already quite clear that it is very difficult for the PPA to keep up with its current workload and responsibilities with the existing number of staff. Consideration should be given to either reducing its responsibilities (removing contract registration altogether or putting a threshold for procurement requiring PPA's approval) or increasing the number of staff within the Agency.

114. Since budget allocations of the PPA are subject to administrative decisions which can be changed easily, the WB team gives a lower score of 2.

Sub-indicator 4(d) —The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.

115. The PPA is not responsible for direct procurement operations and PPA staff are not members of the bid evaluation committees, but PPA does both review and approve procurement decisions and also handles procurement-related complaints. In such cases, the PPA may be in a position to decide on a complaint case for which it has reviewed documentation, and this may create a possible conflict of interest.

116. There is also an Oversight Committee (OC) created by Government Decision No. 648, dated May 29, 2008, that has 19 members and reports directly to the Government. Its most recent head was deputy PM and Minister of Economy. OC's role is to monitor public procurement to ensure efficiency and transparency. To this end, the PPA submits activity reports to OC every six

months so that the Committee can address any issues faced by the PPA during the reporting period. The OC is also responsible in particular for ensuring compliance with the PPL for procurement of large contracts (works over MDL20 million and goods over MDL5 million).

117. The Committee was fully functional until the run-up to the April 2009. Since most of the members of the committee were members of the Communist Party, the Electoral Code required them to resign during the election campaign. Government Decision No. 155, dated February 25, 2009 replaced the head of the Committee and other members involved in campaign with their deputies until Election Day April 5, after which the Committee was supposed to resume its functions. However the resigned members did not in fact return and the committee has ceased to function. In early 2010, the PPA submitted a note to the Government requesting that the Decision either be modified or cancelled. Establishing an oversight committee may have been necessary when public procurement was centralized. Since the procurement function has been decentralized to central and local government entities, the importance of having an oversight committee is reduced and it seems that there is no merit in maintaining it.

118. Even though the WB team has concerns about the possible conflict of interest in the complaints handling mechanism, the WB team agrees with the self-assessment score.

Indicator 5. Existence of institutional development capacity

Sub-Indicators	Self Assessment Score	WB Assessment Score
5(a) – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information.	3	2
5(b) – The country has systems and procedures for collecting and monitoring national procurement statistics.	2	1
5(c) – A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.	3	2
5(d) – Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.	3	1

Sub indicator 5(a) —The country has a system for collecting and disseminating procurement information including tender invitations, request for proposals, and contract award information.

119. The Public Procurement Bulletin published in hard copy and also electronically on PPA’s website (www.tender.gov.md) serves as centralized bulletin board for posting procurement opportunities, pre-notices, notices, awards and reasons for award. The system allows collection and dissemination of procurement information through posting of procurement notices and notices of awards. The electronic bulletin is accessible by all interested parties while the hard copy of the bulletin is published twice a week and available to subscribers only.

120. Articles 19, 20 and 21 of the PPL require the mandatory publication of annual procurement opportunities, i.e. pre-notices in addition to the procurement notices and contract awards in the Public Procurement Bulletin by all procuring entities. This requirement applies to public procurement contracts for goods exceeding MDL 20,000 (about US\$1,600) and for works and services exceeding MDL 25,000 (about US\$2,000).

121. Due to limited access to information, the WB team gives a lower score of 2.

Sub-indicator 5(b) —The country has systems and procedures for collecting and monitoring national procurement statistics.

122. The Public Procurement Bulletin is the main tool for the collection and dissemination of procurement information and statistics. The Public Procurement Bulletin collects data on procurement opportunities that include information on the name of the contract to be bid, the method of procurement, the date, time and place of the deadline for the submission of bids, date, time and place of the receipt and opening of bids and other relevant information that can be found in the Annual Procurement Plans. The PPA publishes annual reports containing information on public procurement, however due to limited number of staff in the PPA, analysis of available data is not routinely carried out. The Ministry of Finance also registers all public procurement contracts irrespective of value; therefore their records include minor value procurements as well and are more complete.

123. The information available on the Public Procurement Bulletin has not been verified by a specific external audit, but the recent performance audit conducted by Court of Accounts indicated that there are some instances where the procurement plans or procurement notices were not properly published in the Bulletin as required by the PPL. Since there are about 12,000 procuring entities in the country, it is very difficult to monitor whether all of the procuring entities comply with the requirements of the law and submit reliable information or submit any information at all.

124. Due to lack of analysis of collected information and low reliability of the information, the WB team gives a lower score of 1.

Sub-indicator 5 (c) — A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.

125. In accordance with Article 7 of the PM Decision on the establishment of PPA, the PPA is tasked with providing training to the staff of the procuring entities and representatives of the private sector. All training programs including the ones for private sector representatives are free of charge and certificates are issued to all participants. The PPA's annual training program as published on its website currently provides special training programs for local and central public administrations, usually one-day programs covering legislative framework and implementation issues. The PPA has a partnership agreement with the Public Administration Academy, which also provides very comprehensive training programs to the staff of procuring entities. A total of 1,670 staff received training in 2008 and 1,624 staff in 2009, from the PPA and the Academy, along with 150 private sector representatives. There is no regularly used evaluation or feedback process, but PPA is planning to instate such a process.

126. Under the WB-financed Public Finance Management Project, the Public Administration Academy hired a Swedish consultant to develop 18 modules of training on public financial management, including a module on Public Procurement developed jointly by PPA, the Public Administration Academy and Economic Studies Academy. This five-day module covers both theoretical and practical aspects of public procurement and the content includes the legal framework in Moldova, EC Directives, procurement procedures and contract administration.

127. The PPA had a help desk to address questions from procuring entities, but it is not in operation now. The PPA is planning to make it operational again soon.

128. Due to the lack of an evaluation process and the discontinuance of the help desk, the WB team gives a lower score of 2.

Sub-indicator 5(d) — Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.

129. Staff performance evaluation and capacity development issues are addressed in a comprehensive manner under Articles 34 to 38 of the Law on Public Function and Statue of Civil Servants, although there is no specific provision for procurement staff. The procurement system also has its own quality standards for processing procurement actions, such as specific timelines for some of the steps throughout the procurement process, and all contracting entities are expected to comply with them. However, there is no systematic monitoring or use of standards for staff performance evaluation.

130. Since compliance with quality standards is not yet monitored or used for staff performance evaluation, the WB team gives a lower score of 1.

D. Pillar III. Procurement Operations and Market Practices

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

Sub-Indicators	Self Assessment Score	WB Assessment Score
6(a) – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.	2	1
6(b) – The procurement training and information programs for government officials and for private sector participants are consistent with demand.	2	2
6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management.	3	2
6(d) – There are provisions for delegating authority to others who have the capacity to exercise responsibilities.	3	3

Sub-indicator 6(a) —The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.

131. Article 14 of the PPL specifies how procurement functions are exercised. The procuring entities are required to exercise their functions through the procurement working groups (i.e. bid evaluation committees), comprised of procuring entities' officers and experts with relevant professional experience and expertise. The Regulation on the Activity of Procurement Working Group (Government Decision No. 1380 of Dec 10, 2007) specifies that the working group includes officials and specialists from the procuring authority and that it may engage consultant specialists/experts in the area of procurement. It also defines the functions, obligations, rights and powers of the working group and its members, and clearly spells out, in Section I.4, the principles of operation of working groups by highlighting the necessity of transparency, objectivity, impartiality and efficiency. Section III.9 also requires that each member of the working group sign an impartiality statement to avoid any conflict of interest. However, the regulation fails to define the skills of the working group members or the specific skills and knowledge profiles of the consultant specialists/experts that the groups may engage.

132. There are about 12,000 procuring entities in the country but no defined category of specialized procurement staff. The PPA is undertaking several training programs for government staff and coordinating with other training institutions to improve procurement knowledge, but not all procuring entities have taken advantage of them, especially the ones at the local level where the need is greatest. The PPA's training programs should be improved as a short-term solution and a more comprehensive capacity-building program should be developed and implemented as a medium-term measure. The PPA help desk served as a valuable source of information for procurement knowledge until its abolition.

133. Due to lack of systemic matching skills for competitive recruitment and limited knowledge of the government staff in public procurement, the WB team gives a lower score of 1.

Sub-indicator 6(b) —The procurement training and information programs for government officials and for private sector participations are consistent with demand.

134. Training programs are designed to cover the overall legislative framework in public procurement and to address the need for skills and knowledge to handle implementation problems. There are regular training programs being offered by the PPA and Public Administration Academy and procurement staff can readily benefit from these programs. There are also programs to provide training to trainers who can then develop specific training programs for the staff of individual procuring entities.

135. There are no regular training programs on public procurement for the private sector, except the ones organized by the Public Administration Academy. Private sector organizations such as the Chamber of Commerce and Industry (CCI) are also organizing regular meetings with its members where they share information on public procurement issues.

136. The WB team agrees with the self-assessment score.

Sub-indicator 6(c) —There are established norms for the safekeeping of records and documents related to transactions and contract management.

137. Article 32 of the PPL states that the procuring entities must keep a file for every procurement and must ensure its safekeeping for five years after the initiation of procurement

procedure. The content of the public procurement file is specified in relevant regulations. There is a document retention policy specified in the Government Decision No: 9 dated January 17, 2008 that is compatible with the statute of limitations for investigating and prosecuting cases of fraud. Article 73.2 of the PPL allows the procuring entities to disclose relevant confidential information and documentation to the courts, in response to a court decision requesting such documents.

138. There are no organized record-keeping systems for the whole of government, but each agency is responsible for keeping its own records in accordance with the national guidelines. Every procuring entity keeps the relevant records (public notices of bidding opportunities, bidding documents and addenda, bid opening records, bid evaluation reports, formal appeals by bidders and outcomes, final signed contract documents and addenda and amendments, claims and dispute resolutions, final payments, disbursement data) but these are not integrated or consolidated to form part of the procurement records. They are kept in different units of the procuring entity. Most procurement-related records are available in the files of the working group, contract-related records are in the technical unit, and disbursement and payment records are in the finance unit.

139. There are no established protocols to protect physical records. However, the e-government procurement (e-GP) system that is currently being developed will have the necessary security protocols to protect electronic records. When the e-GP system comes into force, it will provide electronic storage of relevant documents, but the electronic copies of the documents will have no legal standing and procuring entities will still need to keep hard copies of documents.

140. Due to lack of security protocols to protect records, the WB team gives a lower score of 2.

Sub-indicator 6(d) —There are provisions for delegating authority to others who have the capacity to exercise responsibilities.

141. Decision-making authority with regard to public procurement, i.e. signing of bid evaluation reports, award recommendations and contracts, is regulated by internal regulations in each procuring entity, but the authority generally stays with the head of procuring entity. Accountability for decisions is defined and compliance is monitored through internal control mechanisms.

142. The WB team agrees with the self-assessment score.

Indicator 7. Functionality of the public procurement market

Sub-Indicators	Self Assessment Score	WB Assessment Score
7(a) – There are effective mechanisms for partnerships between the public and private sector.	1	2
7(b) – Private sector institutions are well organized and able to facilitate access to the market.	3	2
7(c) – There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private	3	2

sector's capacity to access the procurement market.		
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Sub-indicator 7(a) —There are effective mechanisms for partnerships between the public and private sector.

143. After the adoption of the PPL in 2007, Government intensified its efforts to engage in constructive dialogue with the private sector. This dialogue includes capacity-building programs through the PPA, business and professional organizations such as the CCI, and the donor community, which offers a range of private business development programs. Most of the interviewed firms confirmed the availability of capacity-development programs and events with regard to public procurement. Some firms were not aware of available training programs but were satisfied with the level of information offered about participating in the public procurement market.

144. As part of the introduction of e-GP in Moldova, the PPA is promoting greater dialogue between public agencies and the private sector. During the testing phase of the future e-GP system, training for participation in public procurement in general and the use of the e-GP system in particular was provided to a number of contracting agencies and private firms.

145. The CCI has been an active facilitator between the public and private sectors. Representing the interests of the private sector, the CCI provides information about news in both the public and private sector with specific focus on improving the business environment. The CCI is also an established training provider to private businesses through a total of 9 regional branches with 21 local offices. The CCI has submitted two proposals with the objective of strengthening the transparency and efficiency of the public procurement market, one to introduce an electronic business registration system and another to a public-private partnership between the PPA and the CCI.

146. A Partnership Forum for Moldova was launched in March 2010 under which donor countries and international organizations such as the EC, the WB and the UN will provide assistance to support Government's goal of economic integration into the EU. The Government presented its strategic document, "Rethink Moldova," at the Forum, featuring three pillars: Responsible Government, Economic Recovery and Development, and Investment in Human Capital. Priorities include combating corruption, developing a competitive economy based on innovation, investments in high productivity, public-private partnerships, modern business environment, and promotion of small and medium-sized enterprises. Focus will also be put on the use of ICT in all spheres of life, including G2B (Government to Business), in order to improve the quality of service in public-private partnerships. "Rethink Moldova" suggests increasing the stimulus for business development by providing appropriate financial resources through a number of programs, including

- Increased portfolio of guarantees for start-ups and SMEs
- Concessional lending for youth and women's empowerment
- A program of matching grants for returning migrants willing to start up a business
- Establishment of business incubators
- Leasing of equipment for creation of small industries in rural areas
- Matching grants for implementation of the ISO certification

- Matching grants scheme for restructuring plans and export marketing, studies, plans, activities
- Introduction of program budgeting for business development

147. To maintain and catalyze the positive trend revealed in the 2010 Doing Business survey and address some of the constraints it identified, the Government has also approved an Action Plan for the Removal of Business Constraints with the following action items:

- Implement effectively the principles of good regulations as defined by Law 235 on Basic Principles of Regulation of Entrepreneurial Activity;
- Reduce significantly the number of categories of goods subject to mandatory compliance certification and licensing requirements and other types of authorizations imposed on business activities;
- Enforce a one-stop shop policy to streamline relations between companies and Government without the need to interact with multiple government agencies;
- Modernize the legal framework for construction authorization to reduce the duration and number of procedures required to obtain construction permits;
- Improve investor protection by amending the legislation on joint stock companies to bring it in line with best practice and introduce adequate enforcement mechanisms;
- Reduce the tax reporting burden by promoting the use of electronic reporting;
- Simplify procedures for business registration and liquidation;
- Eliminate duplication of information requirements imposed by public agencies;
- Substantially improve the regulatory framework of sanitary and veterinary services.

148. To strengthen the physical infrastructure for business operations, a feasibility study was carried out for the creation of industrial parks in Moldova. Government has suggested streamlining the legislative framework for the establishment of industrial parks and setting up these parks in six interested regions with access to infrastructure and training facilities. An estimated total of 25,000 jobs could be created under this program.

149. Investment in physical infrastructure—roads, water supply, and electric power—has not been a very successful component of the Moldovan economy. The Government wants to address this deficiency by improving public-private partnerships based on the legislation approved in 2008 and increasing public investment in infrastructure.

150. Since the Government has capacity development programs, the WB team gives a higher score of 2.

Sub-indicator 7(b) — Private sector institutions are well organized and able to facilitate access to the market.

151. The latest Doing Business Report of the WB Group shows that Moldova has moved up from rank 108 in 2009 to rank 94 in 2010. This positive trend can be attributed to improvements in three major areas: ease of starting a business, ease of registering property, and ease of paying taxes. For instance, on the positive side, it takes about 14 days to obtain an operating license in Moldova compared to an average of 28 days in all 183 evaluated countries. On the negative side, more than 40 percent of firms in Moldova indicate corruption as a major constraint compared to an average of 36 percent in all countries.

152. The private sector is well established and informed about the public procurement market through the media (Public Procurement Bulletin, Public Procurement website) and through improved dialogue between the Government, business organizations such as CCI and the donor community.

153. The CCI plays an instrumental role in promoting the development of the private sector in Moldova including its participation in public procurement. In this function, the CCI provides vocational training to businesses across all sectors to develop professional skills and improve the qualifications of private sector specialists. For this purpose, the CCI has established its own Vocational Training Center.

154. The CCI arranges about half of the 60 exhibitions and fairs held in Moldova per year. For example, the CCI organizes the national exhibition “Made in Moldova,” a well-established forum that brings together local and foreign companies from the private sector as well as representatives from the public sector to support business activities in Moldova and disseminate information in support of the Moldovan economy. During the recent 9th national exhibition “Made in Moldova”, some 400 businesses across all sectors participated as exhibitors and participants for business forums, workshops, and round-table discussions.

155. In addition, the CCI issues the monthly periodical "Info Pro Business" to inform private businesses about all aspects of the Moldovan economy, including relevant information about the public procurement market, and maintains a catalogue with information about more than 10,000 Moldovan businesses on the CCI website.

156. Many donors are engaged in Moldova to support private industry growth, specifically with regard to small and medium enterprises, and to develop a sound national economy. For example, UNDP promotes private sector development in Moldova through several business partnership programs and initiatives to achieve a more sustainable business environment.

157. USAID has sponsored a variety of programs, such as the Competitiveness Enhancement & Enterprise Development Program to enhance the competitiveness of Moldovan enterprises in three industry sectors, and the Business Regulatory and Tax Administration Reform Project to improve the business environment in Moldova by implementing reforms in the business and tax sectors. Another well-perceived USAID initiative was the BIZPRO project (2001-2006) which addressed the lack of access for Moldovan small and medium enterprises to the latest information on government decisions and policy issues that impact their business. Through a telephone hotline service in cooperation with Moldovan business associations, questions were answered with regard to business operations, taxation and regulations affecting small and medium enterprises, resulting in the registration of 200 new businesses within a year. Under the same project, a new system of financing (domestic factoring) was launched in collaboration with Moldova Agroindbank to help small and medium enterprises access flexible financing and assist them in better managing the risks of extensive inventories.

158. Due to limited competition for large contracts, the WB team gives a lower score of 2.

Sub-indicator 7 (c) —There are no major systemic constraints inhibiting the private sector’s capacity to access the procurement market.

159. In general, the private sector’s capacity to access the procurement market is not exposed to major systemic constraints. Procurement practices include sufficient access for private

companies to all the relevant information about public procurement they would require in order to take part in business opportunities with the Government. Competition is at a reasonable level and the number of direct and single-source contracts has been reduced in recent years.

160. Issues that have been identified include the fact that prices are often higher than estimated and the bidders with the same owner participate in procurement opportunities under different names. To this end, much hope is vested in the adoption of a new e-GP system, which will provide for a more transparent and efficient public procurement system with an effective control mechanism that would allow for cross-checking of bidders against the business registration database. In this way, bidders with the same origin can be easily identified.

