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UKRAINE

COUNTRY PROCUREMENT ASSESSMENT REPORT (CPAR)

SUMMARY REPORT



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***EUROPE AND CENTRAL ASIA REGION
THE WORLD BANK***

UKRAINE COUNTRY PROCUREMENT ASSESSMENT REPORT

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CURRENCY

Currency Unit = Ukrainian Hryvnyas (UAH)
US\$ 1.00 = 5.40 UAH (January 2001)

ACRONYMS & ABBREVIATIONS

AA	Authorized Agency (PPO) in Ministry of Economy
AC	Accounting Chamber (Audit)
CIS	Commonwealth of Independent States
COM	Cabinet of Ministers
CP	Commercial Practices
CPI	Corruption Perception Index
EBRD	European Bank for Reconstruction and Development
ECA	Europe and Central Asia Region of the World Bank
EU	European Union
FIDIC	Fédération Internationale des Ingénieurs-Conseils
FTO	Foreign Trade Organization
GOST	Russian Standards
GOU	Government of Ukraine
GPA	Government Procurement Agreement
IA	Implementing Agency
ICAC	International Commercial Arbitration Court
ICB	International Competitive Bidding
IDF	Institutional Development Fund
IFI	International Financial Institution
MOE	Ministry of Economy
NBU	National Bank of Ukraine
NCB	National Competitive Bidding
NGO	Non-Governmental Organization
OPRC	Operational Procurement Review Committee
PIU	Project Implementation Unit
PLW	Project Launch Workshop
PPL	Public Procurement Law
PPO	Public Procurement Office
PQ	Prequalification
RPA	Regional Procurement Advisor
SIDA	Swedish International Development Agency
SIPU	Swedish Institute for Public Administration
TACIS	Technical Assistance to Commonwealth of Independent States
TC	Tender Committee
TRIP	Trade Related Intellectual Property
UCCI	Ukrainian Chamber of Commerce and Industry
UNCITRAL	United Nations Commission for International Trade Law
USAID	United States Agency for International Development
VAT	Value Added Tax
VERKHOVNA RADA	Central Parliament of Ukraine
WBI	World Bank Institute
WTO	World Trade Organization

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UKRAINE COUNTRY PROCUREMENT ASSESSMENT REPORT (CPAR)

PREFACE

This report is prepared based on an assessment carried out by a World Bank team during its visit to Ukraine from October 13 to November 3, 2000. In the course of the field work by the team, a seminar was held, with about 80 participants from different levels of the Government, in which (i) the Bank team discussed Bank's procurement policies and procedures with the executing agencies implementing Bank-assisted projects; and (ii) the Public Procurement Office (PPO), Government of Ukraine (GOU), presented the country's procurement regulations, implementation issues and the preliminary findings of the Bank's team.

The Bank's CPAR team comprised of Mr. Harbaksh S. Sethi, Consultant Advisor, Ms. Karina Mostipan, Procurement Specialist, Mr. Jagdish Jassal, Procurement Consultant and Messrs. Sergei Bushuyev and Vladimir Nakonechny, Procurement Consultants from Ukraine. Prior to undertaking the field work, a detailed questionnaire was issued to counterparts and other agencies to collect information and issues on the procurement system in public and private sectors. The team held almost 50 meetings with officials of ministries, oblast and city administrations; public and state agencies; private sector organizations, firms, institutions and NGOs; national and international banks; international organizations and firms; and agencies implementing Bank's assisted projects. The meetings focused on the status of procurement legal framework and regulations; procedures and practices; problems impacting the implementation of the procurement system; and seeking improvements in the public procurement system in the country. On the part of the GOU, the PPO in the Ministry of Economy (MOE), Ms. Obushko and her colleagues, cooperated very closely and effectively with its team in a comprehensive dialogue and discussions on legal framework, institutional organizations and recommendations for improvements to the Public Procurement Law (PPL) but expressed its inability, due to inadequate resources, to provide staff to work within the Bank's team in individual meetings.

Section I of the CPAR report describes Ukraine's existing public procurement system, including its policies, procedures and practices as well as institutional and organizational framework. It assesses the implementation aspects and makes recommendations for reforming the system in major areas. Section II identifies issues in the implementation of projects financed by the World Bank. The performance of the private sector in the procurement process of the country, with its emerging issues, is described in Section III. Finally, Section IV suggests an action plan with key recommendations for implementation by the Government. Attachments list a summary of different provisions in the PPL; strengths and weaknesses in the public procurement system and provisions in the Law discussed with the PPO to further improve the legal framework; and a technical assistance program for consideration by the Bank.

The Bank team would like to thank the Deputy Minister of MOE, Mr. Victor Kalnyk for all his support and assistance provided to the Bank's team in organizational and discussion arrangements, as well as officials of all government agencies and ministries, private sector organizations, and NGOs that contributed to this CPAR study. The team wish to acknowledge the guidance and support by Mr. Gregory Jedrzejczak, the Bank's Representative of the Country Office in Ukraine. It appreciates very much inputs provided by staff from country, sectors, policy and legal units of the Bank. Ms. Irina Shmeliova and Ms. Julia Tomilenko assisted with making all logistics arrangements of the Bank's team. Mr. Mohammad Ilyas Butt assisted with the processing and formatting of the full report.

EXECUTIVE SUMMARY

Background

The main objectives of the country procurement assessment are to diagnose the public procurement system in Ukraine, assess compatibility of the country's laws, policies and procedures with international best practices, review compliance with the procurement laws and regulations and identify areas for improvement of the procurement system in Ukraine.

Legislative Developments to Date

Ukraine began its first concerted effort to draft comprehensive public procurement legislation in 1996, with assistance from European Union TACIS program. Following that, the Government requested the World Bank's technical advice with drafting a new law in 1997. In 1998, USAID provided assistance in further refining the draft law, in the light of advice given by the World Bank and Ukraine's other development partners. In a related area, a Presidential Decree of 1998 launched the Government's "National Anti-Corruption Program" aimed, among other things, at combating corruption related to public procurement. These sustained efforts on the part of the Government of Ukraine to develop the country's legislative framework for public procurement illustrate the Government's strong commitment to this important area of reform and deserve recognition.

These efforts culminated, in February 2000, with the enactment of Ukraine's first Law "On Procurement of Goods, Works, and Services for Public Funds" (No. 1490-III dated 22 February 2000), which came into effect in July 2000. This law represents Ukraine's most significant step to date towards the establishment of an open and transparent national procurement system.

The 2000 Public Procurement Law contains many of the essential elements of a sound procurement regime, including:

- a decentralized procurement system, under which ministries, public agencies and state enterprises at different levels of the public administration - central, oblast (district), city and local - undertake their own procurement;
- appropriate and internationally accepted procurement methods for goods, works and services;
- competitive procurement procedures at national and international levels, with the participation of foreign bidders regulated through the application of financial thresholds, and support for the development of domestic industries provided by a domestic price preference scheme.
- transparency in public procurement, achieved through open access to information on bidding opportunities;
- monitoring and enforcement of the law through the creation of a national Public Procurement Office (PPO) in the Ministry of Economy.

The Impact of the 2000 Public Procurement Law

The introduction of the 2000 Public Procurement Law has brought with it encouraging signs of increased competition in public procurement, as evidenced by increased use of the Open Tendering procurement procedure, the main method of competitive bidding. The share of Open Tendering in public tenders increased from around 64% in 1999 to 82% in 2000, largely due to the introduction of a requirement that PPO approval was required for the use of procurement methods other than Open Tendering. During 2000, approximately 350 public tenders out of a total of 1,682 (21%) were conducted under procedures other than Open Tendering and these were primarily for emergency requirements. The savings achieved through this increased application of Open Tendering have been estimated at 20%, by comparison with prices previously paid for similar requirements.

Remaining Challenges

However, with due recognition of the considerable achievements made to date, the Government of Ukraine continues to face challenges in the further development of the country's public procurement system. The most significant of these relate to:

- further development of the legislative framework;
- improving procurement procedures and practices;
- increasing competition;
- more effective and consistent implementation of the Public Procurement Law;
- combating procurement-related corruption;
- developing the institutional capacity of procuring entities;
- improving the professional qualifications of public-sector staff;
- increasing compatibility with international bodies of procurement law, including those of the European Union (EU) and the World Trade Organization (WTO).

The Future Reform Agenda

To develop the procurement legislation further, this report recommends that the first step which the Government should take is to issue regulations containing a clear, transparent set of rules and regulations for the implementation of the Public Procurement Law.

Also, to improve procurement procedures and practices and to bolster enforcement, there is a pressing need to draft and promulgate a comprehensive set of standard bidding documents for use by procuring entities.

Furthermore, strengthening the institutional and organizational resources which underpin the public procurement system will require expanding the functions of the PPO to empower it to take the lead in developing future legislative reform, in formulating procurement regulations, in developing procurement documentation and in procurement training. Over the medium term, the Government should also take steps to safeguard the independent character of the PPO, to ensure that it has the autonomy necessary to exercise its regulatory functions effectively.

A further important area requiring action is the building of institutional capacity of procurement entities to undertake procurement efficiently. This will require the development of national resource centers to deliver procurement training, thereby increasing the professional capacity of public officials charged with implementing procurement.

This report makes detailed recommendations in all of these areas, which have been consolidated into an **Priority Action Plan** of prioritized tasks (see page 31). In the discussions which the Bank held with the Deputy Minister of Economy, at the end of the assessment mission, agreement was reached that the Government will introduce the reforms proposed in this report. The Bank also undertook **steps** to support Ukraine's continuing reform process through **Dutch grant technical assistance** for implementation of this report's recommendations.

Over the medium to long term (2001-2007), the Government has expressed its intention of developing Ukraine's public procurement system so as to achieve compatibility with international legal norms, such as those of the EU and WTO, and has recently formulated its **Action Plan** with that objective (see page 33).

Procurement-Related Areas

This assessment also examined the following areas of Government operations and of the Ukrainian economy which impact on the performance of the public procurement system.

Public-Sector Auditing: The Accounting Chamber of Ukraine has, as part of responsibility for auditing Government expenditures, identified a number of violations of the public procurement legislation, including instances of fraudulent and corrupt behavior on the part of procuring entities. These cases, which are under investigation by criminal and administrative bodies in Ukraine, highlight the need to strengthen the state's capacity to audit public expenditures on procurement (see page 13).

Development of the Private Sector: Ukraine has enacted a significant body of legislation in areas of the law which impact upon the development and operation of the private sector, including finance, entrepreneurship and commercial law. However, there remain significant constraints on the sector's development, including limited access to commercial credit and an under-developed banking sector. It is clear that the legal and commercial environment in which private-sector firms operate requires further development (see page 24).

SECTION I: THE PUBLIC PROCUREMENT SYSTEM

LEGAL AND REGULATORY FRAMEWORK

After the break up of the Soviet regime, Ukraine initiated several steps in introducing new laws to shift from a socialist economy to a market oriented one. Development of the public procurement system in Ukraine has been in an evolutionary process since the early 1990's. The first regulation (Resolution No. 871), prepared with support from UNCITRAL and introduced in October 1993, required international bidding for procurement of imported goods, works, and consultant services financed from state funds or out of foreign credits guaranteed by GOU, under oversight of the Ministry of External Economic Relations.

While the various resolutions provided for decentralized procurement at different levels of government administrations, these failed to provide sufficient clarity and guidance to procuring entities which resulted in inconsistencies in procurement practices among procuring entities and numerous instances of non-compliance. Thus there was a need for a unified procurement law for goods, works and services, with its policies and procedures. Secondly, there was an absence of a separate central procurement office to oversee the implementation of procurement by procuring entities. The government recognized these drawbacks and initiated steps as early as 1996 when it drafted a comprehensive public procurement legislation with the assistance from TACIS. Further technical assistance and advice was provided by USAID and The World Bank. Consequently, in February 2000, Ukraine enacted a first Public Procurement Law "No. 1490-III- On Procurement of Goods, Works and Services for Public Funds" which came into effect July 2000. Although a central public procurement office (PPO) was created in 1999, its roles and responsibilities were only manifested in the new Law of 2000. The PPO plays a policy making and oversight role for Ukrainian public procurement.