161. The following are the reported constraints with regard to access to an open and fair public procurement market.

- Competition is limited due to close relationships between the purchaser and a preferred supplier or due to biased technical specifications including the occasional use of brand names without justification.
- Bidding documents do not always include the requirement for the supplier to present a customs declaration for goods imported from abroad to avoid the supply of illegally imported products at lower price and quality.
- Certain instructions are not in the interest of open and fair competition. For instance the Government Decision “On determining the value of construction objectives and deduction for construction works carried out as of October 1, 2007” dated September 14, 2007, lists certain requirements such as maximum labor remuneration rates and maximum profit sharing that regulate markets in an unfavorable way for private businesses. The same decision refers to the fact that the unit prices as submitted in the bid are subject to changes in line with the actual unit price during the contract execution. One interviewee reported that, as a consequence, firms are punished by being charged double the amount of the difference between the offered and the actual rate. As a result, firms who wish to avoid such a penalty would ask their sub-supplier to show a higher actual rate in the sub-contract and share the profit with the sub-supplier.
- The requirement of submitting a tax declaration in the bid, which can only be obtained one or two days before the bid submission deadline due to its limited validity of three days, imposes an additional barrier on bidders— and also provides a good opportunity for competing bidders to interact while waiting for the tax declaration in the tax office.
- Unfair payment conditions involving delays extending up to 6 months after submission of invoice discourage participation and provide opportunity for procuring entities to covertly encourage a preferred bidder to submit a bid at a lower price by promising payment after a much shorter time than required in the bidding document.

162. Due to the constraints indicated, the WB team gives a lower score of 2.

Indicator 8. Existence of contract administration and dispute resolution provisions

Sub-Indicators	Self Assessment Score	WB Assessment Score
8(a) – Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and	2	1

acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.		
8(b) – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.	2	2
8(c) – Procedures exist to enforce the outcome of the dispute resolution process.	2	2

Sub-indicator 8(a) — Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.

163. There are no detailed contract administration provisions contained in the PPL, except that Article 69.2 to 69.6 regulate contract amendments such as increasing the scope of contract, introducing new terms and conditions, and price adjustments for contracts longer than one year .

164. In respect of Government Decision No. 1380 which regulates the activities of the working group in public procurement (i.e. bid evaluation committee), there is a provision which foresees that the working group “prepares the necessary documents to sanction the economic agent in cases of inappropriate execution of contract terms”. In practice, supervision of works is often contracted out to third parties i.e. private engineering and consultancy firms or competent individuals. In terms of goods, there are some specialized institutes which provide quality control of certain items such as medical equipment and pharmaceuticals but this is not done at the contract delivery stage.

165. Final payments are generally processed on time, except in some cases where delays may occur due to unavailability of funds.

166. Since there are major deficiencies in contract administration procedures, the WB team gives a lower score of 1.

Sub-indicator 8(b) — Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during performance of the contract.

167. International arbitration is an accepted method of resolving disputes in Moldova. The Chamber of Commerce and Industry has established and administers the International Commercial Arbitration Court which is an officially recognized Arbitration Institute that settles disputes under the two main arbitration laws, the Law on Arbitration (Law 23-XVI of 22.02.08) and the Law on International Commercial Arbitration (Law 24-XVI of 22.02.08). The Arbitration Court, which is a standing, non-governmental, non-corporate body of arbitration, independent in the exercise of its powers, applies acceptable arbitration rules and maintains a list of national and well-known international arbitrators.

168. In the absence of standard forms of contracts, it is not possible to say that international arbitration is accepted as a matter of course for international bidding. Alternative Dispute Resolution (ADR) forms do not appear to feature in most contracts. If amicable resolution is not achieved within 5 days, the practice is to resort to the courts. The Agency believes that some

procuring entities include clauses for expert determination to provide independent expertise (i.e. adjudicator) but not as a matter of standard.

169. The WB team agrees with the self-assessment score.

Sub-indicator 8 (c) – Procedures exist to enforce the outcome of the dispute resolution process.

170. Moldova is a member of the New York Convention on enforcement of international arbitration awards and has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts. There is a new department in the Ministry of Justice to monitor enforcement of court decisions. However, there is, so far, no process to monitor this area of contract administration and to address performance issues.

171. The WB team agrees with the self-assessment score.

E. PILLAR IV. Integrity and Transparency of the Public Procurement System

Indicator 9. The country has effective control and audit systems.

Sub-Indicators	Self Assessment Score	WB Assessment Score
9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.	1	1
9(b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.	2	2
9(c) – The internal control system provides timely information on compliance to enable management action.	1	1
9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	1	1
9(e) – Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.	1	2

Sub-indicator 9(a) — A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.

172. Moldova’s public sector control and audit system includes several institutions. The Court of Accounts has the role of the supreme external audit body accountable to the Parliament. The Department for Financial Revision and Controls (DFRC) performs the role of the Government’s centralized internal financial control body reporting to the Ministry of Finance. The respective roles and functions of these institutions are reflected in the Law on the Court of Accounts and the Law on Budget System and Budget Process.

173. The control and audit system is being reformed, but reforms are still ongoing and the system is not yet fully functional; the Law on Public Internal Financial Control is being finalized. Since 2007, a system of decentralized internal audit units embedded in Government entities is being developed. In line with the EU public internal financial control model (PIFC), these units are supported by the central harmonization unit for internal audit and internal financial controls established at the MOF in 2008. The internal audit system is under development and does not cover the whole of Government as yet. Most internal audit units that have been established in the central government ministries and agencies in the last two years are in the process of building professional skills of their staff. The legislative and methodological bases for their operation are also not yet fully developed.

174. There is no practice of specialized procurement audits or control checks; however issues related to procurement are an important element of the activities of each of the audit bodies mentioned above. In 2009, the Court of Accounts conducted Moldova's first performance audit on implementation of the Public Procurement Law as part of the performance audit pilot exercise.

175. As part of its institutional development plan, the Court of Accounts is switching to the use of risk-based principles in its activities. Internal audit units are also expected to follow risk-based approaches in their work. The DFRC has preserved a traditional financial inspection function inherited from Soviet times and follows a prescribed frequency of controls rather than focusing on areas of high risks. At the same time, the Government may ask DFRC to conduct additional thematic controls if it sees a need to do so.

176. The WB team agrees with the self-assessment score.

Sub-indicator 9(b) — Enforcement and follow up on findings and recommendations of the control framework provide an environment that fosters compliance.

177. Each of the control and audit bodies has its own program of activities. Internal audit units of government entities are required to conduct audits on an annual basis. Since these units were only recently established in most cases, no information is available to assess their enforcement practices.

178. The Court of Accounts' audits of the use of public funds are annual and result in submission of an annual report on the use of public funds to Parliament. Beginning recently, they have not involved systematic audits of all the government entities, as now they are based on risk assessments. The Court of Accounts has a defined procedure to follow up on its recommendations, verifies compliance on an annual basis and also maintains compliance statistics published in the Court of Accounts annual report. The latest compliance estimate provided by the Court of Accounts is above 80 percent of the total number of recommendations provided in 2008.

179. The DFRC is required by law to perform controls at the agencies subject to such controls once every two years. DFRC recommendations are included in the control completion report that is provided to the management of the institution, the Minister of Finance and the law enforcement bodies in appropriate cases. DFRC verifies compliance during subsequent regular visits to the institution.

180. The WB team agrees with the self-assessment score.

Sub-indicator 9(c) — The internal control system provides timely information on compliance to enable management action.

181. The existing internal audit units have defined rules of operations and have every opportunity to inform management of their findings in a timely manner. However, the history of their existence is too short in the majority of cases to assess the efficiency of their operation.

182. The Department for Financial Revision and Controls has clearly defined rules of operation and submits all control reports to the Minister of Finance on a regular basis. The reports are also routinely submitted to the management of the controlled institutions. The law enforcement bodies receive the reports for cases that require their involvement.

183. Taking into account an early stage of development of the internal audit system and its limited coverage, combined with low frequency of controls performed by the Department of Financial Revision and Controls, it is difficult to assess the efficiency and effectiveness of the existing systems.

184. The WB team agrees with the self-assessment score.

Sub-indicator 9(d) — The internal control systems are sufficiently defined to allow performance audits to be conducted.

185. Internal audit standards and manuals have been developed and approved and are available to the auditors. However, internal control procedures are not fully developed or documented. Given the limited capacity of the newly recruited auditors, the efficiency of application of the developed standards is limited. There is no systematic information available to assess the degree of adherence to existing procedures. Capacity for conducting performance audits is being developed both by internal audit units and the Court of Accounts through pilot exercises.

186. The WB team agrees with the self-assessment score.

Sub-indicator 9(e) — Auditors are sufficiently informed about the procurement requirements and control systems conduct quality audits that contribute to compliance.

187. As there is no practice of specialized procurement audits or controls, there are also no auditors with specialized qualifications in this area, and no formal requirements for such qualifications. However, a procurement training program is in place and the staff of procurement agencies are accessible for consultations on an as-needed basis. Staff of the control and audit bodies were familiarized with the procurement legislation and procedures through specialized training sessions organized by the PPA. Such specialized training is available to new staff on a periodic basis through the Academy of Public Administration. Interviewed representatives of the control and audit agencies have also confirmed that staff of the PPA are available to provide consultations to the auditors on specialized procurement-related issues.

188. The experienced staff of Court of Accounts are sufficiently informed about the procurement legislation and have identified several procurement-related issues during their audit work. Some of these key findings are lack of complete secondary legislation to guide the procuring entities in conducting public procurement, lack of sufficient training for the procuring entities' staff, working group members have other responsibilities and hence cannot dedicate enough time for procurement-related work, artificial splitting of contracts to use less competitive

procurement methods, rejection of low-priced bids due to minor deviations, and no provision in the PPL to restrict submission of one bid per bidder.

189. Since auditors have access to PPA’s staff in case they need procurement knowledge, the WB team gives a higher score of 2.

Indicator 10. Efficiency of appeals mechanism

Sub-Indicators	Self Assessment Score	WB Assessment Score
10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	3	3
10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed.	3	2
10(c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information.	3	3
10(d) – Decisions are published and made available to all interested parties and to the public.	3	3
10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints.	3	3

Sub-indicator 10(a) —Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.

190. The review process is conducted on the basis of available evidence submitted by the complainant and the procuring entity to the PPA, which has the authority to issue a final decision that is binding on all parties unless appealed to the administrative court.

191. There are specific time periods defined in the PPL for submission and review of complaints and issuing of decisions to avoid any delays in the procurement process. Articles 72 and 73 of the PPL establish timeframes for issuance of decisions by the PPA. The bidders are required to submit a complaint within 10 calendar days after they become aware of the circumstances for the grounds of the appeal and if they fail to do so, PPA shall not examine complaints submitted beyond this period. If the dispute is not settled amicably within 10 calendar days after filing of the complaint, the PPA shall issue a substantiated decision within 20 calendar days after the submission of the complaint to the PPA and the decision will be communicated to the complainant within 3 working days.

192. The WB team agrees with the self-assessment score.

Sub-indicator 10(b) — The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed.

193. The complaint review mechanism provided in the PPL has precise and reasonable conditions and timeframes for decision. For the most part, the timeframes are met despite the heavy workload of the small department consisting of three people within the PPA which handles approximately 360 cases per year. While reviewing complaints, the PPA generally asks for additional documents related to the subject procurement; when procuring entities failed to provide documents in time, the 20-day time limit foreseen in the PPL was not met.

194. Where documents are not forthcoming, there is little the Agency can do directly to enforce compliance. It is obliged to rely on the Center for Combating Economic Crimes and Corruption which does have such power. The problem can also be “resolved” by waiting for the expiry of the bid validity period, which then makes the whole bidding procedure redundant. This approach is far from ideal and demonstrates the PPA’s lack of power. The fact that it needs to engage in what appears to be retaliation seriously undermines its credibility.

195. Where procuring entities refuse to comply with the decision of PPA in relation to a complaint, the PPA may choose to enforce the decision by not approving the contract, meaning that funds will not be made available for that contract, or by delaying approval of next contract submitted by the same procuring entity. This approach may be ultimately effective but also suggests that the authority of the Agency to enforce its decisions is not clear-cut and may not be respected.

196. While the system appears to work, the methods employed are not very clear and the authority for enforcement is unclear, therefore the WB team gives a lower score of 2.

Sub-indicator 10 (c) — The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information.

197. Procedures governing the decision-making process are based on information and records available with the Agency and relevant to the case. They are balanced and unbiased in consideration of relevant information.

198. The remedies for breach of the rules are described in Article 72.4 of the PPL. They will mostly result in the cancellation of the bidding process and in practice re-bidding but can also be an order for re-evaluation. If the procedure is terminated, bidders will receive compensation for wasted bidding costs, including costs of providing bid securities and bid preparation costs in accordance with Article 72.7, though this provision has never been implemented in practice.

199. The WB team agrees with the self-assessment score.

Sub-indicator 10(d) — Decisions are published and made available to all interested parties and to the public.

200. A list of the decisions made by the Agency is made available on the website together with the results, though there is no requirement in the PPL to publish. However, this list does not contain any explanation or summary of the decisions. Copies of the decisions are made available on request.

201. The WB team agrees with the self-assessment score.

Sub-indicator 10(e) — The system ensures that the complaint review body has full authority and independence for resolution of complaints.

202. The Agency has autonomy of action from the Ministry of Finance but is no longer fully independent. Following recent changes in its status on November 2009, the Agency now has the status of a department of the Ministry. It is clearly independent of the procuring entities but it is not clear how independent it can be from the rest of the system. In addition, the Agency has a policy and advisory role and also approves bid evaluation reports and contracts. There is no suggestion that there has been any specific case of conflict between these roles in the past but the duality of its roles leaves room, at least theoretically, for conflicts to arise. The section dealing with complaints is not fully independent within the agency and the head of that division reports to the Head of the Agency. All the indications point, in practice, to an independent authority but to one that may have difficulty in imposing its will.

203. Even though the WB team has some concerns about possible conflict of interest in complaint handling mechanism, the WB team agrees with the self-assessment score.

Indicator 11. Degree of access to information

Sub-Indicators	Self Assessment Score	WB Assessment Score
11(a) – Information is published and distributed through available media with support from information technology when feasible.	3	2

Sub-indicator 11(a) — Information is published and distributed through available media with support from information technology when feasible.

204. In accordance with the PPL and Government Decision No. 747 (dated Nov 24, 2009), the PPA is responsible for the editing of the PPB and for the maintenance of the public procurement website. These two media are the main channels for the disclosure of any information related to public procurement in Moldova including the advertising of procurement opportunities and the publication of awarded contracts.

205. For each fiscal year, contracting agencies must publish procurement plans that include procurement for goods and services above MDL 200,000 (US\$16,000 equivalent) and for works above MDL 1,000,000 (US\$80,000 equivalent) in the Public Procurement Bulletin. Procurement plans for procurement of goods and services above MDL 2.5 million (US\$ 200,000 equivalent) and for works above MDL 99 million (US\$ 7.92 million equivalent) also have to be published in the Official Journal of the European Community. Besides procurement plans, specific procurement notices have to be published in the PPB and on the public procurement website for procurements for goods and services above MDL 100,000 (US\$8,000 equivalent) and for works above MDL 500,000 (US\$40,000 equivalent). Contracting agencies must also publish contract award information within 30 calendar days in both media.

206. All private firms interviewed during the assessment confirmed that access to public procurement information in general is easily available through the PPB in paper format (published at least once a week or sometimes twice a week) and through the website of the PPA (www.tender.gov.md), which provides a link to the electronic version of the Bulletin. The

information provided helps to understand public procurement and get all relevant information with regard to new procurement opportunities. However, as of February 23, 2010, the PPA began charging a subscription fee of MDL 47 per month to provide the more detailed electronic bulletin twice a week as an email attachment to interested subscribers. A second version of the Public Procurement Bulletin with a general summary of planned procurements will remain available to the public free of charge. The general bulletin does not include specific information, such as name of agency or contact person and details.

207. The current version of the website is available in three languages (Romanian, Russian, and English). It is well structured and quite user-friendly but offers room for improvement with regard to the available content. In the Russian and English versions of the website, most of the content links do not provide the expected information since the information is available in Romanian language only. The Romanian version offers more information, such as contract awards, training, and complaints, all offered for the last three years (2007-2009). All three language versions of the website offer a link to the Public Procurement Bulletin; however the link did not work for the CPAR team (obviously due to the new subscription fee requirement).

208. While public procurement information is available in dedicated print and electronic media, it is not clear whether all contracting agencies follow the requirement of publishing all information as required by the legislation. A future link of the e-GP system with the budget planning system could offer the basis for a control mechanism in order to check compliance with the publication requirements before approving budget requests.

209. It is not clear yet how the introduction of a subscription fee to access information, which until very recently had been available for free, will be perceived by the private business community. International best practice would support the availability of electronic procurement information without charging any fees. The degree of acceptability of such a fee-based system will depend much on the value added of the services provided as well as the level of the fee.

210. It should also be mentioned that a new e-GP system is being developed and tested, which provides access to procurement information including procurement notices and contract awards with a user-friendly search engine and database. This system should eventually be used as the one-stop e-GP portal of Moldova and replace the current online public procurement bulletin in compliance with the legal requirements.

211. Given current problems with PPA's website, the WB team gives a lower score of 2.

Indicator 12. The country has ethics and anticorruption measures in place.

Sub-Indicators	Self Assessment Score	WB Assessment Score
12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.	3	2
12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in	2	1

fraudulent or corrupt practices.		
12(c) – Evidence of enforcement of rulings and penalties exists.	2	1
12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement.	2	2
12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.	2	2
12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	2	2
12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions	1	3

Sub-indicator 12(a) — The legal and regulatory framework for procurement including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out the actions that can be taken with regard to such behavior.

212. Article 30 of the PPL imposes a mandatory prohibition on corrupt acts leading to disqualification although it does not provide precise instruction on how to incorporate the matter in bidding documents. The existing sample bidding documents reiterate the legal provisions but do not provide precise definitions, relying instead on some examples. Nor do contracts include any provisions on fraud and corruption.

213. Due to lack of instructions on how to incorporate fraud and corruption related provisions into the bidding and contract documents and lack of conflict of interest provisions, the WB team gives a lower score of 2.

Sub-indicator 12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.

214. Article 30 of the PPL requires the contracting authority to refer cases of corruption to the competent authorities, i.e. to the Center for Combating Economic Crimes and Corruption (CCECC), which will be in a position to apply the relevant laws. The CCECC reports to the Prime Minister and is governed by the Constitution, Penal Code, Civil Code and Law on Combating Corruption and Prevention of Economic Crime. The PPL does not include an explicit reference to other laws that specifically deal with fraud and corruption, nor does it spell out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement.

215. Due to lack of specific provisions in the PPL, the WB team gives a lower score of 1.

Sub-indicator 12 (c) — Evidence of enforcement of rulings and penalties exists.

216. In 2009, the Agency sent 29 cases to CCECC, although not all of these involved fraud and corruption. Many were rulings against procuring entities for their failure to supply

documents in the context of a procurement complaint, as indicated in the response to sub-indicator 10(b), which is the only leverage possessed by the Agency to require the submission of relevant documentation. It is not recorded whether the referred cases are related to fraud and corruption or non-compliance with the Law, therefore precise figures or references for fraud and corruption are not known. Of the three or four cases where fines were imposed, it appears that two concerned the non-submission of documents. It thus appears that fines for fraud and corruption were imposed in only two cases.

217. There are nine penal cases initiated by the CCECC in 2009 related to abuse in office, gaining personnel interest, negligence in office and other offenses that were referred to the relevant authorities.