The new Law addresses the main principles of procurement relating to economy, efficiency, international competition, and transparency and provides important features such as decentralized procurement systems, appropriate procurement methods, functions of public procurement office, anti-corruption measures, appeal process, accreditation of procurement staff, etc. However, failure of many provisions to be explicit and clear has led to problems of inconsistent and non-uniform application of the new procurement law. A number of regulations aimed at addressing these issues are thus in different stages of preparation, clearance and adoption within the government administration.

The GOU demonstrates a strong commitment in introducing these regulations to the procurement reform process so as to enforce the provisions of the new PPL expeditiously. There are however, important regulations which need to be put in place for a comprehensive implementation of the Law in a transparent and efficient manner. These relate to domestic preference, procurement performance review, and most importantly, harmonization of laws, especially in the area of fraud and corruption. The draft law on harmonization has been pending with the Cabinet of Ministers since September 2000 and

needs to be expedited. Also, equally critical for an efficient and uniform application of the PPL is the accreditation of qualified procurement staff. Further, there are some areas in the Law which need clarifications, changes and amendments in order to provide efficiency and transparency to the process and to avoid misuse or abuse. For example, the Law does not have separate procurement methods for the selection of consulting and technical assistance services. Other issues are: price of the “Best” bid higher than the allocated budget; least number of responsive bids in restricted tendering; thresholds for participation of foreign firms. For the integrity of the public procurement system and transparency of the procurement process, the team agreed with the PPO to initiate steps for making the necessary changes in the PPL (Attachment 2). Detailed discussions of these subjects are provided in the Section “Policies, Procedures and Practices” in the report.

INSTITUTIONAL FRAMEWORK, ORGANIZATION AND RESOURCES

The PPL of 2000 authorizes the COM to designate an Authorized Agency (AA) for monitoring and coordinating procurement of goods, works and services. Even before the law was formally enacted, a Public Procurement Office (PPO) was created in 1999 in the Ministry of Economy to assist in the development of the law. The mandated functions of the PPO include: development of legislation; co-ordination, monitoring and enforcement of procedures; institutional capacity building; etc.

The PPO functions are entrusted to the Department of Public Procurement in the Ministry of Economy, with its own chief. The PPO functions under the overall administrative jurisdiction of the Minister Of Economy. Currently, there are three divisions with a staff of 15 persons (i) Legal, Monitoring and Complaints; (ii) Information, Training and Compliance; (iii) Review and Approval. It is intended that PPO shall establish some field offices in the Oblast administrations. The institutional capacity and professional capability to undertake the mandated functions are inadequate for efficient implementation of the Law. Therefore, strengthening and augmenting PPO staff resources is critical. The proposed technical assistance program is necessary for completing the work program. The role of developing, monitoring, and overseeing the public procurement system is best served if the PPO is an independent agency under the Cabinet of Ministers. It is recommended that the Government initiates steps to ensure an independent status of the PPO in near future.

The PPL establishes a decentralized procurement system under which the procurement is delegated to a large number of procuring entities at state, Oblast and local administered bodies. The procurement capacity in main line ministries and state owned enterprises varies and needs overall strengthening. At Oblast and local levels, the Bank team found the procurement capacity either low or non existent; the officials handling procurement in some Oblasts were hardly aware of the scope of PPL 2000. In some city administrations, however, the procurement staff appeared to be aware of their responsibilities under the new Law but complained of weak support in seeking clarifications, detailed guidelines and bidding documents. In a newly issued Order # 224 of October 2000, some coordinating functions of PPO have been delegated to departments of economy in

autonomous Republic of Crimea and to Oblast administrations (Kiev and Sebastopol). Inadequate procurement capacity and expertise in Oblast and local bodies is one priority area that needs to be addressed.

The PPL refers to establishment of a Tender Committee (TC) to conduct procurement proceedings. The Government order # 280 in December 2000, provides general guidelines on procedures for the appointment of TCs and their responsibilities. The TC may establish additional working groups. Also, the procuring entity may conclude contracts with outside organizations to perform the functions of TC. Decisions of the TC shall be adopted by simple majority vote with a presence of at least two-third of all members. In practice a tender committee is said to have twelve to fifteen members. This process of decision making provides little confidence in the fairness of the process, which may be manipulated to meet vested interests.

Although the government has made substantial progress in the development of the procurement law, regulations and decrees, one of the major impediments in realizing fully the economy and efficiency of public procurement is the implementation part of the legislation. It is recognized that under Bank financed operations, implementation is largely satisfactory because of procurement training delivered by the Bank for implementing agencies' staff. Some other international agencies, especially SIDA have provided training assistance to PPO and other agencies. Also, The World Bank Institute (WBI) provided grant funds to train the trainers and support facilities to establish project and procurement management courses at certain academic institutions in Ukraine, such as, the Academy of Public Administration in Odessa. These efforts have undoubtedly established some basic skills in both public and private sectors. However, the majority of staff at all levels of the government, especially in Oblast and local bodies, have inadequate understanding of national and international public procurement, rationale for procedures in the procurement process and the importance of ethics.

The PPL has designated the PPO to undertake training of procurement specialists and to establish a program for accreditation. However, the PPO **does not have adequate resources both human and financial to undertake such tasks on a continuous basis. Although it has conducted 17 seminars as of June 2001, organizing training for about 1000 government officials administering state funds, this effort has to be continued to have any meaningful impact.** In a Bank conducted procurement seminar, during the CPAR field work, attended by about 80 participants from different public agencies, concerns were expressed that sufficient training and guidelines have not been provided to undertake public procurement in accordance with the PPL. The Bank team has estimated that technical assistance is required to train (i) about 15 to 20 trainers in different regional training centers; (ii) about 250 public officials from governments and administrations; and (iii) about 1,500 persons from Oblast and local bodies. It is recommended that the government formulates a strategy for procurement training, e.g. number of public officials to be trained, training institutions to be involved, scope of training and courses and recommendation for this purpose. Academic institutions in Ukraine can assist in conducting such training both for public and private sectors.

The business community is an important stakeholder in the public procurement system. Understanding the policies, procedures and rules of procurement would increase the degree of competition for better economy in public procurement. Currently, participation of domestic enterprises in public procurement is quite limited, as the business community in general is not well conversant with the provisions of PPL. There is a pressing need to inform the business community about the PPL and to train them in the preparation of responsive bids. Some academic institutions offer educational courses in international procurement. These institutions can provide support to government efforts to conduct Business Outreach Seminars. The Bank team estimates that the training of some 15,000 persons would be required. The government should develop a program in coordination with academic institutions to hold information seminars on the public procurement law.

POLICIES, PROCEDURES AND PRACTICES

Details of different aspects of the procurement policies and procedures contained in PPL are provided in Attachment 3. The main features of these policies and procedures are covered below:

Procurement Policies

The PPL 2000 covers procurement of goods, works, and services to be financed out of public funds in full or in part. The Law specifically excludes procurement of goods, works, and services within the scope of the national defense and those that may be specially exempted by Cabinet of Ministers (COM). The criteria under which COM can exclude some procurement from the application of the law are not provided in the PPL 2000. Also, the Law includes the procurement of consultants as part of the services and does not specifically provide for consulting and technical assistance services. The procurement of such services requires specialized terms of bidding and evaluation approach. It is therefore critical that the Law makes a separate provision for consulting and technical assistance services. Under the new Law, public procurement is decentralized to all levels of government, enabling each entity to conduct its own procurement in accordance with prevailing law and its related regulations.

Procurement Planning

Procurement planning is critically linked to the budget planning and allocation, and more importantly the release of funds to budget users; this has a considerable impact on effective application of the PPL to achieve economy and efficiency. Current budget practices require the line ministries and other procuring entities to submit in August/September budget estimates and procurement schedules for goods, works and services for the following year. The planning and procurement process starts only after the approval of the national budget by Ukrainian Parliament. The budget allocation for the year 2000 was approved only in February 2000. However, due to tight budgetary situation and frequent shifting in priorities, the monthly allocations for procurement are not released in full or on time, thereby causing delays in the procurement schedule. Each procuring entity is therefore forced to adopt procurement practices requiring short time procurement periods but which may not fully meet the criteria of economy and efficiency. It is suggested that the government develops a rolling three-year budget

allocation plan in which the following year allocation is approved in October/November and for additional two years some tentative funds are provided so that procurement can be planned and efficiently undertaken for long term contracts, particularly for civil works. In addition to these constraints in budget allocation planning, there are also factors hindering a sound procurement planning in technical aspects. For example, there are a number of weaknesses, such as project design, packaging of procurement items, cost estimation and technical control, etc., which contribute to making the planning process inefficient and uneconomical.

Dissemination of Procurement Information

The Law meets, in general, the principles of transparency in providing information to and communication with business community. For contracts above EUR 10,000 for goods and services and EUR 40,000 for works to be procured under open tendering process, the Law requires advertisement of procurement notices, invitation to bid, prequalification and disclosure of bidding results. All announcements relating to tenders and prequalification are required to be published in the bulletin "Visnyk Derzhavnykh Zakupiv" (VDZ), issued by PPO, as well in local and, when required, in international media. For contracts exceeding EUR 200,000 for goods, EUR 300,000 for services, and EUR 4 million for works, the announcements are also required to be published in international media, including electronic communications network. The Law provides adequate guidance on the preparation of announcements. The advertisement process has been very effective since the adoption of the law. During 2000, over 80% of contracts were procured through advertisement. All communications between a procuring entity and a bidder are required to be in writing. Notification of contract award, rejection of all bids and contents of any procurement complaint is provided to all bidders. To further enhance transparency, it is suggested that:

- *PPO should introduce an on-line version of the VDZ publication for large value contracts in the English language to improve access to foreign bidders.*
- *The bulletin should disseminate procurement information on critical issues, best practices and case studies.*
- *The bulletin should publish sanctions against bidders and officials for any misuse or abuse of the procurement system in Ukraine.*

Participation in Procurement

The PPL includes multiple provisions which, on one hand, provide a perception of encouraging broader participation on national and international level but, on the other hand, follow a protectionist approach in favor of domestic bidders by excluding foreign bidders participation below specified thresholds.

The technical and administrative requirements are unduly large. For civil works and services, bidders are required to submit a license or permit. During the CPAR team's discussions, the domestic bidders complained about lack of uniformity in administrative requirements, such as certificates, licenses, etc. Such requirements are equally applicable to foreign bidders. Their participation becomes much more limited as it takes three to four weeks to obtain a license in Ukraine. For drugs and pharmaceuticals, the registration process takes one to six months. As mentioned earlier, the Law provides for compulsory announcements of prequalification (PQ) process but fails to specify the nature of contracts or monetary thresholds for this purpose. Also, the preparation time for PQ submission is too short to encourage a broader and efficient participation and competition.

To encourage the development of local industry, the Law provides for domestic preference to bids submitted by domestic manufacturers by applying a preferential adjustment of 10% to the bid price. The Law also permits procuring entities to restrict the bidding to domestic bidders for contracts below EUR 4 million for works, EUR 0.2 million for goods, and EUR 0.3 million for services. In addition to this, the

Law, under national competition, provides for a 15% preference to bids submitted by enterprises employing handicapped and persons in Ukrainian correction institutions.

The Law however fails to provide any guidance on eligibility and the methodology for application of domestic preference. Moreover, the Ukrainian domestic industry (manufacturing, construction and consulting) is in the process of development to compete efficiently in quality and price at international level. Exclusion of foreign bidders below the specified financial thresholds in the PPL is therefore not in the interest of Ukraine in developing an efficient industry. These thresholds should be reduced to allow more competition. Additional requirements for foreign bidders to submit documents in the Ukrainian language (the law recognizes only the Ukrainian version as valid) and to integrate domestic inputs, both materials and labor, could only be viewed as discriminatory procurement practice and would discourage wider application of competition.

Efficiency, Transparency and Integrity of Procurement Procedures and Process

The PPL includes appropriate and internationally accepted procurement methods: Open Tendering; Restricted Tendering; Two-Stage Tendering; Single Source; and Request for Quotations. The monetary thresholds for application of Open Tendering and Request For Quotations are provided in the Law. As mentioned earlier, the PPL is silent on procurement methods for consulting and technical assistance services. Brief details of the different methods are provided below.

Public Procurement Law: Procurement Methods

Open Tendering: Main procurement method that can be used irrespective of contract value. However, use of another method for contracts above EURO 100,000 requires approval of the PPO. All announcements relating to procurement above EUR 10,000 for goods and services, and EUR 40,000 for works, are to be published in VDZ and local media. For contracts exceeding EUR 200,000 for goods, EUR 300,000 for services, and EUR 4 million for works, advertisement is also required in international bulletins and international electronic network. The Law forbids breaking procurement packages into smaller lots to avoid Open Tendering. Formal procedures are mandated to conduct this method.

Restricted Tendering: This method is intended for goods, works, and services that are offered by limited number of bidders or if the procurement is of secret nature. A minimum of two bids are required. The procurement procedures differ from open tendering procedures by different format of Invitation for Bids. Use of restricted tendering for contracts valued above EUR 100,000 requires approval of the PPO. Contracts below EUR 100,000 may however be procured without approval of the PPO.

Two Stage Tendering: Its use is permitted if: (i) nature of goods or services is not clear; (ii) the bidding through open or restricted tendering resulted in rejection of all bids; (iii) for new construction work which is similar to works contracted through open or restricted bidding; (iv) scientific research; and (v) consulting or other specialized services. The process for two stage is similar to that of two stage in the Bank's guidelines. The procedures of open tendering apply here also. For contracts below EUR 100,000, the procuring entity may decide for this method without approval of PPO.

Single Source: This method may be used with the approval of PPO for procurement of: (i) proprietary items; (ii) items available from a single source; (iii) procurement of secret or scientific nature; (iv) short term supplies available at prices below market price; (v) medical and household services; and (vi) for contracting additional work not in original design but considered critical provided the cost of additional work does not exceed 50% of the main contract price. Without approval of PPO the single source can be used for goods and services not exceeding EUR 5,000, and works – EUR 100,000 pursuant to Ministry of Economy order #268 of Dec.12, 2000.

Request For Quotations: For contracts of goods and services below EUR 10,000 and works below EUR 40,000 this method is applicable. At least three quotations are required. The quotations are submitted in sealed envelopes by a specified deadline and are opened at specified time in the presence of participating bidders. The contract is awarded to the lowest priced bidder.

The use of a procurement method other than Open Tendering for contracts exceeding EUR 100,000 requires approval of PPO. The law is however silent on the discretion by procuring entities to select a procuring method below EUR 100,000. The conditions for use of Restricted Tendering and Two-Stage Tendering needs to provide more clarity and precision. In the absence of detailed guidelines governing the use of procurement methods and procedures other than Open Tendering it is not clear how such exceptions will be decided and how consistency in exception policy will be maintained by PPO. Secondly, the use of Single Source for contracting additional work up to 50% of the value of the main contract price could be abused. Third, the requirement of minimum of two bids for Restricted Tendering could lack economy and transparency and thus open to abuse and favoritism.

There are no standard bidding documents in Ukraine. The PPL provides guidance on preparation of bidding documents including instructions to bidders, information on bidding, and broad conditions of contracts. The requirements lack completeness, precision, and adequacy which more frequently lead to different interpretations by different entities and thus increased the possibility of deficient procurement

process. The instructions have to be made clearer, evaluation system more precise and objective, and technical specifications and description of civil work more broad based and less restrictive in order to ensure wider competition and realistic prices. The PPO has agreed to develop and issue separate standard bidding documents for goods, works, and services. Further, the framework for bidding documents included in the PPL is not suitable for consulting and technical assistance services.

The proposed time period in the PPL for preparation of bids does not allow maximum participation of bidders. The PPL provides short period for preparation of prequalification application. Although it specifies 45 days for bid preparation, but the PPL also contains provision to reduce this period to 15 days for reasons to be specified by a procuring entity. The shorter period has actually become a practice in the procurement process. Bidding documents may be amended by a procuring entity up to 3 days prior to the deadline for bid submission and the deadline for bid submission extended only if considered necessary. Several contractors and businesses complained that procuring entities do not provide sufficient bid preparation time and often make amendments without extending the deadline for bid submission.

The PPL provides that bidding documents contain information about the currency (currencies) in which the bid prices should be quoted. In practice, there are two areas with problem. First, civil work contracts are strictly regulated by Ukrainian Constructions Standards (DBN) according to which different types of civil construction activities have unit rates. Contractors complained that regulation of prices does not provide incentives to contractors to participate. Secondly, the high inflation in the country has led to inclusion of prices in foreign currency and consistent adjustment of prices in contracts. The PPL does not provide any guidance on the adjustment of prices. It is common practice in Ukraine that prices are quoted in US Dollars and the contract is expressed in that currency. However, the Ukrainian legislation prohibits payment in a foreign currency for goods, works, and services provided by domestic bidders. Thus, the payments in local currency are made based on prevailing exchange rates. This is further complicated if there are foreign imports in domestically supplied goods, works and services or there is a longer period in the execution of a contract. Contractors tend to argue for an adjustment of prices, contracted in foreign currency, on the basis of local inflation and in some cases it was found that such double-dipping had occurred. It is suggested that detailed instructions on pricing and payment of bids/contracts be issued by PPO.

The PPL contains provisions for bid and performance securities. The maximum bid security for civil works is 1% of estimated cost and 5% for goods and services. However, the law fails to specify that the bid security should be in "original" form. Also, the law allows that bid security may be submitted on behalf of a bidder by another entity. Such arrangement has implications on the validity aspects of a bid and is questionable. If stated in the bidding document a successful bidder is required to furnish a performance security up to 15% for goods and services but only 5% for construction works. On the provision of securities by domestic bidders, there are serious difficulties. There are less difficulties in obtaining securities and credits from commercial banks but to provide such securities the banks usually demand 100% cash collateral for the amount of security throughout the validity period, and the cost of obtaining such securities is high. Further, there is high risk of losing the securities since state enterprises as employers are generally high in debt and any securities as receivables could be adjusted against collection from such enterprises. Thus, in practice, in most public sector procurement, the bid securities are not asked for.

The bid opening procedures contained in the PPL are transparent. The information read out at bid opening in the presence of bidders and transmitted later to all bidders, is well recognized. However, the Law does not specifically require the bid opening to immediately follow the deadline for bid closing. In actual practice, bids are opened as late as one week after the deadline for receipt of bids thus compromising the integrity of the bidding process. The Law mandates return of bids unopened if these are submitted after the expiry of due submission time.

The Law covers two main aspects of bid evaluation: (i) evaluation criteria; and (ii) tender committee. The law prescribes broad criteria for evaluation. In addition to price, other factors, both objective and subjective, are proposed. The technical evaluation criteria contained in the law lack clarity as to the application of proposed factors. Among the procuring entities it is a common practice to combine

qualification and technical criteria as well as price for evaluation purposes in which the former could be given a relatively higher weight. Contract is awarded to the bid which is ranked as "Best". The Law does not clarify the definition of "Best" bid. Among procuring entities, there is also variation in the application of evaluation process i.e. weighting of cost and quality. The evaluation criteria provided in the Law are too vague to be converted into monetary values i.e. economic advantage, technology transfer, use of local resources, etc. Further, the Law is silent on discounts while in actual practice bidders' discounts are considered, mostly, at negotiations.

The PPL envisages the appointment of a tender committee by procuring entities to assume charge of implementation of a procurement process. The PPO is in the process of defining procedures and functions of tender committees as required by the Law. The tender committees are required to evaluate bids in accordance with the criteria given in the bidding document. The composition, size and professional approach of establishing a tender committee is such that there is a real question of objective evaluation. Generally, a tender committee consists of 12-15 members among which there could be a representative from the concerned professional association. There is no doubt, that the business community has little confidence in the fairness of the process which is often subjected to meeting vested interests. Thus, a review of the evaluation system and procedures for establishing tender committees is critical and of extreme priority to ensure fair and transparent procurement process.

The law contains some provisions due to which the integrity of the procurement process may be at stake. The law, for example, permits a procuring entity to reject all bids if the number of bids received is less than two, and/if the price of the "Best" bid exceeds the budget allocation. Considering the cost and time involved in open and restricted tendering, the provision on rejection of the bidding process in cases of less than two responsive bids and in cases where the "Best" bid exceeds the allocated budget, needs to be reviewed by GOU.

In contrast to the Law, there is a widespread practice of negotiating contracts, including price, quantity and terms and conditions. The successful firm is often required to increase quantities or offer discounts to the quoted price so as to bring the bid price equivalent to budget allocation. Once a contract is signed, an announcement is published in VDZ bulletin to inform all other bidders. There are no standard formats for contracts which result in wide variation of contractual terms and conditions. The contract is concluded so as to be in compliance with provisions of Ukrainian Civil Code (1540-06), which was enacted sometime in 1963.

The Law provides procedures for formal appeals and complaints by bidders against violation of procurement procedures by procuring entities. Complaints may be submitted to the procuring entity or to the PPO prior to conclusion of the contract with the successful bidder. With the receipt of the complaint or appeal the procurement process is suspended for 15 days during which a decision by the procuring entity or PPO must be made. Also, all participating bidders are to be notified on the contents of the complaint so that they may provide their contribution or address similar claims. The Law is vague on the role of these two bodies in the decision-making process. In case of a valid complaint, a new bidding process is to be authorized by PPO. No other option is provided for in the PPL for procuring entity to evaluate the bids. The government should consider to authorize PPO so as to require procuring entity to undertake a re-evaluation of the bids. The timeframe of 15 days for final decision on a complaint is too restrictive and may not be adequate for a fair and equitable decision, especially in complex cases. Secondly, involving all participating bidders in the complaint process may reflect a high degree of transparency but will certainly delay the procurement process.

The foregoing findings illustrate the strengths and weaknesses in the procurement policies, procedures and practices. These are summarized in Attachment 1.

These deficiencies have led to high risk of influences in the public procurement system and thereby to uneconomic and in-efficient use of public funds. The Bank team discussed with the PPO, the areas which need strengthening of public procurement

legislation and its implementation aspects. The Government has expressed its strong interest, as part of its reform process, to invite recommendations on the procurement process, assemble lessons from the application of the existing Law and seek compatibility with international practices, especially compliance with Directives of European Union in seeking its association. Further reforms are required in:

Legal Framework

- Making appropriate amendments and clarifications in the PPL to enhance its clarity, transparency, efficiency and implementability.
- Implementing regulations, guidelines and instructions on the PPL for a consistent and uniform application by procuring entities.
- Establishing separate processing methods and procedures for selection of consulting and technical assistance services.

Organization Framework:

- Strengthening the public procurement office with adequate and capable staff so as to meet its responsibility for modification of existing procurement law, formulation of regulation and procedures, development of bidding documents, monitoring the procurement process, and providing training to procuring entities.
- Establishing the PPO as an independent agency under the COM.
- Enhancing training of PPO in international procurement.
- Publishing a procurement bulletin to disseminate procurement information and best practices.

Improving Procedures and Practices

- Modifying necessary procurement methods and processes to enhance efficiency and transparency.
- Streamlining pre-qualification criteria with selection based on meeting technical, financial, experienced and professional requirements (Pass/Fail system).
- Mandating the use of standard bidding and contract documents.
- Defining the evaluation system and criteria and limiting only to monetary converted factors and without any consideration of subjective provisions.

Enhancing Competition:

- Reducing the existing financial thresholds to allow participation of foreign enterprises for efficient growth of domestic industry.
- Allowing margin of preference for domestic goods, works and services that meet specific input criteria and eligibility.
- Deleting requirements for foreign bidders to integrate domestic inputs.

- Making business license/permit/registration a condition to contract instead of a bidding condition.

Strengthening Institutional Capacity:

- Providing extensive procurement training to procuring entities at all levels.
- Finalizing the procurement accreditation system in staff.
- Supporting procurement institutions to provide procurement courses and training to private sector and assisting Government in its training efforts.