218. Procuring entities through working groups or the CCECC initiate the debarment (blacklisting) process of the firms in accordance with the Government Decision No. 45 dated January 24, 2008 once they determine that the firms have engaged in fraud and corruption. The PPA makes the final decision and maintains the list of blacklisted firms.

219. There is a department in the Ministry of Justice to follow up and enforce that the court rulings are implemented.

220. Due to weak evidence of enforcement, the WB team gives a lower score of 1.

Sub-indicator 12(d) — Special measures exist to prevent and detect fraud and corruption in public procurement.

221. The Government has an active anti-corruption body, the Center for Combating Economic Crimes and Corruption, which does investigate and prosecute cases of corruption. The CCECC has developed a “red flags” methodology to detect fraud and corruption in public procurement. The Center has enough personnel to put together a case and then pass it to the prosecutor’s office.

222. A representative from CCECC is supposed to attend the working group (bid evaluation committee) meetings as observers, though sometimes they are intentionally not invited by the procuring entity. CCECC also provides assistance to the procuring entities, if required by them, in preparing bidding documents, bid evaluation reports and also at the final acceptance of the contract completion.

223. A national strategy for fighting and preventing corruption and an action plan for implementation of the national strategy were put in place in December 2004. The strategy has required all procuring entities and public authorities to put in place an anti-corruption plan, however, the activities are isolated and not properly coordinated so as to be an effectively integrated program. The program lacked any enforcement measures, and while some entities complied, it has not been possible to identify or measure the results/outputs of the program due to lack of monitoring.

224. The WB team agrees with the self-assessment score.

Sub-indicator 12(e) — Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors.

225. There are several civil society organizations (Transparency International, the Alliance for Anti-Corruption, the Center for Analysis and Prevention of Corruption) and there is some dialogue with the Government, though the impact on improving the system appears limited.

226. The WB team agrees with the self-assessment score.

Sub-criteria 12(f) — The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.

227. Articles 7 and 9 of the Law on Prevention and Combating Corruption provide internal mechanisms such as a phone hotline, email address, and local office through which civil servants can report corruption. The CCECC maintains a 24-hour hotline for reporting corrupt acts that protects the anonymity of the callers. It appears to receive upwards of 1,000 calls a year, 10 percent of which are serious and are investigated. This suggests that there is some confidence in the mechanism, but reliability of the system still needs to be monitored. The country also has laws that provide for whistleblower protection.

228. The WB team agrees with the self-assessment score.

Sub-criteria 12(g) — Existence of Codes of Conduct/Code of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions

229. The Government has a new Code of Conduct dated February 2008. It targets not only civil servants operating in financial management or procurement in particular but applies to all civil servants. It provides norms of conduct and defines prohibited acts and transactions for public officials. The norms of conduct stipulated in the Code of Conduct are mandatory and any infringement of the Code results in disciplinary action falling under the provisions of the legislation on public function and statute of the civil servants. The Code also includes financial disclosure requirements for high officials (including the Head of the Agency). In addition, Article 14.3 of the PPL provides for specific disclosure requirements and conflict of interest requirements for members of the working groups.

230. Considering the comprehensive code of conduct with accountabilities and requirements and clear provisions in the PPL, the WB team gives a full score of 3.

III. STRATEGIC CHOICES

A. Institutional Arrangements for Public Procurement

231. Even though various aspects of the institutional setup of the public procurement were assessed under several sub-indicators, a comprehensive summary is provided in this section, together with the evolution of the organization of public procurement in Moldova.

232. **The National Agency for Government Procurement (NAGP)** was the first agency responsible for public procurement and was established by the first Public Procurement Law (April 1997) and its legal status, tasks, and functions were further amplified by a Government

Decree of December 1997. The NAGP was a state institution, established as a separate legal entity under the Ministry of Economy. It was authorized to conduct procurement on behalf of public entities by reviewing and clearing their bidding documents, inviting and receiving bids, reviewing and approving bid evaluation reports that were prepared by working groups in which NAGP staff also participated, approving contracts, and reviewing and deciding on complaints. Even though it had many shortcomings and unacceptable features compared to an internationally acceptable public procurement oversight body, this very centralized system seemed to be justified at that time given the very low level of compliance with the public procurement law, weak enforcement and poor capacity in procuring entities.

233. **The Agency for Material Resources, Public Procurement and Humanitarian Aid (AMRPPHA)**, which replaced NAGP, was established by the new Public Procurement Law (April 2007). The new PPL put AMRPPHA directly under the Government with more independence and a higher status in the Government structure. However, in addition to its primary role of providing oversight for public procurement function, it had additional responsibilities for the procurement of material resources (such as fuel, wheat, and medicine). Although the new law decentralized the responsibility of conducting procurement to public entities, the AMRPPHA was still in charge of review and approval of bid evaluation reports and contracts. Due to lack of staff, AMRPPHA had difficulties in conducting a thorough review of all contracts and continued to have conflicting responsibilities in both approving the procurement decisions and handling complaints related to those cases.

234. **The Public Procurement Agency (PPA)** was established in November 2009 after restructuring of AMRPPHA to more rigorously separate the regulation of public procurement from other activities of the Government. The PPA was placed under Ministry of Finance with the aim of ensuring close coordination across the entire public financial management system; however this downgraded the PPA's position in the Government structure compared to AMRPPHA's position. This restructuring did not change the main responsibilities of PPA with regard to the review and approval of bid evaluation reports and contracts, handling complaints and so forth.

235. The current centralized review and approval process has the following shortcomings:

- i. **The process results in shifting the responsibility and accountability of public entities to the PPA.** In a fully decentralized public procurement systems, public entities are responsible and held accountable for their actions in conducting public procurement. In other words, approval of contracts by an authority like the PPA is not an internationally accepted practice, especially in member states of the EU, which Moldova aspires to be part of. In this practice, the decision is taken out of hands of the purchaser and given to an entity which has no technical expertise in individual procurements and currently is answerable to no one. Complaints are made to the PPA (which now makes the ultimate decision in procurement) against actions taken by public entities that no longer have control of the ultimate decision.
- ii. **The process is considered a potential conflict of responsibilities because the PPA is also responsible for handling complaints related to those cases which have already been reviewed and approved by the PPA.** Similarly, having this dual responsibility in approving the procurement decisions and also in resolving the complaints related to those cases is not an internationally accepted practice. The PPA is implicated in the decision-

making process and thus becomes both defendant and judge. Although the complaint review department of the PPA is a functionally independent unit within the PPA, it is not administratively independent from those other units, and this apparent conflict in responsibilities may impose constraints in its freedom of action when handling complaints.

- iii. **The process consumes most of the PPA's limited staff time and resources.** The PPA reviews and approves about 23,000 contracts per year (more than 100 contracts per day) which means that it is simply unable to address the issues required to make a proper decision. The PPA can add very little value to the procurement process. If the public entity responsible for the procurement process is incapable of making the final decision in an informed way over a period of months based on technical input, then the value added by a centralized procurement decision that takes only minutes is uncertain. The approval process sometimes simply causes delays in some of the procurement transactions. It is getting much harder for the PPA to keep up with its current workload and responsibilities with the existing number of staff. The international practice is that the central public procurement agency focuses on preparation of secondary legislation, capacity building and similar functions where it can add more value in improving the whole public procurement system instead of dealing with individual procurement transactions.

B. Strategic Options

236. In light of the above, the Government should make a strategic decision by considering the following three options.

Option 1: The PPA could immediately discontinue its current function of reviewing and approving of all contract awards.

237. This option would ensure complete decentralization of the public procurement function to the public entities and would be in line with international practices. It would also address concerns about the possible conflict of PPA's responsibilities and enable it to handle and resolve complaints without any potential constraints. In parallel to the decentralization process, the necessary tools, including a complete set of secondary legislation, standard bidding documents, standard forms of contracts, manuals, and guidance notes should be made available to public entities to ensure consistent implementation of the Law.

238. What modern systems of procurement have done (even in those civil law countries which originally championed the centralized control approach, such as France, Belgium, Italy, and Germany) is to turn bidders into free policemen. Since they are closest to the procurement process and have a direct financial interest in the outcome, they are in the best position to identify and bring to the attention of the authorities any perceived breaches of the rules. In this way, only cases where wrongdoing is suspected need to be "controlled," thereby avoiding centralized approval where it is not needed and concentrating the focus and resources on those instances where there is real cause for concern.

Option 2: The PPA could continue with the responsibility of reviewing and approving contracts and phase out this function gradually in the next 3 to 5 years.

239. This option would eventually bring the public procurement system in line with international practices. The PPA could continue reviewing and approving contracts until the public entities are provided with necessary tools and have acquired the necessary capacity to take on the contract review function with full responsibility and accountability. This transition could be based on a series of milestones that include increased procurement responsibility commensurate with increased capacity and experience.

240. Should the Government choose this option, then the next steps would include providing the complete set of regulations, standard bidding documents, contract forms and manuals and continuing oversight while capacity is built, along with establishment of a temporary complaint review committee.

241. There are major deficiencies in the secondary legislation as most of the regulations referred to in the Public Procurement Law are not ready yet. Most of the necessary tools such as standard bidding documents, standard forms of contracts, manuals, and guidance notes are not up-to-date or not available at all, which makes it difficult for the public entities to implement the Law consistently and to properly conduct public procurement.

242. Public entities, especially at the regional and local level, have weak capacity in implementing the PPL, therefore continuation of review and approval by the PPA would ensure some kind of quality control over the procurements conducted by these public entities until they acquire capacity to properly conduct procurement. Alternatively, the PPA could introduce new thresholds for this approval requirement and approve only large value contracts that exceed these thresholds, or approve only certain decisions such as the use of less competitive methods or of accelerated procedures, until the approval requirement can be totally phased out.

243. Until the complete phase-out of this responsibility from PPA, the complaint handling responsibility should be taken away from the PPA and given to a temporary complaint review committee to avoid any possible conflict of interest for the next few years. Centralization of decision-making coupled with the role of judge in the same agency is not accepted by the international community and it is also incompatible with the EU Directives that appear to have been the model for the PPL.

Option 3: The PPA could continue to exercise this responsibility of reviewing and approving contracts.

244. If the Government decides that the PPA should continue the current system of centralized control, then the next steps would include massive staff increases, complete provision of regulations, standard bidding documents and contract forms and manuals, and establishment of an independent complaint review body.

245. The PPA should be given significantly more resources by increasing the number of staff in order for the PPA to be able to cope with the current tasks and responsibilities and carry out its centralized approval function effectively. Currently, the PPA has 26 staff together with the Director and the Deputy Director and carries out an enormous number and variety of tasks including the review and approval of thousands of contracts. There is very little time left for drafting secondary legislation, preparing standard bidding documents and standard forms of

contracts, handling complaints, maintaining a functional Public Procurement Bulletin, conducting training in the area of public procurement, and other properly centralized procurement functions. The PPA is fully consumed with the review and approval of about 100 contracts per day with its limited number of staff and it is obvious that there is insufficient time for these documents to be properly scrutinized. The data shows that while some contracts are approved on the same day, others waited for over a month for approval, resulting in delays in the procurement processes. The implications of continued centralized approval have led all modern systems to abandon this mechanism of control in favor of a bidder-driven complaints mechanism.

246. Central approval takes up vast resources if done properly. It requires the review of each and every contract, regardless of whether there is any breach of the rules. This is expensive in terms of time and money since it involves large numbers of contracts. The review of more 100 contracts a day is an impossible task if the PPA is to do anything other than check that the correct forms are in place. Even experienced procurement specialists could not do more than skim that many award procedures in a day. The result is that there can be only a superficial control over the documentation. As a control mechanism, it is ineffective, but if the decision is made to do so, to carry out this task effectively there would need to be a massive increase in the staff of the PPA.

247. The necessary tools including a complete set of secondary legislation, standard bidding documents, standard forms of contracts, manuals, and guidance notes should be made available to the public entities to ensure consistent implementation of the Law.

248. The complaint handling responsibility should be taken away from the PPA and given to a truly independent complaint review body to avoid any possible conflict of interest due to duality of functions. Complaints must then also be made available against the decision of the PPA which would, in fact, be the final decision-maker in the procurement process.

IV. PROCUREMENT PRACTICES IN HEALTH, TRANSPORT AND EDUCATION SECTORS

A. Methodology

249. During the period of February 15 to March 15, 2010, the CPAR team visited around 20 procuring entities to collect information on 105 contracts in the PPA database that were signed during 2008-2009 in the health, transport and education sectors, about 35 contracts from each sector. The PPA's archives and the procurement files and financial records of the procuring entities covered by the survey served as primary sources of data collection. The selection of methods/contracts was designed to cover the whole range of processes conducted by procuring entities in those sectors, and to reflect procurement practices and strategies at all levels of government. Each sampled contract was reviewed in detail; the findings are summarized here.

250. Data was collected from four different administrative and geographical locations: Chisinau, the capital city (central level); Chisinau municipality authorities (regional level); and Ialoveni and Nisporeni District authorities (regional and local levels). Each sector survey included about 20 procurement processes at the central level, 10 procurement processes at the regional level and 5 procurement processes at the local level. Procurement processes were

selected to cover the different procurement types and methods. Contracts placed through a centralized procuring entity/authority (e.g. the Drug Agency in the health sector and State Road Administration in the transport sector) were largely covered, and some minor value contracts were also included in the survey, to provide the broadest possible picture.

B. Procurement Methods

251. Despite the fact that the PPL provides for 11 different procurement methods, only a few are currently used to award public contracts. The five methods described below are the only ones used by procuring entities in 2008 and 2009. The other procurement methods, such as competitive dialogue, negotiated procedure, electronic auctions and framework contracts, are not in use because there are no regulations for those specific procedures, and the e-GP system is still in the developing and testing phase.

Open Bidding (OB)

252. OB may be used for contracts that exceed MDL200,000 excluding VAT (about US\$16,000) for goods and services, and MDL 1 million (about US\$80,000) for works. According to PPA, there was no contract placed under Closed Bidding method in 2008 and 2009.

Bidding through Universal Commodity Exchange (UCE)

253. According to the PPL, the procurements of certain categories of strategically important goods with exact predefined specifications may be conducted through the Universal Commodity Exchange. Government Decision No. 329 dated March 19, 2008 lists in its Annex 1 the goods to be procured through UCE, which are (i) oil and oil derivative products, (ii) coal and petrol products, and (iii) transport means and mechanisms. Such goods as vehicles, petrol, and coal are to be procured through UCE if the estimated value exceeds the threshold of MDL200,000 (US\$16,000) excluding VAT. It is mandatory for the procuring entities to purchase such goods through UCE for contracts over the established threshold. This threshold is similar to that for application of the Open Bidding procedure, below which the RFQ applies.

254. The UCE is defined as a legal entity registered and licensed under Moldavian legislation that organizes and conducts auctions for selection or optimal bids, like a centralized procurement agent. Moldova's UCE is a privately owned entity, for which the auctions are advertised by procuring entities in the PPB and which charges the winning bidders a service fee of 0.5 percent of the total contract amount. The original intent was for such method to serve as an alternative to single source procurement for supplies quoted and purchased on a commodity market, i.e. any international commodity exchange, allowing procuring entities to purchase directly from the exchange without advertising. This is usually the cheapest option and since the markets are generally international there is no danger of discrimination.

255. However, the way UCE operates is different than the usual practices in international commodity markets where the procuring entities can purchase commodities directly without advertising. The goods which have to be procured through UCE do not represent commodities, which are usually defined as basic natural resources (raw materials) and agricultural products (not processed) with simple technical specifications that can easily be compared without any technical expertise. In contrast, manufactured goods such as motor vehicles can have a different specifications and trademarks; they are not considered as commodities and are not traded at commodities exchanges. The CPAR team found that the procuring entities prefer to conduct

procurement themselves rather than through UCE, as they do not see the benefit of procuring through UCE under current arrangements and the prices for commodities bought through UCE are not the most economic advantageous for procuring entities.

Request for Quotations

256. This method is similar to the WB’s Shopping procedure.

RFQ with publication:

- Goods and Services: contracts from MDL100,000 excluding VAT (US\$8,000) to 200,000MDL (US\$16,000), above which the Open Bidding is applied, or UCE for certain types of goods;
- Works: contracts from MDL500,000 excluding VAT (US\$40,000) to MDL1 million (US\$80,000), above which Open Bidding is applied;

RFQ without publication:

- Goods and Services: contracts up to MDL100,000 excluding VAT (US\$8,000);
- Works: contracts up to MDL500,000 excluding VAT (US\$40,000).

Single Source procurement

257. This method is not linked to any threshold and applies in special circumstances, as established in the Article 53 of the PPL.

Minor Value Contracts (MVC)

258. MVC are not covered by PPL and are placed without formal competition, regulated by a separate Government Decision No. 148 dated February 14, 2008. MVC may be used for goods contracts up to MDL20,000 excluding VAT (US\$1,600) and for works and services contracts up to MDL25,000 excluding VAT (US\$2,000). The regulations for this procedure require that a formal standard contract be signed by the procuring authorities where the price exceeds MDL10,000 excluding VAT, below which payments may be made without a formal agreement.

259. Tables 2 and 3 present the distribution of public procurement contracts by method of procurement in 2008 and 2009 based on information provided by PPA. Open bidding remains the principle method of procurement, representing around 40 percent by number of contracts and over 60 percent by value in both years. It is commendable that the use of single source procurement has decreased significantly from the level noted in the 2003 CPAR.

Table 2. Contracts registered by Moldova’s AMRPPHA and District Councils, 2008

Procurement method	Total				
	Number of contracts	%	Amount, MDL	%	
Open bidding	12,295	37.63	3,783,996,046	64.19	72.7

Open bidding through Universal Commodity Exchange	104	0.33	122,280,707	2.08	18.66
Request for proposals with publication (registered by AMRPPHA)	2,236	6.84	378,998,757	6.43	
Request for proposals without publication (registered by AMRPPHA)	4,676	14.31	558,848,015	9.48	
Request for proposals registered by District Councils, Municipalities and Gagauzia	11,382	34.84	541,417,092	9.18	
Single Source (registered by AMRPPHA)	1,977	6.05	509,402,496	8.64	
TOTAL	32,670	100	5,894,943,117	100	

Table 3. Contracts registered by AMRPPHA and District Councils, 2009

Procurement method	Total				
	Number of contracts	%	Amount, MDL	%	
Open bidding	14,465	41.90	2,790,547,602	61.69	71,36
Open bidding through Universal Commodity Exchange	937	2.71	235,194,377	5.20	
Request for proposals with publication (registered by AMRPPHA)	1,982	5.74	202,246,707	4.47	
Request for proposals without publication (registered by AMRPPHA)	4,359	12.63	454,012,568	10.04	22,40
Request for proposals registered by District Councils, Municipalities and Gagauzia	11,501	33.32	559,145,916	12.36	
Single Source (registered by AMRPPHA)	1,276	3.70	282,558,263	6.25	
TOTAL	34,520	100	4,523,705,437	100	

260. The total volume of public procurement is calculated as about US\$567,360,000 for 2008 (using an annual average exchange rate of MDL10.39) and the total volume of public procurement is about US\$407,170,000 for 2009 (using an annual average exchange rate of MDL11.11).

Bidding documents

261. There are several sets of bidding documents used for public procurement contracts, with some variations. There is a need for more comprehensive and consistent bidding documents.

- In procurement of goods and services, the procuring entities use the standard document prepared by the PPA in 2005, a simple and basic document that is outdated and not consistent with the current PPL and could hardly be used for international bidding. A variation of the standard bidding document for goods, which was adjusted to embody specific requirements of health sector, is used by all health authorities, based on a joint MoH-PPA Ordinance No. 370/31 dated September 24, 2008, that approved a manual for public procurement in health sector.
- Another set of bidding documents is used in construction field, including roads construction, based on the document jointly approved by the Ministry of Construction and the Ministry of Economy in 2004. This set is also outdated and not consistent with the current PPL. There is a standard document approved on May 5, 2009, under the Regulation on Design Services in Works Contract (Government Decision No.352).
- A separate bidding document was prepared for use in UCE procedures.
- In case of RFQs, there is no standard document practiced in procuring goods and services, and the authorities simply use a letter of invitation attached to the specification. However, there is a basic RFQ document used for procurement of works, as a smaller version of the standard bidding document for works.

C. Summary of Findings on Selected Sectors

Health Sector

262. Responsibilities in the procurement process are held at central and local levels and at specialized medical institutions. Before 2005, the procurement system in health sector was fully decentralized. The public procurement procedures in health sector have changed with the creation of the Drugs Agency (DA) following the adoption of Government Regulation No. 617 dated June 28, 2005 “On the rehabilitation of the pharmaceutical sector in the country through reorganization of the National Pharmaceutical institute, Pharmaceutical State Inspectorate and the Pharmaceutical Department of the Ministry of Health”. Starting in 2006, procurement of drugs for medical institutions under national programs became centralized under the MoH.

263. The procurement of drugs is currently carried out at centralized level by the DA in accordance with Government Regulation No. 568 of September 10, 2009 “On the approval of Regulation on the Procurement of Drugs for Health system needs”. The centralized procurement includes drugs and other health sector goods as per the list approved by the MoH. The needs in drugs and other health sector goods are defined by each medical institution by July 1 and the MoH defines the needs for centralized procurement by August 1. The information is then submitted to the DA for systematization and organization of centralized procurement.

264. Medical equipment and other goods, works and services are procured by the medical institutions directly. All medical institutions at any administrative level are entitled and required to conduct public procurement in accordance with the PPL. The winning bidder pays the DA 0.2 percent of the contract value for carrying out the procurement procedure and finalizing the contract. The hospitals may sign contracts only with bidders awarded contracts by the DA.

265. The drugs included in the lists for centralized procurement must be registered in Moldova as of the date of procurement notice publication; in exceptional cases, the procurement of

unregistered drugs may be approved by the MoH. The drugs must have a GMP (Good Manufacturing Practice) certificate, however, local producers are considered to be in possession of GMP certificate until the GMP is introduced in the Republic of Moldova. Domestic preference up to 15 percent is applied in accordance with PPL Art.44.

266. For drugs with a period of validity up to 24 months, the shelf life should cover at least 60 percent of this period from the date of supply (i.e. 14.4 months) and for drugs with a period of validity beyond 24 months, the shelf life should cover at least 80 percent of this period. The following evaluation criteria can be used for procurement of drugs: (i) quality; (ii) efficiency; (iii) period of supply; (iv) payment conditions; (v) price.

267. The DA's procurement working group is formed in accordance with the PPL and Government Regulation No. 1380. It consists of staff of the DA and MoH specialists; other specialists may also participate as voting members of the working group. In case of a centralized procurement through Single Source Method, a representative of the medical institution requesting the use of that method is included in the working group.

268. The current procurement procedures and practices in health sector have a number of shortcomings.

- Procurement procedures are poorly planned.
- Contract prices are rarely compared with the estimates or actual market prices to ensure that proposed prices are not substantially higher than current market prices.
- The representatives of medical institutions are not included in the DA's procurement working group and have no opportunity to express their opinion on specific health sector goods during evaluation. As a result in some cases medical institutions have refused to sign contracts with successful bidders selected by the DA.
- Evaluation and contract award is done on an item-by-item basis and each successful bidder has to sign hundreds of contracts with hundreds of medical institutions. This practice results in high implementation and supervision costs that raise the price of goods.
- Post-qualification requirements are not applied to bidders to verify that they are able to supply the quantities for which they bid and that they have experience in implementing similar contracts. There have been cases when a contract covering the annual needs of the whole country for a specific drug was signed with a single supplier who had no experience or resources to implement the contract in a timely manner if at all.
- Price is usually used as the only evaluation criteria, despite the fact that this practice is not appropriate in procurement of drugs, where other important factors should be taken into account, such as diversity of medical products to address the issue of resistance or allergy of the patients to some components of drugs. The efficiency of drugs may vary depending on the patient's individual characteristics, so that the efficiency of the drug is verified through clinical testing.

- There is a special fund available to some patients under certain circumstances. The decisions on the allocations from this fund are made by a special MoH committee, however the decision-making process is not clear and lacks transparency.
- The extremely low number of foreign bidders participating in procurement of drugs may be an indicator that the procedures are not in line with international practices, despite the fact that imported products represent about 90 percent of all purchases.
- Procurement of food for medical institutions is carried out based on the lowest price without any requirement regarding quality. It is almost impossible to sanction unfair suppliers, as some categories of foodstuff such as bread and milk must be supplied daily and any sanction may result in patients going hungry. Some unfair suppliers take of this situation to supply products past their sell-by date or to mix products of different quality, such as flour, in a single bag, so that only the top layer corresponds to the specifications, while the rest is not appropriate for the needs for which it was bought.
- Procurement of food for medical institutions is unnecessarily complicated by the PPA requirement to procure on an item-by-item basis; even where a lot-wise approach is justified, PPA prohibits its use.

Education Sector

269. Public procurement in the education sector is entirely decentralized. All educational institutions at any administrative level are entitled and required to conduct public procurement in accordance with the PPL. There are no specific regulations on procurement in education sector.

270. Procurement at the Ministry level includes purchases of energy resources, office supplies and maintenance for the needs of the Ministry, publication of manuals, and services required for school contests. This year, the Ministry's budget allocated resources for purchasing school buses in the framework of National Program for schools optimization. Institutions which are subordinated to the Ministry, including universities, colleges, vocational schools, trade schools, hostels and national orphanages, lyceums and gymnasiums for a total of 121 institutions, have their own decentralized funds and carry out procurement procedures independently.

271. The procurement for local primary and secondary school needs is done by local authorities and usually includes repair works for school buildings and purchasing of food for students. Local authorities have similar problems to the ones described in relation to procurement of food for medical institutions, aggravated by the fact that the quantities procured for schools are smaller and the bidders refuse to sign contracts on an item-by-item basis, complaining that such tiny contracts are of no commercial interest.

Transport Sector

272. Public procurement in the transport sector is decentralized. All institutions at any administrative level are entitled and required to conduct public procurement in accordance with the PPL.

273. The Ministry of Transport and Road Infrastructure (MTRI) was formed in September 2009 following reorganization of the Ministry of Construction and Rural Development and had 25 staff at the time of this assessment. The State Roads Administration (SRA) which is currently

under MTRI was established by the Ministry of Transport and Communications, for managing, repairing, modernizing, and developing public road infrastructure. The main functions of the SRA are: (i) construction, reconstruction, repair and maintenance of roads; (ii) distribution of resources allocated for these objectives from the state budget and the Road Fund; (iii) ensuring the efficient and economical use of the financial and material resources assigned for the development and maintenance of the road sector in the Republic of Moldova; (iv) keeping the roads viable, managing and administering them.

274. The SRA has two types of contracts: (i) contracts for roads administration and maintenance, and (ii) contracts for roads construction and capital repairs. The first group of contracts is awarded to the 36 branches of a joint stock company that was formed from former state enterprises (“Drumuri” or “Roads”) and to three other companies that remain separate state enterprises with local subsidiaries in the regions. The second group of contracts is awarded to private contractors based on public procurement procedures.

275. Rehabilitation and new construction are included in the transport procurement plan which is approved following Parliament’s approval of the budget. Current policy is to complete unfinished construction before approving new construction. Multi-year contracts for construction are monitored by the line ministry. Allowance for price adjustment is included in road contracts lasting more than 12 months, but not in other types of construction contracts. Only payments for the current budget year are guaranteed and contract provisions state that payments for subsequent years are subject to budget allocations.

276. The current procurement procedures and practices in transport sector have a number of shortcomings, in particular:

- Although the SBDs used by SRA include qualification requirements in terms of experience, equipment and specialists, these documents are used only in the roads sector. For other civil works, the post-qualification requirements are not used and this leads to unfair competition and contract awards to companies that do not have the financial resources, experience, equipment or qualified specialists to complete the works.
- Because experience is not taken into account during evaluation, contractors are able to manipulate the bidding prices and submit unrealistically low bids in order to get the contract award on the price criterion alone. The quality of works is significantly lowered, and the procuring entity is deprived of the opportunity to employ qualified contractors.
- Maximum profit indicated in the bid is limited to 6 percent and the prices are not adjustable.
- Foreign bidders very rarely participate, which may be an indicator that the procedures are not in line with international practices.

D. Summary of Recommendations on Selected Sectors

277. The review of the selected contracts and the discussions held at the procuring entities of the selected sectors suggest that, despite the progress made in implementing the new PPL and initiatives to introduce e-GP, significant efforts are required to address a number of implementation issues. They are summarized here.

- i. Preparation of procurement plans and publishing of intention notices in PPB need to be enforced in almost all of the procuring entities representing the three selected sectors.
- ii. Bidding documents need to be updated and adjusted to include internationally recognized bidding and contracting provisions, in order to attract foreign firms.
- iii. Additional standard bidding documents and contract forms must be prepared to enable procuring entities to use the full range of procurement methods provided for in the PPL.
- iv. The use of evaluation criteria and their application needs further strengthening and regulation. Many procuring entities commented that the “blind” application of the lowest price criterion in RFQ often creates more problems than benefits. A decision of award to the second priced bidder under RFQ may be rejected by the PPA, unless the RFQ documents explicitly state other factors than price. In fact, any other factor than price in RFQ may be treated as unlawful if not seen as justified by the PPA. This uncertainty makes the procuring entities unsure about setting up appropriate criteria and conditions. The use of merit-point criteria in evaluation of bids for works contracts also requires more attention; in some of the selected procedures, the formula used for defining technical merits was far too general and there were no sub-criteria used to substantiate the points assigned. Guidance notes on preparing and using evaluation criteria are urgently required, especially at the district and rural levels.
- v. There is confusion on the lot-wise versus item-wise evaluation of bids, especially for the procurement of drugs and of food for hospitals and schools. Guidance notes should be developed to explain the pros and cons of these two evaluation approaches. It does not make sense to procure food or grocery products on an item-wise basis. Similar products should be grouped into lots and procurement should be conducted through lot-wise evaluation. This will result in fewer contracts that will be easier to administer and supervise and also that will attract greater interest from suppliers.
- vi. Due to lack of standard bidding documents, the warranty and shelf-life of some goods are not defined at the bidding stage; when bidders quoted different periods, their bids cannot be compared.
- vii. In some cases, the same firms that prepared the technical specifications for some goods (e.g. medical equipment) were awarded contracts to supply those goods. This practice should be stopped by introducing clear conflict-of-interest provisions in the legislation.
- viii. The centralized procurement of drugs through the DA should be better planned and implemented (including quality aspects) in order to avoid gaps in supply of drugs, such as the shortages of essential drugs that occurs in many hospitals at the beginning of the fiscal year. Complaints of the health managers and practitioners about the quality of supplied drugs should be addressed through necessary testing and certification procedures.
- ix. Procurement through UCE should be revised to reflect the initial purpose of this method in the PPL.

- x. Timely payments should be assured by the procuring entities in line with the contract provisions. When payments are late, procuring entities should pay interest penalties for the period of delay.
- xi. The practice of partial or incomplete ordering of items under fixed price and quantity contracts should be stopped.
- xii. Quantity variations in works contracts must be regulated. Several cases were found of contract amounts that were increased by 30 percent i.e. the maximum allowed by the PPL.
- xiii. More thorough evaluation of bids and more detailed evaluation reports should be encouraged. The assessment suggests that the evaluation of bids is frequently made within the same day, using a very simple evaluation report.
- xiv. The procuring entities need to check whether the bids are submitted by different entities to ensure competition. There were several cases where different firms took part in the bidding procedure, but all were owned by the same person. The requirement of minimum number of firms participating in procedure was therefore met in accordance to the Law, but in fact no competition took place.
- xv. Sample bidding documents should be prepared for specialized goods such as drugs and food, to provide guidance to the procuring entities on the use of appropriate bid evaluation criteria and appropriate contract conditions.

278. The findings and recommendations of this survey of procurement practices are fully consistent with the WB's assessment using OECD/DAC methodology. Therefore, the CPAR's general recommendations also apply to these sectors. Two of these general recommendations could have significant impacts in particular in the three sectors investigated.

279. The use of framework contracts as an alternative to OB and RFQ methods could result in large savings both in terms of money and staff time, for procurement of (a) goods that can be procured off-the-shelf, or are of common use with standard specifications; (b) technical services that are of a simple nature and may be required from time to time by the same procuring entity or entities, or (c) very small value contracts. This method, which is already defined in the PPL, can be put into use as soon as the relevant implementing regulation and corresponding standard bidding document together with forms of contracts are prepared. The use of framework contracts in procurement of drugs can be considered, especially for drugs ordered in partial deliveries or several multiple small orders during the year. Similarly, framework contracts can be used for procurement of foods for hospitals, schools, and kindergartens. In fact, as soon as the relevant regulation and corresponding documents are ready, this method can be widely used for procurement of common use items such as stationery and would reduce the administrative burden of currently unnecessarily complex procurement procedures.

280. Another recommendation specific to these sectors could include capacity development programs, both in terms of training and issuance of sector-specific manuals and guidance notes on the technical, commercial and administrative aspects of procurement, targeting the procuring entities' staff (like doctors and teachers). These programs should cover (i) developing evaluation criteria and technical specifications for specific items such as food for hospitals and schools, drugs, medical equipment, textbooks and educational materials, and (ii) contract management and supervision.

V. ELECTRONIC GOVERNMENT PROCUREMENT (E-GP)

A. Summary of Findings

281. The e-GP readiness assessment conducted as part of this CPAR is summarized here with details presented in **Annex 6**. The Government in general and all interviewed representatives from the different institutions in particular are aware of the significant role that Electronic Government Procurement (e-GP) can play in the context of increasing transparency and efficiency of public procurement. As part of the e-Moldova initiative, e-GP is one of the selected key areas of high priority. The e-GP implementation effort is well coordinated between the PPA in the Ministry of Finance, the Ministry of Information Technologies and Communication, and the Center for Special Telecommunications. The Office of the Prime Minister fully supports this important initiative in the context of Moldova's public administration modernization and reform agenda.

282. The challenge is to use the momentum of the new Government gained in the general context of the e-Moldova agenda and extend it to the area of e-GP in particular. Strong leadership for e-GP implementation would include (i) the allocation of appropriate resources in terms of funding and staffing of the PPA as lead agency for e-GP adoption and (ii) the development of a strategic e-GP implementation and action plan with clearly defined roles, responsibilities, and milestones.

283. The existing legislation supports the introduction of a national e-GP system basically in line with the relevant EU Directives. The PPL refers to the use of electronic means for the disclosure of public procurement information as well as for procurement transactions. The application of e-GP is described in greater detail in the annex of Government Decision No. 355 dated May 2009 which approves the technical concept of e-GP. Additional implementing regulations on the application of electronic means for public procurement procedures would complement the existing procurement legislation and provide a stronger legal and regulatory e-GP framework. The use of electronic means for public procurement is also supported by relevant e-legislation with regard to electronic communication and electronic signatures. The requirement of electronic signatures based on a Digital Certificate for the legal validity of electronic procurement documents has created some delays in terms of e-GP implementation.

B. Recommendations

284. In order to strengthen institutional leadership and management capacity, appropriate resources should be allocated to pursue a proactive and strategic e-GP planning process and to coordinate and execute the planned activities in this area with other relevant stakeholders inside and outside the government.

285. The PPA should be staffed with a full-time e-GP team. This would include an e-GP project manager and additional staff as needed (e.g. a public sector specialist for the implementation of training and awareness programs, a specialist in online technologies with knowledge of international e-GP trends and standards, a business outreach expert to the private sector). Alternatively, an international e-GP expert could be hired to provide strategic advice and assistance in planning and implementing the e-GP agenda.

286. The PPA in collaboration with other stakeholders should develop a strategic e-GP implementation plan with the objective to raise the e-GP readiness level of the six components

assessed to an adequate degree. Such a strategy would provide a comprehensive roadmap for the continued adoption of e-GP and include action plans with clearly defined roles, responsibilities, and milestones. It should also provide some e-GP performance indicators to measure the advantages against a baseline of traditional paper-based procurement.

287. As support to the PPL, implementing regulations should be developed with regard to the specific use of electronic means to advertise procurement information and with regard to the range of methods of conducting electronic procurement procedures (e.g. e-Tendering, e-Reverse Auctions, e-Catalogues, Dynamic Purchasing Systems). Such regulations should clarify the conditions of equivalency of procurement data and documents in electronic and paper format.

288. Increased effort should be invested in implementing the application of digital certificates based on the available legislation in order to facilitate rather than delaying the increased use of e-GP. The procedure of obtaining a digital certificate from the Certification Authority should be neither expensive nor complicated and time-consuming. Appropriate training should be provided to e-GP system users of how to apply and renew the digital certificate.

289. Since there is no international standard for digital certification available, attention should be paid to the issue of international participation and competition in the public procurement system of Moldova. If digital certificates issued outside Moldova are not recognized or compatible with the e-GP system, interested bidders from abroad should not be required to travel to Moldova.

290. An active e-GP program marketing campaign under the leadership of the PPA in collaboration with the Ministry of Information Technologies and Communication should be launched to promote institutional change and common understanding of the program across the government as well as the business community and civil society. Such a campaign should benefit from the use of communication channels such as the Internet, printed media, radio, and TV.

291. Learning events such as conferences, workshops, and seminars should be organized with buyer and supplier representatives to develop capacity in the area of e-GP. The PPA should actively participate in the international e-GP dialogue through different online media, such as the e-Procurement community of the EU at www.epractice.eu/community/eprocurement or the e-GP community of practice of the Multilateral Development Banks at www.mdbegp.org and in person.

292. For e-GP user training, multiple training methods should be taken into consideration, such as train the trainer, in-person training at workshops or seminars, online training programs, online demo versions, user manuals, online help facilities, and user help desk facilities. Training providers should be involved which can offer an established network of locations throughout Moldova, such as the Chamber of Commerce and Industry.

293. The e-GP implementation should take into consideration the application of international standards wherever possible to ensure interoperability at international level (for example, product classification for electronic catalogues). Standardized procurement procedures and bidding documents in line with international best practice should provide the basis for the functional requirements and specifications of the e-GP system. Standards should also be used in order to ensure compatibility between the e-GP system and other relevant systems for data exchange.