Enforcing Procurement Process:

- Requiring procuring entities and business community to observe code of ethics in procurement and implementation process. The public procurement and related laws should publish sanctions in cases of misuse or abuse of the PPL.
- Introducing in the PPL, provisions for internal control mechanism within procuring entities for strict application of the law.
- Strengthening Accounting Chamber activities in the audit of procurements conducted by implementing agency.
- Supporting ant-corruption program of civil society and NGOs groups.
- Publishing sanctions and debarring enterprises involved in corruptive and abusive practices in the procurement process.

AUDITING AND ANTI-CORRUPTION MEASURES

Audit Control

The Ukrainian constitution provides for the establishment of a central audit mechanism “The Chamber of Accounting” to exercise control over the use of finances of the State Budget on behalf of the Ukraine Parliament Verkhovna RADA. The Chamber is a permanent entity and is independent of the government’s executive arm. The chairman and the members are appointed by the Parliament for a seven years term with the right to extend to another term. The financial resources for the Chamber are the allocations from the Ministry of Finance. The Chamber is currently understaffed for its functions. It employs about 200 persons mainly located in Kiev and plans to establish regional offices during 2001 by hiring about 150 additional staff. There are almost 1,000 users of public funds, however, under the current resources, the Chamber audits about 80 major users of public funds every year.

The Chamber sets its own standards for auditing. In its audit, the Chamber evaluates compliance with three main principles: (i) legality of utilization of funds; (ii) use of funds for intended purposes; (iii) efficient use of funds. It has recently released its 1999 annual report as well as a report on audit of World Bank operations. The audit reports are of public domain and are made available to the media. The main findings of the 1999 audit report, are summarized below:

- There have been violations of the current legislation of Ukraine in accepting some loans without the approval by the VERKHONA RADA.
- The efficiency of utilization of Bank’s loans is low due to lack of proper preparation of projects, approval and notification process within the Ukrainian system, slow implementation, etc.
- The projects implementation management system needs improvements.
- There have been some violations of currency legislation by some Ukrainian agencies

According to Chamber officials, there were numerous violations of legal requirements in the public procurement system in the past. One of the major problems in the past was the implementation of the various decrees and regulations governing public procurement and lack of compliance monitoring mechanism. The report expressed the urgency for better controls over the public expenditures particularly economy and efficiency in the public procurement process. It was stated that about 20 criminal cases started against officials on misuse of public funds but final actions are still outstanding. The Chamber welcomed the new PPL but expressed concerns regarding lack of clarity and supporting regulations and standard procurement documents and contract formats. The Chamber also welcomed the government anti-corruption initiatives with the involvement of international financial institutions and civil society. On the audit of The World Bank operations, the Chamber expressed its difficulty in not being fully conversant with Bank’s procurement policies and procedures and expects its participation in training for such procedures. TACIS has indicated an assistance program under which it will support the audit office in enhancing the institution capacity to oversee public sector spending in an effective manner. The following steps would strengthen the auditing aspects on public procurement:

- *The Chamber should expand its coverage on the number and frequency of audits of user entities for which sufficient budget should be allocated by GOU.*
- *Chamber staff should be trained not only in international practices, auditing standards, audit methodology but also in application of PPL.*
- *Chamber, in addition to financial audits, should undertake procurement audits so as to achieve maximum efficiency and economy.*
- *The procuring entities should establish internal audit mechanism in order to ensure compliance with PPL.*
- *Government should reinforce the mechanism for applying penalties against violation and misuse of public funds. The draft law on this, proposed by the Accounting Chamber should be enacted expeditiously.*

Anti-Corruption Measures

In the public procurement system, there were numerous violations involving procurement practices lacking integrity and transparency i.e. barter transactions, promissory notes, etc.

There were cases where member of Tender Committees were partner with businesses bidding for contracts; shorter bid preparation time to eliminate serious bidders from participation; vague evaluation system; avoidance of public tendering and sole source contracting with little justification; distorted bid evaluation; etc. Such irregularities during the bidding process and/or misinterpretation of unclear provisions and rules lead to manipulations in the procurement process. This requires clear and transparent procedures and much tighter supervisory controls within/of procuring entities.

The new PPL contains relevant provisions to ensure high standards of ethics during the procurement process, such as conflict of interest which requires that persons having any relations with the bidders can not be a member of a Tender Committee; rejection of a bidder if it gives directly or indirectly any bribe to any official of the procuring entity so as to influence a decision; and filing of an appeal in case of any wrong doing on the part of procuring entity. There are also provisions in the Criminal Code and Administrative Rules which foresee punishments for fraudulent and corruptive activities on part of public employees. In spite of all such measures, corruption in Ukraine is said to be wide spread. The problem of corruption is openly recognized in Ukrainian Government and Parliament. Examples relating to privatization of energy companies in Ukrainian Oblasts are well known. According to NGO reports, most of the crimes are in the area of anti-trust legislation, tax evasion, patent and trade mark cases.

Because of predominance of corruption in Ukraine and its impact, directly or indirectly on procurement, a National Anti-Corruption Program was prepared with the help of the World Bank and other IFIs and endorsed by a Presidential decree in 1998. There has been, however, little progress with its implementation. An International Seminar on Anti-Corruption was held in October 2000, under the auspices of a coalition of NGOs in Ukraine. However, from public procurement point, the following measures need to be taken in addition to those on audit control:

- *In case of misuse or abuse of PPL, the sanctions should be published.*
- *The enterprises involved in corruptive and abusive practices in procurement should be debarred from participation in public procurement.*
- *Bidding documents should contain prohibition against fraudulent and corruptive activities by bidders.*

PUBLIC SECTOR MANAGEMENT PERFORMANCE

There is no precise reliable data on the annual values spent under the public funds for procurement of goods, works and services. Some information has been extracted from the government budget relating to the size of the public expenditure which has been spent

through the public procurement system. It is estimated that about 15% of the budget is used for public procurement. Based on the information available in budget documents, the total value of domestically financed procurement, for capital and recurring expenditures, is about US\$800 million (UAH3,300 million) for 1999 and US\$1,300 million (UAH7,000 million) for the year 2000. Also, based on indications in discussions with officials in the Ministry of Finance and Bank's team assessments, the expenditures is shared equally between goods and works. There is almost negligible share of consulting services.

The level of government funding on public procurement seems low compared to the size of Ukraine and figures of other countries. The main reason has been the lack of funds. However, to accommodate urgent requirements for goods and works for public needs, a number of different procurement forms have been adopted in the past. One such approach was termed as "Offset" or "Promissory Note" procurement which was used in 1999 by the ministry of Health. Another procedure was called "Electrical Roubles" or "Oil Dollars" procurement which was used in the energy sector. These methods have now, however, been prohibited to be conducted in public procurement.

To improve the information on public procurement expenditure, a new state statistics reporting system on accomplished tenders in public procurement has been introduced in 2000. This system shall not only provide statistical data on use of public procurement funds for goods, works and services and their related procurement methods but also determine the impact of the competition in the efficient use of state funds. The government has noticed a positive trend in the application of Open Tendering procedures. In 1999, the share of Open Tendering was about 64% which increased to 82% in 2000, due to adoption of the law and the fact that, according to PPL, the PPO has to provide approvals for application of procurement methods other than Open Tendering for contracts above EUR100,000. It is estimated that during the 12 months period in year 2000, 350 cases out of 1,682 were conducted under the non-open tendering process. Most of the cases are said to be for single source procurement (about 85%) which dealt primarily with closing of mines, liquidations and because of natural disasters. The savings through the Open Tendering has been estimated upto 20%. This is relatively low in comparison to data in other countries in transitional stage of economy where the savings are reported to be over 30% in the initial years of introduction of competitive bidding. The reasons for the low percentage may be attributed to the following factors:

- *Inadequate knowledge of PPL and procedures together with lack of professional qualification in procurement.*
- *Insufficient institutional support in information, guidelines and bidding documents.*
- *Less effective implementation due to ambiguity and inconsistent application of the PPL.*

The government has initiated steps in addressing the shortcomings through issue of legislative regulations on specific subjects of the PPL but still extensive efforts are required in the area of (i) strengthening of institutional capacity through training of procurement staff and professionals as well as informational support to business community; and (ii) institutional support to procuring entities through provisions of training, standard bidding documents and procedures.

RISK ASSESSMENT

Ukraine has a very little experience with public procurement system. In early 1990s, it introduced some regulations for domestic and imported products procured with public funds. Also, the first public procurement law was enacted in February 2000 and became effective only in July 2000.

As discussed in the report, there are a number of gaps in the legislation relating to specificity, clarity and transparency of a number of provisions. Also, the PPO, a good step in the right direction, was established only in 1999; it actually started functioning after the enactment of PPL. The office is confronted with a large number of tasks without sufficient funds and skilled resources to fulfill its diversified responsibilities. Further, the application of legislation at all levels is not well understood by procurement entities as not much information and training has been provided at different levels.

The public procurement system needs amendments, changes, clarifications and regulations to be fully applicable efficiently in practice. With these requirements and little information available and insufficient training of procurement entities, the procurement system is not functioning completely well in implementation. The Bank's team identified a number of cases and the Accounting Chamber concluded also with cases where the public funds have not been utilized economically and efficiently. These may be attributed due to weak provisions in legislation, inconsistent interpretation of the provisions, and/or subjective decision making by procuring entities.

Considering the intrinsic weaknesses in the existing procurement system combined with implementation problems, the Bank's team conclusion is that the procurement risk rating for the country public procurement be established as "High".

For the Bank financed projects, the systemic procurement risk may be lower, because all implementing agencies generally follow Bank procurement guidelines and standard documentation. Even for contracts under National Competitive Bidding process, the implementing agencies use ECA Regional Procurement Documents. However, the implementation risk is still rated "High". The risk in the projects is primarily related to weak management and lack of skills and delays in conducting procurement or making decisions on evaluation and awards due to vested interests in domestic and/or foreign bidders (Section II).

SECTION II: PERFORMANCE OF BANK FINANCED PROJECTS

Bank's Lending Portfolio

Ukraine joined the World Bank in September 1992. As of January 1, 2001, the Bank approved 19 projects with a cumulative lending amount of US\$2,935 Million, of which US\$2,132 Million has been disbursed. These projects included five adjustment operations with cumulative lending amount of US\$1,510 Million of which US\$1,409 Million has been disbursed. There are currently, however, only five effective loans in the portfolio with cumulative lending of US\$414 Million of which only US\$91 Million has been disbursed. One loan of US\$120 Million, approved by the Bank, was cancelled. The main focus of the Bank projects was institutional capacity building and development; governance reforms, especially in fiscal and financial management; development of private sector potential and efficiency; restructuring and privatization of public sector enterprises; and support to energy, agriculture and social sectors. The current pipeline of lending program for Ukraine includes 10 projects amounting to US\$596 Million for support in social, health, energy and agriculture sectors.

Decentralization of Procurement Functions

Recognizing the need for efficient implementation of Bank's projects in a new member country, the Bank established in 1995, in its Country Office in Kiev, staff to provide procurement services to project implementing agencies. These services were primarily the advice, clarification and support functions during the preparation and implementation of projects, the fiduciary responsibility relating to clearance of procurement documentation and contract awards, however, remained with Headquarters. On having acquired adequate procurement capability in the Country Office and as per Bank's OPRC approval in November 1999, delegation of partial fiduciary procurement responsibility up to a specified financial threshold was accorded for six projects in Privatization and Finance and Human Development sectors, two from then existing portfolio and four from the pipeline. The two projects in the portfolio have since been closed. The Borrowers' implementing agencies have greatly appreciated the decentralization of the fiduciary responsibilities to the Country Office as this increases the efficiency of procurement implementation. Further decentralization of projects is subject to review of satisfactory findings of the performance of the Country Office procurement staff by the Regional Procurement Advisor (RPA).

Organization of Procurement in Bank Financed Projects

Different organizational forms have been adopted for implementation of Bank's projects and no uniform approach has developed until now. Following three different arrangements of Project Implementation Units (PIUs) for undertaking procurement are predominant in Ukraine:

- *Existing staff of implementing agencies responsible for procurement.*
- *Establishment of a PIU within the implementation agency.*
- *PIU as a separate legal entity.*

In addition to the above implementation arrangements, there are different arrangements with Ministry of Finance and National Bank on access to Bank's loans for expenditure purposes. Because of numerous problems occurring in such arrangement structures, the Bank and the Government has agreed in June 2000, during its CPPR discussions, to setup a working group to assess the current procedures for preparation and implementation of Bank financed projects and present recommendations in order to streamline and speedup the execution of projects. Recommendations emerging out of the group shall lead to institutional capacity building of procurement entities implementing Bank's projects.

Performance of Projects

The generic procurement and related issues facing the Bank's projects are:

- *Weak management with limited monitoring and supervision skills.*
- *Inadequate institutional capacity and capability in technical and procurement aspects.*
- *Delays in release of budget funds and lack of counterpart funds.*
- *Slow pace in meeting project implementation conditionalities.*
- *Insufficient fiduciary functions.*

Weak Project Management:

At the preparation stage of the project, the implementing agency (IA) is not well established and/or not well conversant with the Bank's procurement planning and procedures. On approval of a Bank's project the concerned IA starts establishing an organization which is not skilled enough, not only in Bank's procurement policies and procedures, but also in management and supervision techniques required to efficient implement a project. In many cases, the Bank staff undertakes itself preparatory steps and/or involves a counterpart team to some extent. This constraints considerably an efficient implementation to accelerate the project processing. It is thus recommended that during the preparation, the IA appoints a team of core persons who are responsible for the project procurement arrangements. The draft of the working group to recommend measures for streamlining the preparation and implementation of Bank's projects suggests such team to be appointed not later than the beginning of negotiations with the Bank. This is however, late in the procurement processing cycle and should be established at the early preparatory stage of the project.

Inadequate Institutional Capacity and Capability:

This is the main area of weaknesses that exists in the implementation of project. Multiple factors contribute, such as :

- Ability to formulate technical specifications in a broader manner involving new technologies so as to attract larger competition than restricting participation to favor firms of vested interests.
- Full application of the Bank's policies and procedures: Because of inadequate experience in international and Bank's procurement procedures, the implementing agencies have from time to time difficulties in different interpretations regarding predominance of Bank's procurement procedures relative to the provisions in the national law and/or existing practices. Areas of concerns that require attention relate to technical specifications, evaluation criteria, bid evaluation process and negotiations with bidders.
- Lack of counterpart Funds: Implementing agencies have considerable difficulties in obtaining adequate funds for co-financing of procurement packages, especially their inability to pay custom duties, taxes and VAT payments.
- Slow pace in meeting project implementation conditionalities: Procurement under some projects has been impacted negatively due to slow implementation of reforms or policy conditionalities, thereby delaying disbursements under projects. There are also some concerns related to delayed ratification and effectiveness of loans which impedes heavily on procurement implementation.
- Enforcement of Fiduciary Functions: The thresholds for the Bank prior review in the beginning of the lending program has been relatively high. Over the years, the nature of the projects financed by the Bank is such that there is a declining share of procurement subjected to prior review. Therefore, a larger fiduciary responsibility on the part of the Bank is required to conduct ex-post reviews and audits.

The information contained in various supervision reports provide in general a satisfactory rating of projects in implementation. Of the 4 projects in portfolio, only 1 project is rated unsatisfactory. In FY 2000, there has been no mis-procurement but only 3 formal complaints by international firms under the international competitive bidding were addressed relating to technical specifications and irregularity in bid submission. These complaints however, could not be found acceptable by the Bank. The fiduciary risk in procurement under the Bank projects may not be as high as under the public procurement system but because of varied practices and weak enforcement, the risk under the Bank projects could still be regarded "High".

SECTION III – PRIVATE SECTOR

INFRASTRUCTURAL FRAMEWORK

This section describes briefly the financial and trade regimes within which the procurement system operates in Ukraine. The different aspects of financial and trade environment impede to allow Ukrainian enterprises to compete efficiently at the same level as foreign bidders and/or to have potential for exports.

Financial Environment

The banking system in Ukraine is, as other parts of the economy, in transitional stage. During 1991-1995, the National Bank of Ukraine (NBU) followed a liberal bank licensing and registration policy which resulted in registration of a big number of commercial banks. Many of these banks failed during the period 1992-1995 due to excessively risky policies and assets/liabilities mismanagement in the period of hyper inflation. As of October 2000, 195 commercial banks are registered in Ukraine. Currently 154 banks are operating with full banking license, the rest are in the state of liquidation, financial restructuring and re-organization. Of the operating banks, two are state owned and seven are 100% foreign owned. Although about 10 to 15 Ukrainian banks participate in special lending programs of bilateral donors or IFIs, only a few top banks have direct access to international financial markets or can qualify for direct credit lines of foreign reputable banks.

The level of capitalization of the banks in Ukraine is very low and intermediary capacity of most of the Ukrainian banks as well as the financial sector as a whole is insufficient to meet the investment needs of the economy. Banks continue to work predominantly with medium to larger clients since the latter can provide better collateral. More than 70% of total lending portfolio of the banking sector is represented by short term loans upto one year because banks has no adequate access to longer term finance. Only about 10 banks have access to credit lines of international financial and bilateral institutions. The quality of credit portfolio of the banks is not satisfactory. Even though the level of the banks lending has increased substantially in year 2000 compared to 1999 but still it represents only 11% of GDP which is highly insufficient given the potential demand of credit in Ukraine.

Most Ukrainian enterprises (70%) realize their investment activities through banking transactions. Banking services are mainly used by large to medium size enterprises which have significant export activities. The credit demand of domestic enterprises especially for exports, is high. Because of limited financial capability, these banks cannot offer competitive credit conditions in comparison to foreign banks. Most of the commercial banks provide enterprises with short term working capital loans in the local currency with the repayment period of less than one year. About UAH22 Billion was provided by banks as credit in year 2000 with an average interest rate of 40%. Short term credits in foreign currency are provided primarily to export oriented enterprises which

have normally sounder financial performance, stable cash flow and better market aspects. Also, they can link their repayment procedures to the export proceeds. The average lending rate in foreign currency is around 20% which is rather high as compared to international markets. The banks have strict credit policies in lending. In addition to sound financial status and good cash flow, a collateral of 100 –200% is required.

Banks in Ukraine are quite familiar with different securities instruments and Letter of Credit in conformity with “United Rules and Customs for Documentary Letters of Credit”. The cost for providing services is rated as high. Thus, the financial environment puts a heavy burden on Ukrainian enterprises to participate competitively in domestic and international procurement process. Ukraine has recently enacted a new law “On Banks and Banking Activities”. This law is expected to ensure more confidence of enterprises in the banking sector, expansion of banking activities, protection of creditors rights etc. This is expected to provide a more competitive financial market to compete efficiently.

Trade Environment

The government of Ukraine has been adopting a progressively liberal import and export policy in trade. The actions have primarily the objective of joining the World Trade Organization (WTO) and are summarized below.

Ukraine: Accession to World Trade Organization

The following actions are currently in process for consideration of Ukraine’s application to WTO accession:

1. Establishment of legislative program to bring its legislation consistent with WTO rules. About 14 laws are in the process of harmonization.
2. Transformation of custom duties with member countries to conclude bilateral trade agreement on access to goods and services markets (liberalized trade policy).
3. Removal of state support and privilege regime to domestic industry so as to avoid discrimination, such as subsidies to agricultural sector, automotive industry etc.
4. Enforcement of intellectual property rights to be in compliance with Trade Related Intellectual Property (TRIP) agreement.
5. Conformity of Licensing, accreditation, standardization and certification procedures with WTO agreements (abolishment of non-tariff barriers) so as not to impede trade.
6. Completion of privatization program as established by the State.
7. Reform of specialized trade agreements with CIS countries.
8. Expansion of Information System e.g. publish all trade-related laws, provide appropriate appeal and review process etc.

Ukraine has undertaken a detailed action plan, with a clear timetable, until the end of 2001, for adoption of WTO requirements. The government's desire to introduce measures expeditiously so as to be consistent with international norms is to some degree not supported by interest groups which would like to retain preferential treatment, such as laws on scrap metal, export duties on some seed products, restrictions on grain export, etc.

The customs regime in Ukraine has been regulated by several laws and a number of other legal regulations based on such laws. The customs affairs in the country are considered by Ukrainian importers and exporters to be complicated and cumbersome, thus creating significant obstacles in trade. The rules and tariffs are interpreted differently by individual customs officials and lack of uniform application procedures. In the opinion of importers, the excessive requirements at customs clearance do not seem to be justified and lead to improper practices. To improve the situation the government has currently drafted a new Customs Code which is expected to be debated in Ukrainian Parliament. The draft complies with international standards in the classification and codification of products, customs procedures, and customs information. Introduction of this code will significantly facilitate the customs procedures and increase transparency in trade.

In order to minimize technical barriers in trade and to expand possibility of domestic enterprises to export goods in international markets, the Government has taken steps to harmonize Ukrainian law on standardization, certification and accreditation with EU standards and meet requirements of WTO. Under a TACIS program, French standards organization is providing technical assistance. The reforms shall introduce three laws which are now under discussion in Ukrainian Parliament: "On Standardization"; "On the Confirmation of Compliance"; and "On the Accreditation of Agencies conducting Compliance Assessments".

The current Ukrainian Standards are fully mandatory and policies in this respect impede the development of technologies, lack consistency with international standards and hinder growth of country's potential in export. Currently Ukraine has about 10% standards that are same as in EU countries, 10-15% equivalent standards, 10-15% almost equivalent and a large percentage of 60-70% meeting only GOST standards. The new law "On Standardization" shall establish a legal framework to introduce reforms. Ukrainian enterprises are well familiar with international standards, including ISO 9000.

The aim of certification is inspection of products to conform to defined standards, both mandatory and voluntary. The Ukrainian legislation mandates certification of imported products. Currently only state bodies in Ukraine are entitled to certify products and these bodies are not able to function expeditiously in existing market environment. Until 1999, there were no regulations on cost of certification. This led to large number of violations and inappropriate behavior. Since April 1999, pricing rules are introduced but still there are considerable violations. The new law "On the Confirmation of Compliance" shall introduce procedures compatible with international practices. The Ukrainian committee for Standardization, Metrology and Certification is responsible for both certification and accreditation. There is thus a conflict of interest in this dual function. A new law "On the

Accreditation of Agencies Confirming Compliance” envisions creation of a Ukrainian national accreditation agency which shall be independent. This agency shall seek accession to the European Association on Accreditation which shall allow recognition of Ukrainian technical standards and mutual acceptance of certification. Ukrainian exporters shall then have possibility to compete effectively in world markets.

COMMERCIAL REGULATIONS

The economic reforms initiated in 1992 and subsequent dis-investment of state owned enterprises resulted in emergence of the private sector in Ukraine. In a number of commercial related areas, legislation has been enacted in order to create a legal framework for operation of a free market economy. In the year 2000, the Government has started steps towards development of an integrated regulatory policy and its related procedures.

The current Civil Code dates back to 1963 and does not include appropriate provisions for creation and operation of private businesses. A new Civil Code is under discussion in Ukrainian Parliament. It contains important norms in the area of definition of legal entity and related property rights; rights of individual entrepreneurs; intellectual property rights; contract provisions between entities; legal status of financial securities; etc. The new Code will call for changes in other legislation also, including harmonization with the PPL.

A variety of regulations are effective in the area of Business Law. The law “On Entrepreneurship” governs the activities of private and public companies. Under the law “On Enterprises in Ukraine”, a number of legal forms are recognized. System of state registration of business entities has been overly complicated. Amendments have been introduced to simplify the mechanism of registration. The new law “On Licensing of Certain Types of Business Activities” regulates licensing aspects of entrepreneurship. Law “On Foreign Investments” provides various protections to foreign investors. Law “On Concessions” provides another important framework defining the terms, conditions and procedures for concession contracts.