294. Internet accessibility and connectivity, especially in rural areas, should be improved and stabilized in order not to exclude private businesses in remote areas from competition in e-GP. In addition, the government can help to establish community or business development centers or partner with existing nationwide networks, such as the Chamber of Commerce and Industry, to offer access to the Internet including appropriate training and instructions in the Chamber's local offices.

295. The e-GP system should be implemented in phases to benefit from quick gains. For instance, the website of the PPA could be updated to provide more content and offer access to all procurement notices and contract award information in the new, currently tested e-GP system based on a database with a search engine, automated e-mail notification, and possibly RSS service.

296. Gradually, more functionality could be rolled out in the new e-GP system such as the downloading of bidding documents, online bid clarification, and the uploading of electronic bids. Further phases might include electronic reverse auctions and electronic catalogues as basis of framework agreements or dynamic purchasing systems.

297. The e-GP system should be based on a sustainable business model with regard to ownership, operation, and source of funding. Preferably, no fees will need to be paid for participating in public procurement through the e-GP system. If necessary, symbolic fees can be introduced to generate funds for the maintenance of the system.

298. The new e-GP system could benefit from an attractive name in both Romanian and English language. For instance, many Latin American e-GP system names are a combination of the country name and "compra" (PanamaCompra or ChileCompra). E-GP systems in Korea and the Philippines are called KONEPS and PhilGEPS respectively. Similarly, the e-GP system in Moldova could have a memorable name for marketing purposes.

299. Discussions should be initiated between the Government of Moldova and the WB with regard to the possibility of providing funding, for example, under the planned e-Moldova project, for continued e-GP implementation.

VI. COUNTRY FIDUCIARY RISK ASSESSMENT

300. The overall assessment of the public procurement system of Moldova was done in accordance with the OECD/DAC methodology based on ratings for each of the indicators:

RISK ASSESSMENT BY EACH INDICATOR		
Indicator	Level of Risk	Mitigating measures
Pillar I. Legislative and Regulatory Framework		
1. Legislative and regulatory framework	Low	- Complete missing regulations - Improve the content of the Public Procurement Website - Arrange publication of procurement of notices at the Website and Bulletin
2. Implementing regulations and documentation	Moderate	- Complete and update standard bidding documents and standard form of contracts

Pillar II. Institutional Framework and Management Capacity		
3. Public sector governance system	Moderate	- Ensure integration and coordination between financial management and procurement systems, including budgeting, planning etc.
4. Normative and regulatory body	Low	- Strengthen the capacity of current organization and take necessary measures to remove the function of review and approval of each contract at the medium to long term
5. Institutional development capacity	Moderate	- Improve training programs and develop comprehensive capacity building program
Pillar III. Procurement Operations and Market Practices		
6. Efficiency of procurement operations and practices	Moderate	- Supplement existing regulations to introduce specific requirements on the skills and knowledge profiles of the working groups
7. Functionality of public procurement market	Moderate	- Develop mechanisms for partnerships between public and private sector, especially in the infrastructure sector investments
8. Contract administration and dispute resolution	High	- Prepare regulations to set minimum requirements for contract administration and supervision
Pillar IV. Integrity and Transparency of the Public Procurement System		
9. Control and audit systems	High	- Complete development of internal control procedures
10. Appeals mechanism	Low	- Empower PPA to utilize its authority to handle complaints
11. Accessibility to information	Moderate	- Improve the content of the Public Procurement Website - Arrange publication of procurement of notices at the Website and Bulletin - Develop and implement e-GP system
12. Ethics and anticorruption measures	Moderate	- Better coordinate isolated activities to become an effective integrated anti-corruption program

301. While the Law on Public Procurement appeared to have met a number of the baseline indicators for a good public procurement system with a basically sound legal framework, a number of risks in implementation and enforcement of the Law do remain. One of the major deficiencies is that many of the regulations referred to in the Law are not ready. Some of the regulations and sample bidding documents currently in use are not fully consistent with the current PPL.

302. Procurement monitoring and control over procurement decisions has been centralized by mandating the approval of each contract (except minor value contracts) by the PPA and registering them at the State Treasury. This practice has tended to shift the responsibility and accountability of the procuring entities to the PPA.

303. The internal control procedures in procuring entities are still being developed and are not fully functional yet.

304. Anti-corruption provisions in the Law are being enforced and violators punished by the anti-corruption agency, but these activities are not fully coordinated so as to ensure successful enforcement. There are several civil society organizations active in the field of public procurement and combating corruption, but they are not as effective as one might hope.

305. As a result of this CPAR; **the public procurement system in Moldova is assessed as moderate risk.** At the country level, several actions to improve the public procurement system and to mitigate the fiduciary risks are identified. Measures to mitigate the country procurement risk in donor-financed projects are addressed in the procurement arrangements for these projects in the respective financing agreements.

VII. PROCUREMENT IN WB-FINANCED PROJECTS

306. WB-financed projects are mostly implemented by the Project Implementation Units (PIUs) rather than the relevant public agencies due to limited capacity of these agencies and lack of qualified and experienced staff. The PIUs can easily attract and retain qualified and experienced staff in project management, procurement, financial management and other areas of project implementation because these staff are hired as individual consultants for the duration of the project with a considerably high salaries than those of civil servants.

307. The WB's procurement fiduciary functions were decentralized to the WB's Kiev office where an accredited and authorized procurement staff was based for about five years. This arrangement proved to be satisfactory for both the WB and the Moldovan authorities until the relocation of this WB staff member to Washington DC headquarters in early 2010. The WB is in the process of recreating this position and it is expected that the new procurement staff will be placed in Kiev by the second half of 2010.

308. In the interim, this function is being handled under various arrangements. Some projects are being supervised by a few procurement staff based at WB headquarters, and some are being supervised by procurement staff located in WB's Kiev office with a range of accreditation and authorization levels. Another WB staff member in the Chisinau office has been assigned to work on procurement to ensure smooth coordination between WB staff in Washington DC and Kiev and PIU staff in Chisinau.

309. Procurement activities under WB-financed projects are being reviewed either through prior or post review based on the following country-level thresholds for different types of procurements.

Procurement Method Thresholds					
ICB		NCB		Shopping	Commercial Practices
Goods	Works	Goods	Works	Goods & Works	Goods & Works
>\$ 200K	> \$1 Mil	< \$ 200K	< \$1 Mil	< \$ 100K	< \$ 2 Mil

Prior Review Thresholds						
ICB		NCB		Shopping	Consultants	
Goods	Works	Goods	Works	Goods & Works	Firms	Ind.
All	All	First two contracts	First two contracts	None	> \$ 100K	>\$ 50K

310. Based on the significant improvements in the overall project implementation capacity and experiences gained with the WB’s procurement procedures; the WB has already increased these thresholds significantly after the previous CPAR dated 2003. This CPAR does not foresee any increase in the procurement method thresholds or prior and post review thresholds.

311. The most common findings at the procurement post reviews and measures to address these findings are summarized below.

- (1) Entering into verbal negotiations (including over the phone) with consultants and suppliers on the terms of the contract awards, including negotiation of rates: All required communication between the staff of the procuring entity and consultants/suppliers during contracting process should be done in writing (either by e-mail or fax) and filed in procurement files that would be subject to the WB post review and audits.
- (2) Conducting parallel negotiations (either verbally or in writing) with several consultants: Negotiations should be limited to the highest ranked candidate at a time.
- (3) Introducing changes to the Terms of Reference and contract forms (including payment terms and changes with price implications) after a “no objection” from the WB is issued: No changes should be introduced at the time of contract award and the procuring entities should confirm that the terms and conditions of the contract do not differ from those on which bids were invited.
- (4) Changing the type of contract (from a lump sum with clearly defined deliverable to a time based one) after a “no objection” is issued: The type, terms and conditions of contract should be kept unchanged at the time of contract signing.
- (5) Including reimbursable expenses in contracts with local consultants without the reimbursable budget and type of expenditures being agreed in advance with the WB, for example allowances for translation to consultants whose selection includes language requirements and submission of the reports in the languages that the consultants have claimed as fluent in their CVs: Eligible expenses should be included only with prior agreement.
- (6) Including non-qualified consultants on the short list, or awarding the contracts to consultants whose CV-stated qualifications, prior experience and references do not correspond to the actual qualifications and abilities of the selected individual: The procuring entities should conduct due diligence before shortlisting or awarding a contract by checking references and employment records.

(7) Evaluation committee members signing blank evaluation scoring sheets or signing the scoring sheets on behalf of an absent committee member, or having more than one voting (scoring) opportunity: Evaluation should be done by each member of the evaluation committee member independently; only after completion of individual evaluations, the committee members may come together to discuss any major differences.

(8) Making reference to commercial banks' exchange rate for both evaluation and payment calculations purposes: The official selling rate of the Central Bank should be used, and the rate used should be the same for all bids/proposals in a tender.

(9) Asking for clarification on the currency or the price after the submission deadline: No clarifications may be sought after the receipt of bids that may result in changes in price.

(10) Including payments to individual consultants or "staff nominated by the Ministry" under goods contracts: Payments should be made only to the authorized representatives of the suppliers/contractors.

(11) Extending bids submission deadline after it has lapsed to accept additional bids for evaluation: No bids should be accepted after the deadline for submission of bids.

(12) Modifying standard procurement procedures and deviating from the selection process prescribed by the Project Operation Manual: The WB's Procurement and Consultant Selection Guidelines and the Project Operation Manual accepted by the WB should be used for all procurement under WB-financed projects.

312. To strengthen its fiduciary review in some of the low-capacity project implementing agencies, the WB is conducting more prior reviews and doing more hand-holding especially at the initial stages of projects.

313. The assessment of national procurement procedures conducted for this CPAR based on the new PPL is provided in **Annex 7**. Procedures which will be used under the National Competitive Bidding (NCB) method have also been revised and are provided in **Annex 8**.

VIII. AGREED ACTION PLAN

314. The action plan with short-, medium- and long-term measures is provided in **Annex 3**. Among the many recommendations made to address issues identified during this assessment, a few of the recommendation stand out as requiring Government's immediate attention. These can be summarized under the following main actions:

- i) Implement the strategic choice to improve the institutional arrangements i.e. the PPA could continue with the responsibility of reviewing and approving contracts and phase out this function gradually in the medium to long term,
- ii) Strengthen PPA with necessary resources in terms of staff and funds and make it a self-sustainable agency with necessary managerial and financial autonomy,
- iii) Address deficiencies in the legislative framework, i.e. either by amending the PPL or dealing with them through changes in the secondary legislation,
- iv) Complete missing regulations in line with the current PPL,

- v) Complete and update standard bidding documents including standard form of contracts for various procurement methods,
- vi) Improve PPA's website to make it a fully functional website for publication of legislation, procurement opportunities, contract awards and other documents and information with free access by all interested parties to ensure greater transparency,
- vii) Proceed with the next phases of the E-GP,
- viii) Develop guidance notes and manuals for the use of procuring entities to improve contract administration and supervision,
- ix) Improve the existing training programs in terms of scope and frequency and develop a comprehensive capacity building strategy for public staff
- x) Ensure independent complaint handling mechanisms by taking necessary measures to avoid any possible or perceived conflict of interest of PPA's functions.

ANNEX 1. LIST OF PERSONS MET

1. Mr. Veaceslav Negruta, Minister of Finance
2. Mr. Vladimir Hotineanu, Minister of Health
3. Mr. Leonid Bujor, Minister of Education
4. Mr. Anatol Salaru, Minister of Transport and Road Infrastructure
5. Mr. Boris Gherasim, Deputy Minister of Transport and Road Infrastructure
6. Mr. Dorin Recean, Deputy Minister of IT and Communication
7. Mr. Stefan Creanga, General Director, Public Procurement Agency
8. Mr. Ghenadie Grib, Deputy Director, Public Procurement Agency
9. Ms. Angela Voronin, Director, State Treasury
10. Ms. Stela Mocan, Advisor to Prime Minister
11. Mr. Nicolae Onilov, General Director, Medications Agency
12. Mr. Mihail Lupu, Deputy Director, Medications Agency
13. Mr. Andrei Cuculescu, Head of Division, Ministry of Transport and Road Infrastructure
14. Mr. Ion Sobari, Head of Division, Ministry of Education
15. Mr. Valeriu Sava, Head of Division, Ministry of Health
16. Mr. Ion Borta, General Director, Financial Control and Revision Service
17. Mr. Gheorghe Cojocari, Member of the Court of Accounts
18. Mr. Iurie Ursu, Deputy Director, National Regulatory Agency for Electronic Communications and IT
19. Mr. Pavel Sincariuc, Director, General Division of IT Development, Ministry of IT and Communication
20. Mr. Alexei Secieru, Deputy Director, Center for Combating Economic Crimes and Corruption
21. Mr. Iurie Ciorba, Division Deputy Director, Center for Combating Economic Crimes and Corruption
22. Mr. Tudor Bors, Division Deputy Director, Center for Combating Economic Crimes and Corruption
23. Mr. Victor Cernat, Director, Oncological Institute of Moldova
24. Mr. Mihai Ous, Director, Republican Hospital
25. Ms. Angela Colatchi, Deputy Rector, Academy of Public Administration
26. Mr. Igor Enicov, Deputy Rector, State University of Moldova
27. Mr. Valeriu Erhan, Deputy Head of Rayon Council, Ialoveni
28. Mr. Tudor Gindea, Senior Specialist in Public Procurement, Ialoveni Rayon Council
29. Mr. Gheorghe Caracuian, Mayor, Ialoveni
30. Mr. Veaceslav Cernat, Deputy Mayor, Ialoveni
31. Mr. Alexandru Butnaru, Senior Specialist, Public Procurement, Nisporeni Rayon Council
32. Mr. Sergiu Harea, Director, Economic Development Department, Chamber of Commerce and Industry
33. Mr. Viorel Chivriga, Program Coordinator, IDIS Viitorul
34. Ms. Lilia Carasciuc, Director, Transparency International
35. Mr. Oleg Hirbu, Project Manager, EC Delegation
36. Mr. Veaceslav Shokin, Procurement Specialist, CAPMU
37. Representatives of Center of Special Telecommunications and DAAC System Integrator
38. National Association of private companies in the field of IT and Communications
39. Mr. Victor Baban, Electroteh Company
40. Mr. Alexandru Ghilas, Director, Lusmecon SA
41. Mr. Ion Antohii, Director, Radu SRL
42. Mr. Petru Seremet, Administrator, Nitech Moldova
43. Mr. Sergiu Rata, Director, Imunotehnomed SRL

ANNEX 2. LIST OF LAWS, REGULATIONS AND OTHER DOCUMENTS REVIEWED

1. Law No. 96-XVI of 13.04.2007 on public procurements
2. Law No. 158-XVI of July 4, 2008 on public function and statute of civil servant
3. Law No. 25 of 02.22.2008 on the civil servants' code of conduct
4. Law No. 393 of 13.05.1999 on chamber of commerce and industry
5. Law No. 1104 of 06.06.2002 on the Center for Combating Economic Crimes and Corruption
6. Law No. 261 of 05.12.2008 on Court of Accounts
7. Law No. 24- XVI of February 22, 2008 on international commercial arbitration
8. Law No. 23- XVI of February 22, 2008 on arbitration.
9. Civil code, No. 1107 of 06.06.2002
10. Government decision No. 1380 of 10.12.2007 on the approval of the regulation on the activity of the working group in procurement
11. Government resolution No. 45 of 24.01. 2008 on the approval of the regulation on development and tracking of the black list of economic agents
12. Government decision No. 178 of 18.02.2008 on the approval of the regulation on procedures to include, update and maintain the list of qualified companies
13. Government decision No. 648 of 29.05.2008 on the work of the government public procurement steering committee
14. Government decision No. 155 of 02.25.2009 on the work of the government public procurement steering committee
15. Government decision No. 148 of 14.02.2008 on small-value public procurement
16. Government decision No. 1407 of 10.12.2008 on the approval of the regulation on conducting single-source public procurement
17. Government decision No.568 of 10.09.2009 to approve the regulations for the purchase of pharmaceuticals and other medical goods to cater to the needs of the health care system
18. Decision No. 893 of 26.06.1996 on the establishment and use of Roads Fund
19. Government decision No. 329 of 19.03.2008 on the approval of the regulation on conducting public procurement of goods through the Universal Commodity Exchange
20. Government decision No. 255 of 09.03.2005 on the national strategy of building an informational society "Moldova Electronica" (Electronic Moldova)
21. Government resolution No.476 of 27.03.2008 on the actions taken to implement the national strategy to build up an information society – "Electronic Moldova" in 2008
22. Government decision No. 355 of 08.05.2009 on the approval of the technical concept of the automated informational system "State Registry of the Public Procurement"
23. Methodology for Assessment of National Procurement Systems Based on Indicators from OECD/DAC/WB Round Table, OECD, July 2006
24. Public Procurement Transparency in Chisinau, TI Moldova, 2007
25. Perception of the Corruption Phenomenon in the Republic of Moldova, Research Report, EC and SIDA, July 2007
26. Corruption Vulnerability Scan, The World Bank, May 2008
27. Public Expenditure and Financial Accountability Assessment, The World Bank, July 2008

28. Self-assessment of the National Procurement System of the Republic of Moldova, October 2008
29. Country Partnership Strategy FY09-12, The World Bank, December 2008
30. Perception and experiences of household representatives and businessmen regarding corruption in the Republic of Moldova, Research Report, TI Moldova, USAID, MCC, January 2009
31. Performance Audit Report on Public Procurement, Court of Accounts of Moldova, May 2009
32. Standard Twinning Project Fiche on Support to the Public Procurement System in the Republic of Moldova, EU, 2009
33. Rethink Moldova, Priorities for Medium Term Development, Government of Moldova, March 2010

ANNEX 3. AGREED ACTION PLAN

Actions	Responsible Agency	Short Term (in 1 year)	Medium Term (in 1 to 3 years)	Long Term (in 3 to 5 years)
Pillar I: Legislative and Regulatory Framework				
1. Complete missing regulations (such as those covering framework contracts, competitive dialogue, negotiation procedure, dynamic procurement system etc.) and update the existing ones, as necessary, in line with the current PPL.	PPA, MOF, Cabinet of Ministers (*)	X	X	
2. Complete standard bidding documents including the standard form of contracts for various types of procurements (goods, works, services and consultancy services), for various procurement methods and various sizes of procurements and update the existing ones, as necessary, in line with the current PPL.	PPA, MOF, Cabinet of Ministers (*)	X		
3. Ensure fully functioning PPA website by (i) improving its content and uploading complete set of procurement legislation in three languages (Romanian, Russian and English) for easy access of the government entities and for both local and international business community, (ii) maintaining it regularly with updated information and documentation and (iii) arranging publication of all procurement notices in PPA's website and publishing complete set of information as required by the PPL with access to all interested parties free of charge.	PPA	X		
4. Continue to publish Public Procurement Bulletin in paper form and include complete set of information for procurement notices as required by the PPL and also explore alternative ways for international publication of procurement notices for the procurements exceed the certain threshold as required by the PPL.	PPA	X		
5. Amend the PPL to provide more clarity in procurement procedures and address deficiencies provided in this CPAR.	PPA, MOF, Cabinet of Ministers	X		
6. Prepare guidance notes for implementing agencies on (i) opening of bids immediately after the bid submission, (ii) defining appropriate bid evaluation criteria for procurement of goods and works and selection of consultants, (iii) evaluation of bids by using various criteria, (iv) minimum requirements contract administration etc.	PPA (*)	X		

Pillar II: Institutional Framework and Management Capacity				
7. Amend the PPL and prepare regulations to supplement provisions of the PPL on public procurement complaints, requesting aggrieved bidders to first file their complaints with the procuring entity. They should file a complaint to the PPA only if they are not satisfied with the way that the procuring entity resolves/handles the complaint.	PPA, MOF, Cabinet of Ministers		X	
8. Put in place necessary measures to increase the number of PPA staff in order to cope with the current workload (especially until PPA's function of approving bid evaluation reports and contracts is abolished) or raise the threshold for this requirement in order to reduce PPA workload temporarily and create incentives to retain experienced and qualified staff.	MOF	X		
9. Decentralize procurement decisions to all procuring entities by revising the PPL to remove the requirement for PPA's approval of bid evaluation reports and contracts.	PPA, MOF, Cabinet of Ministers			X
10. Avoid any possible or perceived conflict of interest by putting in place measures to completely separate the responsibilities of the two PPA departments that review/approve contracts and handle complaints.	PPA, MOF		X	
11. Analyze the statistical information collected and address systemic issues through guidance notes and targeted training programs.	PPA (*)		X	
12. Develop comprehensive capacity building program for public procurement staff, improve existing training programs in terms of scope and frequency to reach all procuring entities, especially local government units and consider outsourcing the delivery of training programs by retaining its quality assurance role.	PPA		X	
13. Reinstate the PPA help desk through dedicated phone line and email to address questions from procuring entities.	PPA		X	
14. Ensure self-sustainable PPA with some level of financial autonomy by introducing nominal fees for its services, such as a subscription fee for the Bulletin, training fees for private sector	PPA, MOF		X	
Pillar III: Procurement Operations and Market Practices				
15. Supplement the existing regulation on the formation of working groups by introducing specific requirements on the skills and knowledge profiles of the working group members.	PPA, MOF		X	

Pillar IV: Integrity and Transparency of the Public Procurement System				
16. Complete development of internal control procedures.	MOF		X	
17. Address issues identified by Court of Accounts through training, regulations, guidance notes.	PPA, COA			X
18. Empower and fully authorize PPA to handle complaints and publish PPA's decisions on complaints on its website.	MOF, PPA	X		

(* Recommended to be included in the scope of Twinning Agreement.

ANNEX 4. WB PROJECT AND TRUST FUND PORTFOLIOS IN MOLDOVA

Current Composition of WB Portfolio in Moldova

Project Name	Effectiveness Date	Closing Date	Net Commitment Amount (US\$ million)
ENERGY 2	3/2/2004	12/31/2011	45.00
ENV INFRASTRUCTURE (GEF)	10/30/2007	12/15/2011	4.56
SIF 2	9/15/2004	3/31/2013	45.00
PUB FIN MGMT TA	1/3/2006	12/31/2011	8.55
COMPETITIVENESS ENHANCEMENT	2/10/2006	6/30/2012	33.80
POPS STOCKPILES MGMT AND DESTRUCTION	3/9/2006	5/31/2010	6.35
QUAL EDUC IN RUR AREAS OF MD	8/7/2006	5/31/2010	10.00
RISP (APL #2)	7/7/2006	6/30/2012	31.00
HEALTH SERVICES AND SOCIAL ASSISTANCE	9/5/2007	8/31/2011	17.00
AVIAN FLU - MD	9/12/2006	3/31/2011	8.00
ROAD SECTOR PROGRAM SUPPORT PROJECT	10/30/2007	6/30/2011	4.97
NATIONAL WATER SUPPLY & SANITATION	12/19/2008	6/30/2013	14.00
TOTAL:			228.23

Trust Fund Portfolio

Trust Fund Name	Net Grant Amount (in US\$ thousands)	Effectiveness Date	Grant Closing Date	Donor Name
TRAINING CAPACITY BUILDING AND TRAINING RELATED TO MANAGEMENT OF PUBLIC FINANCES (CHILD FUND UNDER TF054016)	1,963.09	12/20/2005	6/30/2010	Swedish International Development Cooperation Agency (SIDA)
JSDF-MOLDOVA: YOUTH SOCIO-ECONOMIC EMPOWERMENT THROUGH INCLUSIVE BUSINESS DEVELOPMENT & INNOVATIVE SOCIAL SERVICE DELIVERY	1,727.14	12/16/2004	12/31/2009	Japan - Ministry of Finance
DUTCH GRANT FOR CO-FINANCING OF THE PUBLIC FINANCIAL MANAGEMENT PROJECT	4,227.63	12/1/2005	6/30/2010	Netherlands Minister for Development Cooperation
PHRD-MOLDOVA: COMPETITIVENESS ENHANCEMENT PROJECT	4,500.00	11/14/2005	6/30/2012	Japan - Ministry of Finance
GEF FSP-MOLDOVA: POPS STOCKPILES MANAGEMENT AND DESTRUCTION PROJECT	6,350.00	3/9/2006	5/31/2010	MULTIPLE DONORS
CDCF - MOLDOVA BIOMASS HEATING ERPA	1,969.04	1/15/2006	7/15/2016	MULTIPLE DONORS
IDF-MOLDOVA: REFORMING COURTS	380.00	5/2/2006	5/2/2010	IBRD
MDTF TECHNICAL ASSISTANCE SUPPORT TO PUBLIC ADMINISTRATION REFORM OF MOLDOVA	6,150.00	7/11/2006	12/31/2010	MULTIPLE DONORS
PHRD-MOLDOVA: AVIAN INFLUENZA CONTROL & HUMAN PANDEMIC PREPAREDNESS & RESPONSE PROJECT	500.00	6/16/2006	12/31/2009	Japan - Ministry of Finance
MOLDOVA EFA-FTI CATALYTIC FUND (PHASE I)	8,800.00	5/25/2006	8/31/2010	MULTIPLE DONORS
BCF - MOLDOVA SOIL CONSERVATION ERPA	2,478.00	6/16/2006	12/31/2015	MULTIPLE DONORS

SUPPORT TO THE SECOND RURAL INVESTMENT AND SERVICES PROJECT IN MOLDOVA	6,461.16	7/12/2006	6/30/2010	Swedish International Development Cooperation Agency (SIDA)
MDTF FOR STRATEGIC DEVELOPMENT OF THE COURT OF ACCOUNTS	2,786.60	4/23/2007	6/30/2011	MULTIPLE DONORS
REPUBLIC OF MOLDOVA: IDF GRANT FOR CAPACITY BUILDING IN MOLDOVA PUBLIC SECTOR ACCOUNTING PROJECT	160.00	8/15/2007	12/31/2010	IBRD
GEF FSP - MOLDOVA: ENVIRONMENTAL INFRASTRUCTURE PROJECT	4,562.00	8/23/2007	12/15/2011	MULTIPLE DONORS
Moldova : Canadian Grant for the Remediation of POP Pesticides Polluted Areas and Inventory of PCB Contaminated Oil in Power Equipment	639.06	6/29/2007	12/31/2009	Canadian International Development Agency (CIDA)
MD: HEALTH SERVICES AND SOCIAL ASSISTANCE ADDITIONAL FINANCING GRANT	7,000.00	8/15/2008	8/31/2011	IBRD
COMMUNITY SUPPORT PROGRAM FOR SUSTAINABLE AND INTEGRATED FOREST MANAGEMENT AND CARBON SEQUESTRATION THROUGH FORESTATIO N.	975.90	6/24/2009	4/2/2013	Japan - Ministry of Finance
MOLDOVA DUTCH TA-TF FINANCIAL SECTOR REFORM	3,094.99	9/1/2008	6/30/2011	Netherlands Minister for Development Cooperation
COMMUNITY PARTICIPATION IN POST-CONFLICT REGIONS	1,950.00	3/17/2009	3/17/2013	Japan - Ministry of Finance
PREVENTING HEPATITIS B&C IN MOLDOVA	1,383.76	5/5/2009	5/5/2012	Japan - Ministry of Finance
Successor Swedish Grant for Public Finance Management Project	2,480.18	9/9/2009	6/30/2011	Swedish International Development Cooperation Agency (SIDA)
Moldova Regional Development and Social Protection Project	16,083.52	8/7/2009	6/30/2011	EU- Commission of the European

				Communities
Swedish Grant for Second Additional Financing for the Moldova Social Investment Fund II Project	2,460.42	2/11/2010	12/31/2010	Swedish International Development Cooperation Agency (SIDA)
MOLDOVA ACCOUNTING AND AUDITING EXCHANGE EXPERIENCE WITH THE NEW EU MEMBER STATES	120.00	7/15/2009	5/31/2010	MULTIPLE DONORS
TOTAL:	89,621.28			

ANNEX 5. STATUS OF 2003 CPAR ACTION PLAN

ACTION PLAN FOR PUBLIC PROCUREMENT REFORM IN MOLDOVA						
AREA	ACTION AGREED ON JUNE 2003	Responsible Organization	TIMING			PROGRESS MADE AS OF MARCH 2010
			short-term < 6 months	medium term <12 months	long term <24 months	
1. Legislative Reform	a. Enact an amendment to the Law on Procurement of Goods, Works, and Services for Public Needs.	NAGP to draft Government to approve Parliament to pass		X		New Public Procurement Law enacted on April 2007
	b. Enact implementing regulations on procurement planning, pre-qualification and bid evaluation. Update implementing regulations when the procurement law is amended.	NAGP to draft implementing regulations Government to enact	X	X		Some of the implementing regulations are issued, but there are still several regulations referred in the PPL that need to be completed.
2. Institutional Reform	a. Appoint an executive director of the NAGP	Ministry of Economy	X			PPA reorganized under the Ministry of Finance on November 2009 and the Director of the Agency appointed on January 2010.
	b. Require the Executive Director of the NAGP to submit a written Monthly Report on the Performance of Public Procurement to the oversight committee and publish the report.	Oversight Committee	X			Government Decision of May 29, 2008 appointed an Oversight Committee on public procurement to monitor and ensure correct implementation of PPL and PPA submits activity reports to OC at every 6 months. OC ceased

						functioning since April 2009.
	c. Publish the Annual Report of the oversight committee to the Government.	Government		X		No publication yet.
	d. Establish a Training Division in NAGP. Develop and deliver regular procurement training courses for civil servants at the Public Administration Academy.	NAGP Public Administration Academy			X	There is no training division at the PPA, but they conduct procurement training courses together with the Public Administration Academy.
	e. Conduct training courses in public procurement for the dedicated procurement staff of the recently established territorial administrative units of local government.	NAGP	X			Training courses are conducted mainly at the central level but do not meet the need at the local government level.
	f. Create an independent commission, comprised of independent experts in relevant disciplines, to review procurement protests.	Government		X		PPA has a small division to conduct review of procurement complaints, which is independent from the procuring entities but there is a potential conflict in PPA's duality of functions.

ANNEX 6. ELECTRONIC GOVERNMENT PROCUREMENT (E-GP) READINESS ASSESSMENT

Summary of Findings

The e-GP readiness assessment was conducted on the basis of a set of e-GP adoption indicators jointly developed by the Multilateral Development Banks' e-GP working group.¹ A total of six components (government leadership & management planning; legal framework; buyer & supplier activation; standards; infrastructure; and systems & applications) were assessed against the following four levels of e-GP readiness:

- 1 – There is no real evidence that components are being addressed and supported;
- 2 – There is little evidence that components are being addressed and supported;
- 3 – There is some evidence that components are being addressed and supported;
- 4 – There is adequate evidence that components are being addressed and supported.

The table below shows the level of e-GP readiness for each of the six components and the resulting overall level of e-GP readiness in the Republic of Moldova. In summary, the e-GP readiness level in Moldova is quite advanced and provides a good basis for the further implementation of a national e-GP program. Success of the implementation of such program will depend on the ability of addressing and supporting all components to an adequate degree.

Component	Level of e-GP Readiness	Comments
Government Leadership & Management Planning	2 = little degree	Leadership needs to be strengthened to continue e-GP implementation
Legal Framework	3 = some degree	Existing policy and legislation to be complemented
Buyer & Supplier Activation	2 = little degree	Awareness & capacity building needs to be intensified
Standards	3 = some degree	Procurement standards to be improved
Infrastructure	3 = some degree	Infrastructure constraints in remote/rural areas to be addressed
Systems & Applications	3 = some degree	E-GP system to be finalized and rolled out
With an overall rating of 2.67, Moldova moves in the right direction and has created a promising basis for further e-GP implementation.		

Appropriate e-GP awareness raising and capacity building is the key to successful change management from the traditional, paper-based to the innovative, web-based procurement

¹ <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=645459>

environment. As part of testing phase 1 of the e-GP system, training was provided to participating government agencies and private firms. The extension of such training as part of a broader e-GP awareness raising and capacity building program will contribute to achieving collective understanding, agreement, and commitment among all e-GP stakeholders. Moldova participated in several e-GP knowledge sharing activities, among others in the first round of the WB's e-GP learning series in 2009. The continuation of the international dialogue in the area of e-GP will help Moldova to benefit from good e-GP practices and lessons learned of other countries.

The automation of public procurement needs to rely on standards not only with regard to technology but also in terms of procurement legislation, procedures, and templates. To this end, the e-GP standards framework in Moldova on the basis of the adopted procurement legislation and of the relevant e-Legislation is technology-neutral and promotes the application of web-based standard templates and procedures to be applied across all government procuring agencies. Since the Ministry of Information Technologies and Communication is involved in the development of the e-GP system and, at the same time, in setting and applying government-wide technological standards under the e-Moldova initiative, the chances of successful interoperability of the e-GP system with other IT systems in the government and private sector are quite promising.

The existing ICT infrastructure and related Internet connectivity in Moldova should not create a major obstacle to the introduction of e-GP. The mission found that the Internet penetration among buyers and suppliers in urban areas is well established whereas some constraints in remote rural areas remain to be addressed. Although the Internet usage and population statistics at www.internetworldstats.com for Moldova reports an Internet penetration of 19.7 percent in relation to the total population, the connectivity rate in relation to government agencies and private businesses is estimated to be much higher.

While the PPA runs a website to publish a whole range of public procurement information, this website offers considerable room for improvement. A lot of content is not available and the link to the Public Procurement Bulletin did not work most of the time during this assessment. Much more promising is the new e-GP system, phase 1 of which has already been developed and tested in a few agencies. The system offers a public space with free access to a whole range of public procurement information. In addition, it provides a private space with access authorization based on the use of Digital Certificates to support legally valid procurement transactions including the exchange of digitally signed electronic documents. The new e-GP system is owned by the PPA, developed by the Ministry of Information Technologies and Communication with the help of a contracted private Software developing firm, and hosted on the Hardware platform of the Center for Special Telecommunications. The implementation of phase 2 (more functionality and implementation of Digital Signature) and phase 3 (roll out and training) of the e-GP system is subject to available funding (MDL 3 million and 2 million respectively).

Introduction

As part of the CPAR mission to the Republic of Moldova from February 1-12, 2010, discussions with multiple stakeholders in the area of public procurement in general and electronic government procurement (e-GP) in particular were organized to establish an overall picture of the current e-GP efforts and identify issues to be addressed on the way forward. The e-GP assessment reflects the findings from meetings with representatives from various ministries and organizations of the Government of Moldova during the mission in Chisinau. Besides the

discussions with representatives from the Government of Moldova, the mission also met private industry representatives from 18 firms of different sectors.

In addition, the following documents were reviewed in the context of the e-GP assessment

- Law on Public Procurements no. 96-XVI of 13.04.2007
- National Strategy on Building Information Society – “e-Moldova”, 2005
- Decision: On the Approval of Technical Concept of the Automated Informational System “State Register of Public Procurements”, Nr. 355 issued by the Prime Minister on May 8, 2009
- Decision: On the Approval of the Regulations concerning the Organization, Function, Structure and Staff Limit of the PPA, Nr. 747 of November 24, 2009
- Decision: On the Action Plan for the Implementation of the National Strategy on Building Information Society – “Electronic Moldova”, Nr. 476 of March 27, 2008
- Standard Twinning Project Fiche of ENP National Action Program 2007 No. MD09/ENP-PCA/FI/05 between EU and Republic of Moldova

The report continues the findings on the current e-GP situation in the Republic of Moldova are described based on a set of e-GP adoption indicators jointly developed by the Multilateral Development Banks’ e-GP working group as part of an e-GP readiness assessment. Then, it suggests some possible actions and recommendations in the context of moving forward and implementing the e-GP agenda in the Republic of Moldova. The last part includes some information on the current public procurement website and an overview of e-GP basics including definition, benefits, and implementation challenges.

Current Adoption of e-GP in Moldova

Government Leadership & Management Planning

There is no doubt among Government officials and private sector representatives that e-GP plays a significant role in modernizing the public procurement system in Moldova in line with the basic principles of the Public Procurement Law, such as

Efficient use of public funds;

Transparency of public procurement;

Ensuring competition and preventing unfair competition;

Equal treatment, impartiality and non-discrimination for all bidders and suppliers.

While the disclosure of procurement notices, contract award results, and other procurement information on a dedicated public procurement website contribute to improving the transparency of the public procurement system, increased competition and efficiency can result in considerable savings. If only 10 percent of the total public procurement (about MDL 6.422 billion in FY 2007²) were conducted online, annual savings of more than MDL 64 million could be achieved. These potential savings of about 10 percent are calculated on the basis of the experience of countries, such as Brazil, Romania, Korea, and India, who have successfully used the Internet to support public procurement procedures.

² Source: Government Decision No. 355 of May 8, 2009

The level of government leadership for the adoption of the e-GP agenda is quite promising. E-GP is part of the e-Moldova program which is supported by the Prime Minister in collective agreement with all stakeholders in Moldova. In addition, the Government of Moldova is engaged in an active dialogue at international level, for example with the EU or UNDP, to strengthen the public procurement system including the use of e-GP. The EU provides high level policy advice to the Government of Moldova including in the area of public procurement. A twinning project between the EU and Moldova aims, among others, at supporting the implementation of e-GP.

The e-Moldova program is based on the National Strategy on Building Information Society³ which includes two specific action items with regard to extending the use of e-commerce in public acquisitions by 2010

1. Elaboration, launching and extension of the electronic system of public acquisitions (e-procurement);
2. Creation of and support to specialized government portals for public acquisitions through electronic tenders.

A comprehensive e-GP strategy does not seem to be available. Such strategy would provide a roadmap for the implementation of e-GP as part of both the public procurement reform agenda and the e-Moldova program. Besides the e-GP system in the narrow sense of information technology, it would offer the opportunity to address critical success factors of e-GP implementation, such as institutional leadership and management, enabling policy and legislation, awareness raising and capacity building, standardized procedures and templates, sustainable business model, and internet accessibility and connectivity. It should also provide some e-GP performance indicators to measure the advantages over the traditional paper-based procurement.