The law “On Taxation System” defines the main principles of tax system, types and levels of taxes and the applicable procedures. The business community has expressed concerns that the law is insufficiently oriented towards stimulation of business and investment activities. Tax avoidance is wide spread. The underground “shadow” economy is said to have increased from 12% of economic activity prior to independence to current level of almost 60%. A Tax Code is expected to be adopted by the Ukrainian Parliament by the end of 2001. The introduction of the Tax Code will improve the situation with respect to reducing the number of taxes, simplifying administrative procedures, increasing compliance rate and making more equal distribution of the tax burden.

On Settlement of Disputes, commercial disputes are under the jurisdiction of the Arbitration Courts which decide both commercial and administrative cases. Their

activities are regulated by Civil Codes, Arbitration Codes, Law “On Arbitration Court”, and “On International Arbitration”. The International Commercial Arbitration Court (ICAC), at the Ukrainian Chamber of Commerce and Industry settles disputes related to contractual and civil aspects arising in course of foreign trade and other international economic relations. The arbitration procedures are mostly compatible with UNCITRAL procedures. Disputes that can not be resolved by regional courts are submitted to the Supreme Arbitration Court. The Arbitration system, however, need further improvements, particularly domestic commercial arbitration. A new draft law “On Arbitration Court” is now pending in the Ukrainian Verkhovna Parliament RADA.

COMMERCIAL PRACTICES

The larger private sector development started with the privatization of state owned enterprises in 1992. By the beginning of year 2000, approximately 67,000 entities have changed ownership of which about 80% are small enterprises. Of the total 67,000 enterprises, about 53,500 became collectively owned and the remaining about 13,500 are privately owned. According to State Statistics Committee, about 55% of the total industrial output in 1999 came from the said private sector. Some 3.5 million people are employed in private enterprises, which make up about 24% of the total working people in all economic sectors. Effective operation of private enterprises is considerably impeded because of poor liquidity, non-payments, predominance of transactions in kind (barter) and other forms of conducting business.

Since the start of private sector, commercial procurement practices have been developing and are still in a transitional stage. Most of the private sector companies, especially small enterprises, prefer to procure directly on sole source with price negotiations. Enterprises with specialized business activities build long term relationship with limited number of suppliers based on their previous experience with firms relating to quality of products, price competitiveness and delivery commitments. Some large enterprises have been able to develop systematic procedures and undertake formal bidding process among a limited number of bidders. In some cases, especially in large civil works contracts, consulting firms are employed to assist in the preparation of bidding documents and conducting the procurement process.

SECTION IV: RECOMMENDED ACTION PLAN

STRATEGIC APPROACH

Recognizing the need for a unified public procurement system and based on dialogue with international financial institutions, The World Bank, European Development Bank and other agencies such as USAID, TACIS, SIDA, the Government undertook a commendable step of enacting a PPL which covers procurement of goods, works and services using public funds at all levels of the Government.

The Law has demonstrated many teething problems, not only in its provisions but also in its enforcement. These areas impact almost all major principles of procurement – economy, efficiency, competition, transparency. Further, there are emerging lessons coming from the enforcement of the public procurement system. Finally Ukraine is interested to further open up its economy to the outside world, to eventually join the European Union program, be a signatory to the Government Procurement Agreement (GPA) of the WTO. Therefore, relevant amendments, changes and regulations are necessary to accomplish these objectives.

The World Bank and other international agencies are in the process of discussions with the Government of Ukraine on appropriate assistance in the reform process. It is thus recommended that the Government should initiate necessary actions for the reform of the procurement system, which are listed in attached Action Plan and summarized below:

MEASURES TO BE TAKEN BY THE GOVERNMENT

The measures recommended to be undertaken by the Government relate to legislative, institutional and professional aspects of the procurement system. On the legislative aspects, the measures address:

- *Amendments required in the Law*
- *Regulations required to provide guidelines on the Law*
- *Clarifications required in the Law*

The Bank's team, during its field work in Ukraine, discussed the legislative aspects of the reform which are summarized in Attachment 2 of this report. The first step should be to issue regulations with a clear and transparent set of rules and instructions on the provisions of the Law to the extent that these rules are compatible with international practices. In parallel, the Government should consolidate recommendations from international institutions and agencies on the weak provisions in the Law, collect emerging issues from procuring entities relating to implementation of the Law, review the requirements of international organizations such as EU and WTO and initiate formulating the changes required in the Law, both relating to amendments and to clarifications.

On procedures and practices issues, there is an urgency in formulating regulations and instructions to clarify the provisions for applying the Law in a consistent and uniform manner among all procuring entities at different level. Also, from enforcement point of view, drafting of bidding documents is of high priority.

With respect to institutional and organizational aspects, the issues relate to strengthening the functions of the PPO, with respect to its capacity and capabilities, in the area of reform of law, formulation of regulations, developing procurement documentation and training. Further, the Government should initiate step to ensure independent character of the PPO so that in the near future it is attached to the office of COM rather than be a mid-level department in a ministry.

The most important area for the procurement system is building professional capacity. Although PPO is responsible for accreditation of procurement specialist but its weak capacity limits the development and execution of comprehensive training programs at all levels of the Government. Building an institutional framework to impart training to procurement entities is the main priority. In addition, Government should take steps to establish/strengthen institutions in Ukraine that undertake procurement and management activities.

The cost of implementing the Action Plan is beyond the scope of this report, however, the Government should prepare its estimation as part of its development program under the technical assistance and project aid by different international agencies. Based on Bank Team's discussions, the government has recently formulated **its own Action Plan** over medium/long period (2001-2007) which incorporates the Bank's recommendations.

MEASURES TO BE TAKEN BY THE BANK

The Bank as a part of its funding of projects and policy dialogue, has already contributed to development of the public procurement legislation, training of implementing agencies, holding information seminar for private sector and other procurement related infrastructural support in financial and trade areas. Continuation of Bank support is recommended in the following areas:

- *Discuss the CPAR with the Government and agree on the implementation of recommendations in the Action Plan, as part of the Bank's assistance program through Technical Assistance and project operations.*
- ***Process** the request from the Government to provide technical assistance.*
- *Bank should undertake regular training program for staff implementing Bank-financed projects.*
- *Bank should hold information seminar for business community so as to encourage the Ukrainian manufacturing, construction and consulting industry to participate in Bank-funded projects not only in Ukraine but also in neighboring countries, especially in CIS countries where the Ukrainian manufacturers and contractors enjoy a good reputation.*

BANK APPROACH TO SUPERVISION

Section II discusses the four major procurement issues that impact heavily on the implementation pace and thus lead to delays in procurement implementation and thereby to slow loan disbursements under Bank financed projects. The Bank on its part should take the following steps in response to these concerns:

i) involve actively the implementing agency at early stage of project preparation so as to obtain effective contribution in procurement planning and design of procurement arrangements.

ii) undertake capacity assessment of implementing agencies effectively with an action plan starting at effectiveness of the loan so as to carry out procurement functions with economy and efficiency.

iii) conduct Procurement Launch Workshop (PLW) for each project and employ individual consultants for short term at effectiveness of the loan so as to utilize the initial implementation period during which the procurement staff is built-up on a longer term basis. In this respect, a Procurement Manual for the project should be compiled consisting of all the documentation required for different procurement provisions included in respective Loan Agreements.

iv) allocate procurement resources in supervision missions at least once in a year to update procurement plans and to conduct ex-post reviews.

v) undertake conclusive actions in cases of long delays and non-compliance of Bank procurement procedures on part of implementing agencies during implementation or as a result of ex-post reviews and audits.

The discussion in the report have demonstrated that, although open tendering process is an accepted procurement method, the provisions provided in the Law relating to pre-qualification procedures, evaluation system, etc. are not yet established in a clear fair, fully competitive and transparent manner. Therefore, on the acceptability of National Competitive Bidding (NCB) procedures, especially for civil works contracts, the team proposes that in addition to the use of ECA Regional Sample Bidding Documents, the Bank should provide a side letter to the loan agreements specifying the following conditions which should continue until there is evidence that the implementing agencies comply with the requirements in a transparent manner:

- *Foreign firms shall not be excluded from the national bidding process irrespective of the contract value.*
- *There shall be a minimum period of 30 days for submission of bids.*
- *No bids shall be rejected which have a higher price than the estimated cost.*
- *The bidders shall not be required to use domestic inputs (materials and labor).*
- *Domestic state enterprises that meet the Bank criteria on autonomy of enterprises shall be allowed to participate.*
- *Bids shall be opened immediately after bid submission deadline.*

- *No negotiations on price shall be carried out with successful bidders.*
- *Prequalification system shall be based on “Pass/Fail System”.*
- *The evaluation system shall primarily consist of monetary factors and no domestic preference shall be applicable to domestic bidders.*

The current established thresholds for different procurement methods applied under Bank’s financed projects are regarded as appropriate. These are listed below together with the review process:

Goods and S&I Contracts	ICB	Above US\$100,000	Prior review of all contracts
	IS	Below US\$100,000	Prior review of first two contracts (as required)
	NS	Below US\$50,000	Prior review of first two contracts (as required)
Works	ICB	Above US\$ 1million	Prior review of all contracts
	NCB	Below US\$ 1 million	Prior review of first 2-5 contracts (as required)
	Minor	Below US\$0.1 million	Prior review of first two contracts (as required)
Consultants	Firms	Above US\$100,000	Prior review
	Ind	Above US\$50,000	Prior review
Line of Credit	ICB	Above US\$ 2 million	Prior review of all contracts
	CP	Below US\$ 2 million	Prior review of contracts above US\$ 0.5 million (as required)

TECHNICAL ASSISTANCE

The Government of Ukraine fully recognizes the need to introduce appropriate changes in the law to make it compatible with international practices, to undertake steps to strengthen the enforcement of public procurement system and to foster the professional training. The Government of Ukraine expressed agreement with the major recommendations of the Bank’s team, however it needs continuation of dialogue with international institutions and organizations as well as assistance in carrying out different measures in the Action Plan. The Bank’s team, during its field work, held discussion with USAID, TACIS and SIDA which have earlier provided technical and financial support in developmental and professional aspects of the procurement system. SIDA has over the past few years provided training assistance (study tour of public procurement staff and training of trainers). SIDA intends to **conclude** its financial support for: i) upgrading skills in public procurement through seminars in the four regions of Ukraine and study tours to Sweden; ii) development of procurement guidelines, standards formats and checklists; and iii) development of a public procurement control and audit systems through seminars for the Accounting Chamber. The European Union TACIS program

has recently stated its support in providing its assessment on compatibility of Ukrainian PPL with European principles of procurement and some technical inputs in addressing some specific subjects in the Law. Also, a training workshop **was** held. The Government will need substantial support to implement the recommendations in the Action Plan and in that process has requested **technical assistance funds**. PPO has provided a list of items with cost estimates for a technical assistance program to be supported by the **donor's** grants. The Bank's team recommends strongly that The World Bank considers the Government request favorably so that the enforcement aspects are undertaken immediately for an effective implementation, however on the condition, that there is principal understanding on the implementation of the Action Plan. As part of **Dutch** Grant, the Bank should also establish a monitoring mechanism with an appropriate budget for following up the proposed Action Plan and providing the Government with any technical advice needed in the reform process. The details of the technical assistance program are provided in the Attachment 4. Further cost details shall be undertaken during the preparation of the **Dutch Grant Trust Fund** .

UKRAINE

COUNTRY PROCUREMENT ASSESSMENT REPORT

PRIORITY ACTION PLAN

Actions	Priority	Responsibility	Short Term 1-2 Years	Mid Term 3-5 Years
Legislative Framework (Attachment 2)				
Amendments in the law relating to inclusion of procurement for selection of consultants, fair participation of foreign firms, criteria for preferential treatment of domestic bids, use of international language, etc.	Medium	GOU/PPO		X
Improvements through regulations relating to formulating rules and instructions for pre-qualification, evaluation system, procurement processes steps, criteria for rejection of all bids, etc.	High	GOU/PPO	X	
Provisions in law requiring clarifications relating to strengthening of anti-fraud/ corruption measures, streamlining criteria for pre-qualification and evaluation, complaint/approval process.	Medium	GOU/PPO		X
Institutional and Organizational Framework				
Strengthen functioning of public procurement office	High	GOU/MOE	X	X
Establish independent charter for Public Procurement Office	Low	GOU/MOE		X
Development of procurement and information technology database system	Low	GOU/PPO		X

Actions	Priority	Responsibility	Short Term 1-2 Years	Mid Term 3-5 Years
Procedural Framework				
Formulate standard pre-qualification, bidding and contract documentation	High	GOU/PPO	X	
Issue regulations in implementing Law provisions in transparent manner (refer to action in legislative framework)	High	GOU/PPO	X	
Professional Framework				
Development of Training Material	High	GOU/PPO/ Training Agencies	X	
Training of trainers to undertake procurement training at national level	Medium	GOU/PPO/ Training Agencies	X	
Training of procurement entities	High	GOU/PPO/ Oblast Adm.	X	
Support institutions to deliver procurement courses and information to business community	Low	GOU/ Ministry of Education		X
Supporting Framework				
Consider Technical Assistance Program	High	World Bank	X	
Undertake annual training program for Bank financed projects	Medium	World Bank	X	X
Hold information seminar for business community	Medium	World Bank	X	

APPROVED

VICE PRIME MINISTER
V. ROHOVYI

**ACTION PLAN OF THE CABINET OF MINISTERS OF UKRAINE
ON DEVELOPMENT OF THE PUBLIC PROCUREMENT SYSTEM IN UKRAINE
(TAKING INTO ACCOUNT THE PAL MATRIX IMPLEMENTATION)**

**Action Plan of the Cabinet of Ministers of Ukraine
On Development of the Public Procurement System in Ukraine**

(the Ministry of Economy and European Integration of Ukraine is a responsible activities coordinator and an authorized public procurement agency)

№	Actions	Implementation term (quarter, year)
<i>I. Improving the legislative and regulatory framework for the public procurement systems</i>		
1.1.	* Improving the public procurement legislation by amending the Law of Ukraine “On Procurement of Goods, Works and Services for Public Funds” [hereafter Public Procurement Law (PPL)]. Preparing an appropriate draft Law of Ukraine “On Amending the Public Procurement Law” and facilitating its adoption by the Supreme Council of Ukraine.	IV quarter 2002
1.2.	* Drafting and approving additional regulatory acts related to the adoption of the Law of Ukraine “On Amending the Public Procurement Law”.	II quarter 2003
1.3.	* Drafting and approving regulatory and methodological documents on carrying out public procurement according to the current legislation, particularly on conducting pre-qualification procedures, evaluation, certain stages of procurement, criteria for rejecting all bids. ¹	IV quarter 2002
1.4.	* Drafting and approving standard tender documents and standardized contracts for particular types of procurement of goods, works and services.	IV quarter 2002
1.5.	* Drafting of changes and amendments to the legislation and facilitating their adoption in consistency with the provisions of the Public Procurement Law.	III quarter 2003
1.6.	Monitoring the compliance with requirements of the current public procurement legislation to avoid fraud and corruption by procuring entities.	<i>continuously</i>
<i>II. Institutional development of the public procurement system</i>		
2.1.	* Drafting and approving a strategy of the public procurement system institutional development.	IV quarter 2002
2.2.	*Drafting and approving an actions plan to implement the strategy of the public procurement system	II quarter 2003

* *technical assistance is necessary*

** *as per technical assistance of SIDA*

¹ See Annex 1 for list of adopted laws and regulations.

	institutional development.	
2.3.	* Setting up a state agency for public procurement in accordance with the developed strategy and action plan.	During 2004
2.4.	* Exercising inter-agency coordination of procurement of certain types of goods using the funds of the State Budget (through the system of inter-agencies' agreements).	Starting from II quarter 2002
2.5.	* Strengthening the potential of the Public Procurement Department of the Ministry of Economy and European Integration through special training programs, training abroad, purchasing additional hardware and software.	During 2002 – 2003
2.6.	Preparing detailed instructions on the composition, competence and responsibilities of tender committees, inter alia on including qualified (technical) experts into their composition.	I quarter 2002
2.7.	* Improving a mechanism delegated to the regional authorities (through local (oblast) economy departments of state administrations) to conduct procurement using local budgetary funds.	III quarter 2002
2.8.	Developing recommendations for procurement planning by public funds administrators in accordance with the budget legislation.	II quarter 2002
2.9.	Promoting the creation of consulting centers in order to develop a public procurement services market.	During 2002
2.10.	Facilitating the activities of civil organizations on the regional level as to providing consulting services in procurement.	During 2002
2.11.	Introducing a mechanism to prevent fraud and corruption in the area of public procurement, in particular, by including a provision on countering fraudulent and corrupt practices into the standard bidding documents, as well as by making public the decisions on appeals.	IV quarter 2002
III. Development of educational programs and professional training		
3.1.	Developing guidelines for educational programs in public procurement for different target groups.	IV quarter 2003
3.2.	** Developing a User's Guide to conduct public procurement.	I quarter 2002
3.3.	*Developing and disseminating standardized technical specifications and model terms of references (TOR) for various procurement categories.	II quarter 2003
3.4.	* Developing methodological materials to conduct training, retraining and skill upgrading courses in public procurement and organizing such courses.	IV quarter 2002
3.5.	Defining a procedure of certifying public procurement trainees.	III quarter 2002
3.6.	Preparing and holding seminars for employees of the State Treasury, its regional branches, auditors and other staff of public funds administrators, particularly using the facilities of the Distance Learning Center under the Public Administration Academy.	During 2001 – 2003
3.7.	*Organizing training for University lecturers in public procurement. Initiating the introduction of the public procurement course into college curricula.	2003
3.8.	** Holding regional seminars for the officials dealing with public procurement.	I-II quarter 2002

3.9.	* Using TACIS programs for probation and training of public procurement specialists within the framework of the Public Administration Reform Project.	2001-2002
3.10.	* Working out a program and holding seminars for the business community to inform entrepreneurs of the participation in competitive bidding conducted both in Ukraine and abroad.	IV quarter 2002
IV. Introduction of information technologies in public procurement		
4.1.	* Setting up and maintaining a web-page on public procurement.	III quarter 2002
4.2.	* Developing and implementing a mechanism of information support in public procurement, in particular, by means of creating regional publications of the Public Procurement Bulletin, particularly in electronic form.	II quarter 2002
4.3.	Implementing a pilot project in the eastern region of Ukraine (Luhansk, Donetsk, Kharkiv) to set up a regional publication "Public Procurement Bulletin –Eastern Region" including its electronic edition. Disseminating the experience of the pilot project in other Ukrainian regions.	IV quarter 2001 IV quarter 2002
4.4.	* Applying the procurement automation software and implementing information technologies, inter alia networking, in the system of monitoring public procurement.	During 2002 – 2005
4.5.	* Providing information support to the private sector via electronic means to ensure understanding of the specifics of public procurement procedures.	Continuously
4.6.	Creating and maintaining procurement databases, including those associated with the procurement procedures application, number of published announcements, amounts of signed contracts, lists of tender winners, etc.	Continuously
V. Technical assistance attraction		
5.1.	With the support of the World Bank conducting a donors meeting to co-ordinate their activities on technical assistance (TA) in public procurement.	November-December 2001
5.2.	Developing an action plan to attract TA.	I quarter 2002
5.3.	Continuing co-operation with the World Bank in order to search for sources of financing the activities under this plan which would allow its timely implementation.	Continuously

ANNEX 1

**THE LIST OF ADOPTED LAWS AND REGULATIONS IN THE SPHERE OF PUBLIC
PROCUREMENT**

1. Law of Ukraine “On Purveyance of Products for State Needs”.
2. Law of Ukraine ”On State Defence Products”.
3. Law of Ukraine “On Procurement of Goods, Works and Services for Public Funds”.
4. Regulation of the Cabinet of Ministers of Ukraine No 266, dated February 29, 1996, “On Procedure for Drawing Up and Placement of State Order for Purveyance of Products for State Needs and Exerting Control Over Fulfillment”.
5. Regulation of the Cabinet of Ministers of Ukraine No 2244, dated December 9, 1999, “On Issues of State Defense Orders”.
6. Regulation of the Cabinet of Ministers of Ukraine No 1469, dated September 27, 2000, “On Organizational Activities for Functioning of State Procurement System”.
7. Regulation of the Cabinet of Ministers of Ukraine No.347, dated April 11, 2001, “On establishing the procedure to protect local market in case of public procurement of goods, works and services”.
8. Regulation of the Cabinet of Ministers of Ukraine No. 422, dated May 6, 2001, “On procurement of services for privatization process”.
9. Regulation of Cabinet of Ministers of Ukraine No. 1312, dated October 10, 2001, “On establishing the procedure of inter-agencies co-ordination of procurement of certain types of goods using State Budget funds”.
10. Edict of the Cabinet of Ministers of Ukraine No 44-p, dated February 13, 2001, “On List of Products, Should Enterprises of the Ukrainian Association of Organizations of the Blind, Ukrainian Association of Organizations of the Deaf, Union of Organizations of Invalids of Ukraine and Penitentiary System, be Permitted by State Customers to Participate in Tenders”.
11. Order of the Ministry of Economy of Ukraine No 215, dated October 9, 2000, “On Approval of Announcement Forms of Open and Two-Stage Tenders for the Procurement of Goods, Works and Services for Public Funds, Announcement Forms of the Pre-Qualification and Notification Forms of the Tender Results”.
12. Order of the Ministry of Economy of Ukraine No 224, dated October 17, 2000, “On Delegation of Some Coordinating Functions of Procurement of Goods, Works and Services Funded from Local Budgets”.
13. Order of the Ministry of Economy of Ukraine No 235, dated November 3, 2000, “On Adoption of the Forms of Reports on the Results of Procurement of Goods, Works and Services for Public Funds and Filling In Instructions Thereof”.
14. Order of the Ministry of Economy of Ukraine No 264, dated December 4, 2000, “On Approval of the Procedure to Consider Complaints of Suppliers (Contractors) in Regard to Organization and Fulfillment of Procedure to Procure Goods, Works and Services for Public Funds”.

15. Order of the Ministry of Economy of Ukraine No 268, dated December 7, 2000, “On Procedure of Approval by the Ministry of Economy of Ukraine of Application by Clients of Individual State Procurement Procedures”.

16. Order of the Ministry of Economy of Ukraine No 280, dated December 26, 2000, “On Approval of the Regulation on the Procedure for Establishment and Main Functions of Tender Committees for Organization and Fulfillment of Procedures for Procurement of Goods, Works and Services for Public Funds”.

UKRAINE COUNTRY PROCUREMENT ASSESSMENT REPORT

ATTACHMENTS

Attachment 1: Strengths and Weaknesses of the Public Procurement Law

Attachment 2: Discussions and Recommendations on Different Provisions in the Public Procurement Law

Attachment 3: Summary of Different Provisions in the Public Procurement Law

Attachment 4: Technical Assistance Program

Attachment 1

**UKRAINE
COUNTRY PROCUREMENT ASSESSMENT REPORT****STRENGTHS AND WEAKNESSES OF THE PUBLIC PROCUREMENT PROCEDURES AND PRACTICES**

As illustrated in the report, the Public Procurement Law in Ukraine has addressed the main principles of procurement thereby demonstrating its objectives of meeting economy, efficiency, competition and transparency of the procurement process, but equally the Law has not provided sufficient clarity in addressing these principles and thus shows many weaknesses in its conceptual and implementation aspects. The following paras describe the main strengths and key issues in procurement policies, procedures and practices that have certainly an effect on the objectives of economy, efficiency and transparency in procurement.