According to the e-Moldova program, the PPA with the help of the Ministry of Information Technologies and Communication has been defined as institution in charge for the realization of the e-GP action items. The collaboration between these two institutions is also stipulated in Government Decision No. 355 of May 8, 2009, with the PPA as leader and owner of the e-GP agenda supported by the Ministry of Information Technologies and Communication. In addition, the Center for Special Telecommunications has been assigned the role of operator of the e-GP platform.

The PPA was established and subordinated to the Ministry of Finance as a result of reorganizing the former Agency for Material Resources, Public Procurement and Humanitarian Aid as per Government Decision No. 747 of November 24, 2009. At the same time, this Government Decision confirms the leading role of the PPA in implementing the e-GP agenda. Relevant staff and assets were basically transferred from the Agency for Material Resources, Public Procurement and Humanitarian Aid with a few exceptions. The PPA got a new Director and lost one of the previous staff who had played a critical role in the context of e-GP implementation. While the new Director shows a lot of commitment to the e-GP program and the Deputy Director, who has also played an instrumental role in this area so far, is the assigned leader of the e-GP agenda, the PPA may benefit from the availability of more resources specifically dedicated to the implementation of e-GP.

³ http://en.e-moldova.md/Sites/emoldova_en/Uploads/strat_ENG.36370AF841D74D74B3969D0FA3FBE6D2.pdf

Under the current arrangement, the PPA is considered as the beneficiary of the e-GP system and client of the Ministry of Information Technologies and Communication which has been in charge of the development of the e-GP application by contracting the Software development company DAAC. While the Government of Moldova had allocated some MDL 3 million in 2009 for the initial stage of e-GP system development, it is expected that the funding of the next e-GP phases will be provided from the PPA. The Agency, however, has repeatedly expressed concern with regard to the lack of financial resources for the further e-GP implementation.

Taking into consideration the objective of extending the use of e-GP to 20 percent of the central public authorities as conditionality for the 2010 budget support operation by the EU, the challenge to the Government of Moldova is to use the established leadership at high government level to ensure that appropriate resources and skills will be available for the successful continuation of the e-GP agenda.

Legal Framework

Procurement Legislation

The Public Procurement Law of April 13, 2007, and Government Decision No. 355 of May 8, 2009, both include reference to the use of electronic means in public procurement. While the latter constitutes a technical concept of the e-GP system, the Public Procurement Law covers the use of the Internet for publishing procurement information and for conducting procurement transactions.

Chapter IV of the Public Procurement Law refers to publication and transparency. It includes Article 20 and Article 21 and the requirement for contracting agencies to publish request for proposals and contract awards respectively (in both cases: which are estimated to cost, without VAT, more than MDL 20,000 (USD 1,600 equivalent) for procurement of goods and more than MDL 25,000 (USD 2,083 equivalent) for procurement of works and services) in the Public Procurement Bulletin and on the website of the PPA.

The principal requirements with regard to the procurement procedures in Chapter V address among others the non-discrimination when using electronic means. Article 23 refers to the public availability of the electronic communication tools and their compatibility with generally available information and communication technologies. Also, information regarding electronic bidding participation must be available to all interested parties and electronically submitted bids require a digital signature. Article 24 lists a range of means of communications, among others “electronically”, from which contracting agencies can choose. It does not provide a clause on the equivalence of “electronically” to “in writing”.

Public procurement procedures are addressed in Chapter VI. Article 33 offers different procedures under which public procurement contracts may be performed. These procedures include the dynamic purchasing system as well as electronic auction/tender as per the relevant EU Directives. The requirement in Article 39 of submitting bids “in writing” appears contradictory to the option of electronic bid submission (see comment on equivalence in the last sentence of paragraph 24 above).

The Public Procurement Law covers the basic use of electronic means and refers repeatedly to Procurement Regulations approved by the Government, e.g. Articles 55.4 and 56.2. Government Decision No. 355 provides a more specific description of electronic procurement data and procedures, but rather seems to be the technical concept of the e-GP system than a complete set of supporting implementing regulations with regard to the specific use of electronic means to advertise procurement information and to the range of methods of conducting electronic

procurement procedures (e.g. e-Tendering, e-Reverse Auctions, e-Catalogues, Dynamic Purchasing Systems).

E-Legislation

The enabling legal and regulative framework for e-GP includes the Law on Electronic Commerce (2004), the Law on Electronic Document and Digital Signature (2004), Government Decision No. 320 on the Regulation of the Application of Digital Signatures in Electronic Documents of Public Authorities (2006), Government Decision No. 733 on the Concept of Electronic Governance (2006), and Government Decision No. 916 on the Concept of Government Portal (2006).

In accordance with Government Decisions No. 733 and No. 916, the participation in e-GP requires a digital certificate. While access to public procurement information is available for free, the legal validity of procurement transactions including relevant electronic data and documents is subject to applying an electronic signature based on a digital certificate.

Currently, the Center for Special Telecommunications is the Certification Authority for Digital Certificates. In addition, it is planned to create sub-centers in remote areas for the issuance of Digital Certificates. The city of Cahul is a good example, where a Digital Signature Office is hosted in the local branch of the Chamber of Commerce and Industry. The office was established in collaboration with USAID in October 2009.

The implementation of digital certifications however turns out as complicated due to the price and procedures required to obtain a digital certificate. Similar experience is known from other countries where the procedures to get a digital certificate created a potential obstacle to fair competition. In some cases, interested bidders were asked to submit comprehensive legal documentation to prove their identity. Foreign bidders had to submit legal documents proving that they are not registered firms in the country in which they wanted to submit bids. In some cases, foreign bidders would also need to travel to the country of interest in order to obtain the digital certificate.

Buyer and Supplier Activation

Moving public procurement information and transactions online requires buyers (government agencies) and suppliers (private industry) to change their mindset of doing business. While this may not always be an easy task, it is critical to achieve common understanding among the buyers and suppliers about the benefits of e-GP for all stakeholders and to develop collective commitment to achieve these benefits.

Government agencies in Moldova are increasingly using electronic means to improve their G2G (government to government), G2C (government to citizen), and G2B (government to business) relations. In this context, most government agencies run a website in Romanian, Russian, and English and offer online information and services. To this end, the level of awareness of the potential of e-Government has been raised considerably supported by the e-Moldova program.

This momentum should be extended to the area of public procurement not only as part of the e-Moldova initiative in general but, more specifically, as an active e-GP program marketing campaign under the leadership of the PPA in collaboration with the Ministry of Information Technologies and Communication. Active promotion of the e-GP program helps to create common understanding of the program across the government as well as the business community and the civil society. The private sector typically welcomes and supports the introduction of e-GP since private firms seem to be quite familiar with the use of the Internet as part of their daily business including e-Procurement (B2B).

Possible means for marketing the e-GP program include a multiple range of communication channels such as the Internet, printed media, radio, TV, etc. Learning events, e.g. conferences, workshops, or seminars with buyer and supplier representatives offer a good platform for sharing e-GP practice and experience of other countries.

The e-GP program needs to address e-GP capacity building through a comprehensive training plan. The introduction of e-GP requires training and skills development at three levels: (i) strategic planning and managing of e-GP adoption, (ii) use (buyers and suppliers) of the e-GP applications, and (iii) e-GP system and support services.

In order to successfully manage the design and implementation of e-GP, the PPA needs to be staffed appropriately. Public procurement and strategic planning expertise should play the dominating role over IT expertise. While the current management and staff have demonstrated such expertise, the PPA may benefit from additional resources. This would allow the agency to improve the strategic e-GP planning process and to manage the e-GP implementation on the basis of a strong international dialogue and in line with good international practice.

Regarding the e-GP user training, the dimension of changing from traditional to innovative procurement tools needs to be addressed in addition to the training on how to use an e-GP application. The process of providing support to the high number of potential e-GP users will definitely require a considerable amount of resources and planning. According to the Chamber of Commerce and Industry, there are some 12,000 government agencies and 36,000 private firms as potential users of e-GP. Multiple training methods should be taken into consideration, e.g. train the trainer, in-person training at workshops or seminars, online training programs, online demo versions, user manuals, online help facilities, and user help desk facilities.

In the area of providing e-GP systems operation and support services, much of the required capacity building depends on the selected business model of operating the e-GP system. With the Center for Special Telecommunications, the Government of Moldova took the decision of assigning the role of the systems operator to a state enterprise with a lot of experience and expertise to develop the skills and capacity required to provide excellent e-GP systems and support services.

The e-GP training plan should identify appropriate training providers. Existing training providers for public procurement may be in the position to design and deliver e-GP related training to government agencies and suppliers. For example, the Chamber of Commerce & Industry has a total of 9 local centers and 21 subsidiaries throughout Moldova and can play an important role in promoting the e-GP agenda and providing related training to the private sector.

Standards

The automation of public procurement needs to rely on standards with regard to legislation, procurement, and technology. These standards are essential to increase the consistency and interoperability of the national procurement legislation and policies with international trading partners as well as to simplify procedures and avoid the duplication of effort. Where international standards are available (e.g. UNSPSC for product classification), these may be adopted rather than invest into the development of new country-specific standards.

Standards related to e-GP legislation should be technology-neutral in order not to run the risk of setting a standard linked to a specific technology which, given the short innovation cycle of technology, would soon be obsolete when being implemented. Both the procurement and electronic legislation in Moldova and the relevant e-legislation appear technology-neutral and provide a set of standards with regard to procurement procedures and security respectively.

The Public Procurement Law as well as Government Decision No. 355 refer to standardized e-GP procedures (e.g. dynamic purchasing system, electronic reverse auctions) and templates (e.g. required content for electronic advertising and publishing of contract awards). Standard bidding documents and contract templates are partly available and will continue to be developed. Together with additional secondary procurement legislation including more detailed e-GP regulation, they will define more detailed standard procedures and templates for electronic bidding, shopping, and other methods.

Product classification standards are required in the context of implementing electronic catalogues which often represent thousands of line items. For the purposes of e-GP it is advantageous for these classifications to have a simple correspondence with natural language and also that they have an hierarchical structure to facilitate the important management and financial analyses that online procurement technologies make practical. International product classification standards have been set by organizations such as the United Nations (United Nations Standard Product and Services Code = UNSPSC⁴) or the European Union (Common Procurement Vocabulary = CPV⁵). While it appears that the pilot version of the first stage of the e-GP system is based on Moldova's customs codification for product classification, it may be worth to take into consideration to switch to an international standard or to maintain relevant transformation tables to ensure interoperability with international standards.

In general, Government Decision No. 355 supports the use of technical standards in order to (i) harmonize the e-GP system of Moldova with international e-GP systems and (ii) interact with other government information systems, such as the digital certification system, the tax administration system, and the financial management information system. The objective is to establish an interoperability framework which sets common standards and definitions to be used to exchange information between government agencies and their stakeholders. To this end, it is planned to use common technology standards (e.g. open systems architecture, generally available web services, security standards, XML).

Infrastructure

Infrastructure constraints are often a major issue that needs to be addressed as part of the e-GP program implementation in low- and middle-income countries. According to the National Regulatory Agency for Electronic Communications and Information Technology of the Republic of Moldova, the Internet market is well developed and access is available at prices which are comparable to those in other European countries. The telecommunications market offers a competitive structure and about 90 percent of all subscribers are using broadband Internet.

According to a statistics overview on the Internet usage in Europe⁶ found that the Internet is being used by some 850,000 people in Moldova with a total population of over 4.3 million people. To this end, the Internet penetration equals 19.7 percent as of September 2009. Although Moldova belongs to those countries in Europe with a rather low Internet penetration, the calculated Internet user growth between 2000 and 2009 exploded in with 3,300 percent. This figure clearly is an indicator for the increasing Internet penetration in Moldova.

⁴ www.unspsc.org

⁵ http://simap.europa.eu/codes-and-nomenclatures/codes-cpv/codes-cpv_en.htm

⁶ <http://www.internetworldstats.com>

While the 19.7 percent Internet penetration are in relation to the population, estimates with regard to the Internet penetration in the government and in the private industry sector are more optimistic. Central government agencies in general have access to the Internet, while local government agencies are still lagging behind. It appeared from the discussions of the mission that both government agencies and private firms are ready to use the Internet for their procurement activities.

Moving public procurement online will also result in a boost of Internet penetration by small and medium enterprises. Several countries have reported that the introduction of e-GP provided an incentive to get connected with the Internet to those companies who wanted to do business with the government. In order not to exclude private businesses in remote areas without Internet access from competition in e-GP, the government can help to establish community or business development centers or partner with existing nationwide networks, such as the Chamber of Commerce and Industry, to offer access to the Internet including appropriate training and instructions.

Systems & Applications

In accordance with the public procurement law, the advertizing of public procurement opportunities and contract awards is provided in the paper-based Public Procurement Bulletin on a weekly basis. At the same time, it is supposed to be published on the PPA's website www.tender.gov.md.

On June 15, 2010, the website was available for access and could be assessed in terms of its content. The website offers three languages: Romanian, Russian, and English. However, most of the information is available in Romanian language only and therefore not accessible in the Russian and English versions. It should be noted that the Romanian and Russian versions show the correct name of the PPA whereas the English versions still provides the old name, i.e. Agency for Material Resources, Public Procurement and Humanitarian Aid.

The website provided a link to the Public Procurement Bulletin in PDF format and therefore advertized procurement opportunities could be accessed through this website as required in the Public Procurement Law. The content of the website is categorized into 15 topics all of which provide a hyperlink to the relevant content. The table in Attachment 2 summarized the topics and the accessibility to the content in all three language versions. A lot of content, particularly in the English and Russian versions, is not posted and reference is provided instead to the fact that the information will soon be available.

Government Decision No. 476 of March 27, 2008, adopted the action plan with regard to the launch of a new free public procurement portal and Government Decision No. 355 eventually approved the technical concept of the planned e-GP system. The PPA agreed with the Ministry of Information Technologies and Communication to implement the e-GP system in three phases: (i) automation of basic procurement procedures without digital signature, (ii) additional Software functionality for e-tendering, e-reverse auctions, and dynamic purchasing systems, and (iii) roll-out and training.

As of today, the e-GP system is still in development and testing status. It has not yet been piloted and used for real public procurement operations. However, phase 1 has been tested in a few agencies (e.g. Ministry of Information Technologies and Communication, Ministry of Finance, Ministry of Defense, Ministry of Internal Affairs, Ministry of Health) with user training provided and support offered from May to December 2009. As a result, some 30 tenders were tested and user feedback was collected and submitted to the Ministry of Information Technologies and Communication which will be taken into consideration for improvements.

When it is fully developed and become functional; the e-GP system will be available in Romanian, Russian, and English language. It will be the single-window public procurement portal of Moldova and will basically include all major procurement functionalities as defined in Government Decision No. 355 on the basis of the public procurement law. The e-GP system will consist of a public space accessible without any restrictions and a private space which can be accessed only with a Digital Certificate. The public space will offer all relevant procurement information for free.

Since the concept of Digital Certificates has not yet been implemented, the e-GP system will allow for the option to submit electronic bids without a digital signature. In such case however, bidders will need to submit a signed paper-based version to ensure legal validity of the bid. Currently, phase 2 is under development which includes the application of the Digital Certificate to submit electronic bids. It is planned under phase 3 to roll out the e-GP system and extend its use to 20 percent of all public procurement by the end of 2010 in agreement with the EU.

The estimated cost of the implementation in three phases amounts to MDL 3 million (USD 240,000 equivalent) for phase 1, MDL 3 million (USD 240,000 equivalent) for phase 2, and MDL 2 million (USD 160,000) for phase 3. While the funding of phase 1 was allocated from the 2008 budget, one of the major problems is the lack of funding of phases 2 and 3, the estimated total of which is MDL 5 million (USD 400,000). Currently, the WB is in discussion with the Government of Moldova and explores the possibility of including an e-GP component in the planned e-Moldova project.

The e-GP system should be rolled out in phases to benefit from quick gains. For instance, as an initial phase, all public procurement information including advertizing and contract awards would be available in the e-GP portal together with the already existing strong search engine. This may also include the functionality of automated e-mail notification of new business opportunities and/or RSS (Really Simple Syndication) service. Gradually, more functionality could be rolled out such as the downloading of bidding documents, online bid clarification, and the uploading of electronic bids. Further phases might include electronic reverse auctions and electronic catalogues as basis of framework agreements or dynamic purchasing systems.

As earlier in the report mentioned, the business model in terms of ownership of the e-GP system is defined as per Government Decision No. 355. While the e-GP Software application is owned by the PPA, it is developed by the Ministry of Information Technologies and Communication under a contract with DAAC System Integrator - the largest software solutions developer and system integrator in the field of Information and Communication Technologies in Moldova. The e-GP Software application is hosted and operated on the Hardware platform of the Center for Special Telecommunications.

No final decision has been taken regarding the e-GP business model in terms of revenue generation. Fees for larger contracts might be taken into consideration to attract serious bidders and ensure their interest and responsibility. While significant transaction cost savings for bidders would justify the charging of fees, such fees should be reasonable and preferably lower than those charged in the paper-based bidding process. For example, procurement plans, advertizing, and bidding documents in electronic format should be available for free, whereas any transaction fee for using the e-GP system per bidding procedure should be less than the fee charged for the bidding document in paper. Such approach can help to promote the use of e-GP among bidders. Any decision with regard to potential fees for electronic bidding documents should also take into account other relevant charges such as the fee for obtaining the digital Certificate which, currently, is about USD 100.

Given the current lack of funding for the next e-GP implementation stages, it is also important to take a decision with regard to the available financing of e-GP system updates, upgrades, operation, and maintenance. This decision should be very clear whether the required funding will be allocated from the annual government budget, from revenue generated by user fees, or from a combination of the two.

Attachment I: Content of Public Procurement Website⁷

Information Type	Romanian	Russian	English
About Agency	Partly available including organizational chart as Word file	NA	NA
Legislation	Available in Word files	NA	NA
Projects	Available in Word files	NA	NA
Contract Awards	Available on quarterly basis for 2007, 2008, 2009 as Excel files for	NA	NA
Training	Annual training statistics for 2009 and 2010 as Word files	NA	NA
Complaints	Annual complaints lists as Word file (for 2007, 2009 and 2010 accessible, for 2008 not accessible)	NA	NA
Reports	Available as Word files	NA	Available as Word file
News	Three entries (April 22, May 21, May 24, 2010) only partly accessible	Entries of April 22 and May 24 are fully accessible but in Romanian language, entry of May 21 fully accessible in Russian language	NA
Standard Documents	Partly available in Word files	NA	NA
List of Qualified Suppliers	List of 46 Suppliers in HTML format	NA	NA
List of Blacklisted Suppliers	NA	NA	NA
Questions & Answers	NA	NA	NA
Register of Contracting Authorities	NA	NA	NA
Procurement through Universal Commodity Exchange	Documents available as Word files	NA	NA
Archive	All Public Procurement Bulletins of 2010 in PDF format available	NA	NA (instead of "Archive", "The request for price quotations" as headline)

NA ... not available

⁷ As of March 23, 2010

Attachment II: Snapshot of Public Procurement Portal⁸

The screenshot displays the website for the Public Procurement Portal (Agenția Achiziții Publice). The browser address bar shows the URL: <http://www.tender.gov.md/ro/procurement/bap/>. The page header includes the logo of the Romanian Republic and the text "AGENȚIA ACHIZIȚIILOR PUBLICE". The date and time are shown as "23 Mai 2010, Marti 14:58:33".

The main content area features a central message: "Informația va fi publicată în timpul apropiat". To the left, there is a vertical menu with the following items:

- DESPRE AGENȚIE ▶
- LEGIslaȚIA ▶
- PROIECTE ▶
- CONTRACTE ATRIBUITE ▶
- INSTRUIRE ▶
- CONTESTATII ▶
- COMUNICATE SI RAPOARTE ▶

Below this menu, there are several categories of documents and news:

- Noutati ▶
- Modele de documente ▶
- Lista operatorilor economici calificați ▶
- Lista de interdicție a operatorilor economici ▶
- Întrebări și răspunsuri ▶
- Registrul autorităților contractante ▶
- Achiziții publice prin intermediul Bursei Universale de Marfuri ▶
- Arhiva ▶

At the bottom left, there are links for "LEGIslaȚIA" and "GUVERNUL".

On the right side of the page, there is a search bar and a "Harta siteului" link. Below these are several featured news items:

- BULETINUL ACHIZIȚIILOR PUBLICE** (with a "vizitați" link)
- LEGIslaȚIA REPUBLICII MOLDOVA** (with a "vizitați" link)
- REFORMA ADMINISTRAȚIEI PUBLICE CENTRALE** (with a "vizitați" link)
- REGISTRUL DE STAT AL ACHIZIȚIILOR PUBLICE** (with a "vizitați" link)
- PUBLICITATEA OPERATORILOR ECONOMICI** (with a "vizitați" link)
- ANUNȚURI DE INTENȚIE** (with a "vizitați" link)

The footer of the browser window shows "Internet | Protected Mode: On".

⁸ As of March 23, 2010

Attachment III.1: Overview of Electronic Government Procurement

Definition

Electronic Government Procurement (e-GP) is the use of Information & Communication Technology (ICT), especially the Internet, by governments in conducting their relationships with suppliers for the acquisition of works, goods, and consultancy services required by the public sector.

The level of e-GP implementation comprises three basic phases

1. Online disclosure of information (e.g. publication of procurement notices, awarded contracts, and procurement law & regulations);
2. Online procurement transactions (e.g. electronic distribution of bidding documents and RFP/RFQ documents, electronic submission of bids/proposals/quotations, electronic bid opening);
3. Systems integration (e.g. integration of e-GP with systems for contract management, financial management, tax administration, and others).

Along the lines of traditional tendering and purchasing procedures, e-GP can be divided into e-Tendering and e-Purchasing

e-Tendering can be defined as a solution designed to electronically handle the process of public tender for the acquisition of specialized works, goods, and consulting services that are of high value and low volume. Contracts are usually awarded on the basis of price and other factors (e.g. performance, quality, efficiency).

e-Purchasing is a solution designed to electronically facilitate the acquisition of low value and high volume standard goods and services. Contracts are awarded on the basis of price as the only evaluation criteria. E-Reverse Auctions and e-Catalogues are included in this category.

Examples of e-Procurement systems supporting both, e-Tendering and e-Purchasing, include India's State of Andhra Pradesh e-Procurement system⁹, Chile's ChileCompra¹⁰, Korea's Koneps¹¹, and Western Australia's Government Electronic Market¹². Brazil's Comprasnet¹³ is a good example for electronic reverse auctions.

Benefits

Breaking down the physical barriers of space and time, e-GP allows a more transparent and efficient information flow as well as improved access to information and services. Beneficiaries

⁹ <http://www.eprocurement.gov.in>

¹⁰ <http://www.chilecompra.cl/>

¹¹ <http://www.koneps.go.kr>

¹² <http://www.gem.wa.gov.au/Gem>

¹³ <http://www.comprasnet.gov.br>

include not only governments and suppliers but also the public at large who can have access to transparent information on the public expenditure of taxpayers' money.

Many countries around the world are investing into the design and implementation of more or less complex e-GP system as part of the modernization of their public procurement systems. Transparency, efficiency, and improved quality of government procurement are among the main benefits.

In capturing all relevant data and information into a securely operated electronic system and automating public procurement processes, thus making them more compliant with the public procurement legislation, governments can reduce the opportunity for corruption or collusion by minimizing the risk of data manipulation or misuse. At the same time, procurement data and information can be made transparent to government decision-makers who, by using these data, can improve the quality of their decisions in the context of public procurement.

Besides transparency, e-GP provides for efficiency gains in terms of costs and time. As competition can be increased by opening up the access to online procurement notices to more suppliers – provided an appropriate infrastructure is in place – and transaction costs of the procurement process drop considerably (usually between 50 to 75 percent), prices of bids and proposals can be cut by usually 10 to 20 percent. These savings include time savings due to automated procurement procedures. A detailed summary of e-GP benefits can be found in the Appendix.

As the public procurement volume of a country amounts to a percentage of more than 10 percent, sometimes up to 20 percent, of the GDP, the use of e-GP may have a considerable impact on economic development due to huge savings and, in addition, due to the encouragement of small and medium enterprises to use modern technology and build the appropriate capacity.

Key Success Factors

Designing and implementing projects with major ICT components in the public sector have one issue in common: while ICT is basically available and can be used in many ways to improve government performance, there are some human factors which are critical to the success of any such ICT project including e-Government Procurement.

Experience in many countries, no matter which income level, has shown that government leadership is the most important key success factor of e-GP. A strong champion (some countries have seen the President in this role) needs to give the mandate of leading the e-GP initiative to an agency with excellent planning and management skills which is able to bring about collective commitment for change, inter-government coordination, and partnership with the supplier community.

Appropriate government leadership is also needed to meet the requirements of a few more e-GP key success factors:

1. Set a supporting policy & legal framework including a clear e-GP vision and strategy, the definition of roles & responsibilities, the legally enabling environment with sufficient flexibility in order not to become obsolete along the short innovation cycle of ICT;

2. Buyer and supplier activation, including awareness and capacity building among government, suppliers, and the public at large on the basis of a well-thought communication strategy, comprehensive training programs, and user help-desk facilities;
3. Technological infrastructure development including improved connectivity to promote equal access to online procurement data and information, interoperability based on common standards and procedures, appropriate security techniques, and clearly defined e-GP business models.

The following lessons learned are aggregated from e-GP implementation experiences in countries all over the world

Think big & start small – e-GP is a program rather than a set of hardware and software. An e-GP program needs to be based on a vision and clearly defined objectives. The implementation of e-GP requires an incremental approach with quick wins facilitating the successful continuation of the program.

Get a champion and stakeholders on board – Government leadership at high level is critical for successful e-GP implementation.

Establish a Lead Agency – Typically, the public procurement agency (as part of a ministry or as independent agency) leads the implementation of the e-GP agenda.

Assess the e-GP readiness and develop a strategy – Based on the assessment of the current e-GP situation, an e-GP strategy needs to be developed including an implementation plan with clearly defined responsibilities and milestones.

Raise awareness & build capacity – e-GP implementation is more about the human factor than about the technology. Successful change management requires awareness raising of the e-GP program and its benefits as well as appropriate capacity building.

Strengthen international dialogue – There is no need to re-invent the wheel. Based on an active international dialogue, countries can benefit from the good and bad practices in the area of e-GP implementation and take the lessons learned into consideration when designing and implementing their own country-specific e-GP system.

E-GP is far more than technology – Technology is just one component of an e-GP program which helps to improve the transparency and efficiency of public procurement. Successful e-GP implementation needs to address more important areas such as government leadership & management planning, policy & legal framework, buyer & supplier activation, and infrastructure & standards.

E-GP technology can complicate public procurement – Modern technologies, such as PKI, have the potential of complicating public procurement and generating unfair competition (digital certificates for example are not interoperable and the management of multiple digital certificate for different government agencies within and outside the country can create an additional burden for bidders; the acquisition of digital certificates can easily be used to create barriers for bidders to participate in public procurement).

Integration does not mean one application – The integration of an e-GP system with other relevant systems such as a financial management system does not require the same software application but rather an interface or link to such systems.

Decentralized public procurement does not require decentralized e-GP systems – A single centralized e-GP system can be used independently from time and location by all government agencies in a decentralized procurement environment. This does not only avoid duplication of e-GP development but also offers a single-window for government procurement to the private industry.

Don't forget the private sector – The efforts in the context of e-GP implementation need to include the private sector as a major stakeholder of e-GP.

Attachment III.2: Benefits and Beneficiaries of e-GP

	Government	Supplier	Public
Transparency	<ul style="list-style-type: none"> Anti-corruption Increased number of suppliers Better integration and interaction between governments Professional procurement monitoring/management Higher quality of procurement decisions and statistics Political return from the public 	<ul style="list-style-type: none"> Increased fairness/competition Improved access to government market Open the government market to new suppliers Stimulation of SME participation Improved access to public procurement information Government accountability 	<ul style="list-style-type: none"> Access to public Procurement information Monitor public expenditure information Participation Government accountability
Costs Efficiency	<ul style="list-style-type: none"> Lower prices/transaction costs Staff reduction Reduction in fiscal expenditure 	<ul style="list-style-type: none"> Lower transaction costs Staff reduction Improved cash flow 	<ul style="list-style-type: none"> Redistribution of fiscal expenditure
Time	<ul style="list-style-type: none"> Simplification/elimination of repetitive tasks Communication anywhere/time Shorter procurement cycle 	<ul style="list-style-type: none"> Simplification/elimination of repetitive tasks Communication anywhere/time Shorter procurement cycle 	<ul style="list-style-type: none"> Communication anywhere/time

ANNEX 7. CHECKLIST COMPARING NATIONAL COMPETITIVE BIDDING PROCEDURES AND WB POLICY

Checklist Comparing National Competitive Bidding Procedures and WB Policy				
	Yes	No	WB Policy	Remarks
Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?		X	Not allowed	Art 15 of the PPL provides authority to the procuring entities to decide to procure domestic goods and services. Even though this is not used in practice, this is not an acceptable restriction in the PPL.
Are there primary boycotts which are established by law?		X	Only primary boycotts are acceptable	--
Are bidding opportunities advertised in the local press?	X		Required	The bidding opportunities are published at the PPA's Procurement Bulletin published twice a week and also published at the PPA's website.
Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?		X	Required	Art 26.4 of the PPL provides for not less than 15 days for procurements through open and closed biddings.
Are contractors/suppliers prequalified for large/specialized contracts?	X		Required	Art 48 of the PPL requires use of "closed bidding" i.e. bidding with prequalification in procurement of goods, works and services of complex nature, but does not provide any other specific guidance.
Are minimum experience, technical and financial requirements (for pre- or post-qualification) explicitly stated in the documents?		X	Required	The PPL does not explicitly specify the qualifications requirements and leaves it to the bidding documents. In the absence of standard bidding documents, it is not possible to judge whether these are explicitly stated or not.
Registration				There is a registration

<p>should not be used as a substitute for advertisement when open competition is required. However, when advertising for civil works, borrowers could indicate the required minimum category of contractor specified in the registration system.</p>				<p>process, which is called white list, but this is for information purposes only and does not explicitly restrict participation of suppliers not appearing on the list.</p>
<p>Is an invitation to prequalify advertised for each procurement involving large or complex potential contracts?</p>	X		Required	--
<p>Are joint ventures with local firms required for foreign firms' eligibility?</p>		X	Not allowed	--
<p>Are joint venture partners jointly and severally liable?</p>	X		Required	--
<p>Are there set limitations to the number of firms who can bid for a contract?</p>		X	Not allowed	--
<p>Are parastatals allowed to bid?</p>	X		Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law, and (iii) are independent from borrower and its purchasing/contracting authority.	There is no restriction or regulation on the participation of parastatals (state owned enterprises) in public procurement.
<p>Are bidders required to register with a local or federal authority as a prior condition for bidding?</p>		X	Should be discouraged. Acceptable only if registration criteria, process and cost reasonable/efficient and qualified foreign firms are not precluded from	There is a registration process, which is called white list, but this is for information purposes only and explicitly does not restrict participation of suppliers not appearing on

			competing.	the list.
Are extensions to bid validity allowed?	X		Acceptable only if justified by exceptional circumstances.	--
Are there restrictions on the means of delivery of bids?		X	Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.	--
Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?		X	Not allowed	Article 44.6 of the PPL provides set-asides that limit competition. The bids offering the products of the enterprises owned by the Association of the Blind, the Association of the Handicapped, the Association of the Deaf, the production facility of the National Psychiatric Hospital or the penitentiary system institutions and bids offering agricultural products and foodstuffs, which are ecological or in the period of transition to the ecological production processes, shall enjoy the preferential margin of 20% of the bid price found to be the best.
Are there restrictions on sources of labor and material?		X	Not allowed, except for unskilled labor, if available locally.	--
Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?	X		Required	Public opening of bids is regulated by Art 43 of the PPL and provides for opening of all bids at the date, time and place specified in the bidding documents. The PPL does not explicitly indicate that the bids must be opened immediately after the bids submission deadline, but the practice is to open bids on the same day of the bid submission deadline and

				usually within 30 minutes of the deadline for bid submission.
Is a “two envelope” bid opening procedure permitted for procurement of goods or works? ¹⁴		X	Should be discouraged. Allowed only if (i) domestic law precludes use of one envelope and (ii) provided adequate safeguards against retaining second envelope unopened are incorporated in the two envelope procedures and effective bid protest mechanisms are already in place for the due processing of bid complaints.	--
Is automatic rebidding required if too few bids are received?	X		Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result.	The PPL does not have any specific provision for this, however, Government Decision #245 dated March 3, 2008 requires at least 3 bids in procurement through RFQ method. Otherwise, the process needs to be repeated. In Open Bidding, there should be at least 2 bids received for procurement of works and services, otherwise the process needs to be repeated, but there is no such requirement for procurement of goods.
Is “bracketing” used in bid evaluations? ¹⁵		X	Not allowed	“Bracketing” is not used in bid evaluation, except that Art 59.1.c of the PPL provides that the procuring entity may cancel the procurement process if the bid price is more than 20%

¹⁴ All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round.

¹⁵ Rejection of bids outside a range or “bracket” of bid values.

Are bid evaluation criteria other than price allowed?			Only if quantified in monetary terms	higher than the estimated value of the works. Art 45 of the PPL describes the award criterion as “the most economically advantageous tender” wording borrowed from the EU legislation. As a result, the criteria are not always quantified in monetary terms or assessed on a pass/fail basis. On the contrary, they must be based on weighting. According to Article 45.a, price must account for not less than 80% of the score in procurement of goods and works.
Is award made to lowest evaluated qualified and responsive bidder?	X		Required	--
Are price negotiations conducted with “winning” bidders prior to contract signature?		X	Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price. (See Guidelines para 2.60)	--
Are price adjustment provisions generally used?		X	Not required, but recommended for works contracts of one year or more in duration when domestic inflation rate is high.	--
Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract	X		Required (to be acceptable they should be balanced, reasonable, and clearly address the most important issues that lead to problems during	In the absence of the standard bidding documents and standard forms of contracts mandatorily used by all procuring entities, it is difficult to judge the

intended?			performance, e.g. risk allocation, payment, inspection, completion/acceptance, insurance, warranties, changes, contract remedies, force majeure, governing law, termination, etc.)	appropriateness of the contract terms and conditions.
Are contract scope/conditions modified during implementation?	X		Acceptable, but the WB's approval is required for changes in those contracts that were subject to prior review under the Loan Agreement.	--

ANNEX 8. NATIONAL COMPETITIVE BIDDING PROCEDURES

The procedure to be followed for National Competitive Bidding shall be the Open Bidding Procedure set forth in the *Law on Procurement No. 96-XVI* dated April 13, 2007 with due consideration to economy, efficiency and transparency as set forth in, and broad consistency with, Section I of the of the “Guidelines for Procurement under IBRD Loans and IDA Credits” published by the WB in May 2004 and revised in October 2006 and May 2010 (the Guidelines) and required by paragraphs 3.3 and 3.4 of the Guidelines.

Eligibility: The eligibility of bidders shall be as defined under Section I of the Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the WB for reasons other than those provided in Section I of the Guidelines. Foreign bidders shall be eligible to participate in bidding under the same conditions as national bidders. In particular, no domestic preference over foreign bidders shall be granted to national bidders in bid evaluation. The bidding shall not be limited to domestic goods or services.

Government-owned enterprises are eligible to bid only if they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are independent from Borrower and its purchasing/contracting authority.

Registration: Registration shall not be used to assess bidders’ qualifications. A foreign bidder shall not be required to register as a condition for submitting its bid and, if determined to be the lowest evaluated responsive bidder, shall be given reasonable opportunity of registering, without any hindrance. Bidding shall not be restricted to any particular class of contractors, and non-classified contractors shall also be eligible to bid.

Standard Bidding Documents: Bidding Documents, acceptable to the WB, shall be used.

Qualification Criteria: Qualification criteria shall be clearly specified in the bidding documents, and 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 merits points shall not be used. Such assessment shall only take into account the bidder’s capacity and resources to perform the contract, specifically its experience and past performance on similar contracts, capabilities with respect to personnel, equipment and construction and manufacturing facilities, and financial capacity.

Bid Submission: A minimum of 30 days shall be given for preparation and submission of bids after the publication of invitation to bid or the availability of bidding documents whichever is later.

Bid Opening: Bids shall be opened in public, immediately after the deadline for submission of bids. Bids received after the deadline for bid submission shall be rejected and returned to the bidders unopened. A copy of the minutes of the public bid opening shall be promptly provided to all bidders who submitted bids, and to the WB with respect to contracts subject to prior review.

Bid Evaluation: Evaluation of bids shall be made in strict adherence to the criteria that shall be clearly specified in the bidding documents and quantified in monetary terms for evaluation criteria other than price; merit points shall not be used in bid evaluation.

Contract shall be awarded to the technically responsive bid that offers the lowest evaluated price and no negotiations shall be permitted. 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. A bidder shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.

No bidder shall be rejected on the basis of a comparison with the employer's estimate or budget allocation ceiling without the WB's prior concurrence.

Rejection of All Bids and Re-bidding: All bids shall not be rejected or new bids solicited without the WB's prior written concurrence.

Complaints by Bidders and Handling of Complaints: The Borrower shall implement an effective and independent protest mechanism allowing bidders to protest and to have their protests handled in a timely manner.

Fraud and Corruption: The WB shall declare a firm or individual ineligible, either indefinitely or for a stated period, to be awarded a contract financed by the Association, 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, a contract financed by the WB.

Right to Inspect/Audit: Each bidding document and contract financed from the proceeds of the WB funds shall include a provision requiring bidders, suppliers, contractors and subcontractors to permit the WB, at its request, to inspect their accounts and records relating to the bid submission and performance of the contract and to have said accounts and records audited by auditors appointed by the WB. The deliberate and material violation by the bidder, supplier, contractor or subcontractor of such provision may amount to obstructive practice.