Strengths

- i) The procurement function is decentralized to individual procuring entities at different levels of government.
- ii) The procurement Law provides a number of appropriate methods for procuring goods and works of different nature, values, sizes, complexity, etc.
- iii) The Law establishes open tendering as the main method of public procurement and forbids splitting of procurement packages to bypass the process of open tendering.
- iv) The Law lays a great emphasis on advertisement process of public procurement contracts.
- v) The law includes comprehensive qualification requirement, both for pre-and post-qualification and places obligation on procuring entities to confirm such qualifications at the contract award.
- vi) Different aspects of procurement proceedings, such as distribution of bidding documents, clarification and modification process, submission and opening of bids, evaluation process are detailed in the Law.
- vii) The Law contains provisions for protection and preferential treatment of domestic industry.
- viii) There are provisions to combat fraud and corruption on part of bidders and violation of the Law by procuring entities.
- ix) The Law contains provisions on complaints and appeals against non-compliance of the Law by procuring entities.

Weaknesses

In listing individual weaknesses in different areas of procurement principles, one main weakness running throughout the law is its inadequacy in addressing completeness of principles and not providing sufficient clarity and transparency to avoid individual interpretation by procuring entities thereby leading to inconsistency and non-uniformity in the application and compliance of the Law. The key issues are:

Covering Full Procurement:

- The law does not provide separate selection procedures for consulting and technical assistance services. These are intended to be procured in the same manner as goods and works.
- The Law gives authority to COM to exclude procurement of goods, works and services on ad-hoc basis.

Encouraging Competition:

- There is restriction in participation of foreign firms below specified financial thresholds which are relatively high in comparison with the current status of the domestic industry.
- In case of participation of foreign firms, there are mandatory requirements relating to provisions of input of materials and labor force from local sources.
- The criteria for according preferential treatment for domestic firms are not specified in the Law.
- The Law mandates submission of tenders by foreign firms in Ukrainian language.
- The selection of procurement method below the specified financial threshold – restricted tendering and two stage tendering are not well defined and left to the discretion of the procuring entities.
- Bids are rejected if the bid prices are above the estimated cost.
- Contracts for works can be extended by 50% of the initial contract value without competition.

Enhancing Economy and Efficiency:

- The requirements for pre-qualifications are overly stated in the Law and discourage firms to participate.
- The period for submission of bids is inadequate which may discourage participation of good bidders.

Complying Enforcement:

- Absence of standard bidding documents leads to inconsistent process of procurement as well as terms and conditions and may be used by procuring entities to favor some suppliers/contractors.
- Inclusion of evaluation criteria in the law that can not be used in an objective manner by procuring entities.

Attachment 2

**UKRAINE
COUNTRY PROCUREMENT ASSESSMENT REPORT****DISCUSSIONS ON THE PUBLIC PROCUREMENT LAW WITH THE PUBLIC
PROCUREMENT OFFICE AND RELATED RECOMMENDATIONS
(Law # 1490-III, Effective on July 14, 2000)****Articles Recommended for Amendments**

- Article #1: The Law specifies procurement methods and procedures for goods, works and services. The procurement of consulting and technical assistance services is treated in the same manner as for technical services for goods and works. This is not an efficient approach. Although, currently the Ukrainian consulting industry and market is in inception stage of development, but nonetheless the Law should provide separate selection procedures for consulting and technical assistance services. Such provisions shall be included in the new amendments.
- Article #6: The Law provides conditions for protection of domestic market. These provisions are not expected to lead to economical procurement. The Article contains both preferential treatment for domestic firms and restrictions of foreign firms in participation. Considering the status and efficiency of the domestic industry, the thresholds for restricting the procurement only to domestic market are on the high side and should be reduced. Further, there should not be restrictions regarding the input of materials and labor force from local sources. Such provisions effect the transparency and competition and need to be deleted. Also, the criteria for preferential treatment for domestic firms needs to be specified in the law.
- Article #18: The Article specifies that for “restricted tendering” procurement method, at least two firms should be invited. Such requirement leads to uneconomical procurement. The Law should be amended to the effect that all known specialized firms shall be invited under the “restricted tendering” process.
- Article #23: The Article contains the provision of submission of bid security by another enterprise than the bidder. Such a provision is invalid because the identity of the bidder in the tender shall differ from the identity of enterprise providing bid security. This provision needs to be amended.
- Article #28: The Article specifies that the tender shall be rejected if the price of the “Best” bidder is above the estimated cost. This provision is contained in the Law because of difficulties of having budget funds for full

financing of procurement. This is an uneconomical approach. A bid should be adjusted in the scope of supply to be consistent with the availability of the funds. The provision in the Law should be amended accordingly.

Articles Requiring Improvements Through Regulations

- Article #2: The Article provides authority to the Council of Ministers to exclude on ad-hoc basis procurements from the application of the Law. A regulation is required to clarify and define the nature of procurements, such as those for emergency and natural disastrous purposes, that could be procured through exceptional methods approved by the Public Procurement Office.
- Article #3: The Article established the office of a Public Procurement Agency. The functions and responsibilities of the office need to be expanded to include all developmental aspects of procurement such as bidding documents, monitoring of procurement with respects to compliance, information network in publicizing procurements best practices and business opportunities seminars etc. Being at its inception stage and forthcoming implementation tasks of the Law, it is recognized that this Agency can stay as part of Ministry of Economy in the short-term. However, in the near future, the Agency should act as an independent body under the Cabinet of Ministers.
- Article #14: The Article specifies approval of a procurement method other than open tendering for contracts above EUR 100,000 but no mention is stated for contracts below EUR 100,000 for goods and services. Such ambiguity in the Law has led to application of non-economic procurement by some procuring entities.
- Article #16: The Article includes the qualification criteria for pre-qualification procedures. Some of the criteria need improved clarifications in by-laws. Also, the system on selection of pre-qualified bidders needs to be established (pass/fail instead of point system).
- Article #19: The Article provides, on exceptional basis, a period of 15 days for submission of bids. Also, it does not state that the bids are to be opened immediately after the bid submission deadline. Regulations are to be issued by the PPO to improve the contents of this Article for a more transparent process.
- Article #24: The Article specifies submission of a bid security “document” with the bid. The regulation by the Public Procurement Office should specify that this document shall be an “original” bid security.
- Article #26: The Article contains multiple factors for evaluation criteria. These factors can not be used in an objective manner and thus the evaluation

leads to an inconsistent decision-making by procuring entities. Regulations and guidelines on the evaluation process using factors that can be converted into monetary value shall be issued by the PPO.

- Article #27: The Article contains provision for rejection of all bids. These provisions are not clearly described. Regulation shall be issued by the PPO which shall define criteria under which rejection can be made subject to approval by the PPO.
- Article #30: The Article describes circumstances under which “two-stage” procurement method can be used. The provisions are not clear and shall be improved to a regulation by the PPO.
- Article #33: The Article specifies an extension of 50% of initial contract value on sole source basis. In order to avoid the misuse of its application, the PPO shall issue a regulation that such extensions by the procurement entities seek approval from the PPO.

Articles Requiring Further Clarifications in the Law

- Article #7: The Article specifies action against inappropriate behavior of bidders relating to fraud and corruption in the procurement process. The provisions need to be linked with administrative sanctions (debarment) and also define the process governing such sanctions. The Article should also refer to imposition of criminal sanctions prescribed by the Criminal Law.
- Article 15#: The Article contains a large number of criteria for pre-qualification some of which have little importance for pre-qualification and thus redundant . These provisions need to be deleted from the Article.
- Article #32: The Article requires for small value contracts below EUR 10,000 for goods and services and EUR 40,000 for works, invitation to attend the opening of quotations. This provision is quite costly both for bidders and procuring entities and thus be deleted.
- Article #35: The Article specifies that in case of termination of a contract by a procuring entity, the entity shall reimburse the contractor the “non-received” revenues. Given the scarce public budget resources and non-predictable nature of termination, such provision is not appropriate and should be deleted.
- Article #37: The Article provides circumstances under which complaints/appeals can be made by bidders. However, the process is very ambiguous relating to responsibilities of procuring entity and the Public Procurement Office. The provisions need to be made transparent in the process with respect to the role of the procuring entity, the Public Procurement Office and the court of law or arbitration.

Attachment 3

UKRAINE COUNTRY PROCUREMENT ASSISTANCE REPORT

PUBLIC PROCUREMENT LAW

Summary

1. **Procurement Methods:** The Law provides for five procurement procedures for the procurement of goods, works, and services:

- (i) Open Tender
- (ii) Restricted Tender
- (iii) Two-Stage Tender
- (iv) Single Source or Direct Contracting
- (v) Request for Quotations

Open Tender is classified as the principal procurement method. The use of methods other than open tender for contracts exceeding EUR 100,000 in case of Restricted Tender and Two Stage Tender procedures, and EUR 5,000 for Direct Contracting, requires approval of the PPO. Bidding for contracts exceeding EUR 0.2 million for goods, EUR 0.3 million for services, and EUR 4 million for works, is also required to be advertised internationally to attract foreign bidder participation. Contracts estimated to cost less than EUR 10,000 for goods and services and EUR 40,000 for works, can be procured through shopping on the basis of a minimum of three quotations. The Law includes the procurement of consultants as part of the services and does not therefore provide separate provisions for this purpose.

2. **Advertisement:** According to the Law all announcements for procurement tenders or prequalification of bidders are to be advertised in the VDZ bulletin, which is published bimonthly by the PPO, and local press. The Law further clarifies that a procuring entity may not execute a procurement procedure unless it is published in the VDZ **except** for: (i) contracts whose value or share of state funding does not exceed EUR 10,000 for goods and services, and EUR 40,000 for construction works; and (ii) restricted tenders and single source. For contracts exceeding EUR 0.2 million for goods, EUR 0.3 million for services, and EUR 4 million for works, the prequalifications and tenders are also required to be advertised in international press and electronic communications network.

3. **Domestic Preference:** For contracts not exceeding EUR 0.2 million for goods, EUR 0.3 million for services, and EUR 4 million for works, the Law provides for domestic preference to bids submitted by domestic manufacturers by applying a preference margin of 10% to the bid price or by restricting the participation to only domestic manufacturers, under procedures to be specified by the Cabinet of Ministers. In case bidding is restricted only to domestic bidders, a preference of 15% is allowed for bids submitted by enterprises employing Ukrainians who are disabled, and in-correctional institutions, regardless of the estimated value of a contract. In case of works and services to be performed by foreign bidders the procuring entities may require such foreign bidders to use domestic raw materials and workforce. All these provisions are required to be included in the tender announcements and may not be altered. The Law defines a domestic enterprise as a resident business entity manufacturing goods, performing works or providing services in Ukraine.

4. **Debarment of Bidders From Bidding:** A Bidder is not eligible to participate in public bidding if it has been declared bankrupt or is subject to bankruptcy proceedings. Further, bidders convicted of procurement related crimes or other venal crimes, or employing personnel convicted of such crimes, may also be

excluded from participation. Such bidders are however required to be informed of their exclusion and reasons therefore by procuring entities within 7 calendar days after the decision.

5. Qualification Requirements: For services and works, bidders are required to submit a license to perform. Other requirements include information on: (i) technical and other personnel with experience and qualification relevant to proposed contract; (ii) financial status; (iii) equipment available; (iv) payment of taxes etc.; and (v) criminal record, etc.

6. Prequalification of Bidders: The Law provides for prequalification of bidders prior to announcement of a procurement procedure or invitation to bid. The Law does not specify the nature of contracts nor any monetary thresholds for this purpose. The qualification requirements are the same as stated in Para 5 above. The preparation time for PQ submissions is a minimum of 14 and maximum 45 calendar days before the closing deadline. Applicants are informed of the PQ results within 5 calendar days after the completion of the procedure. Only prequalified bidders are allowed to submit bids.

7. Tender Committees: For each procurement procedure a procuring entity is required to appoint a tender committee. The setup procedure and principal function of TCs are to be determined by PPO. The Law specifically excludes from TC membership any experts in procurement procedure compliance, near relatives of bidders' staff or representatives. The tender committees are prohibited by the Law to disclose information relating to evaluation and comparison of bids except clarifications permitted under the Law. The tender committees evaluate bids in accordance with the criteria given in the bidding documents and submit their recommendations to the procuring entity which is not bound to accept their decision.

8. Bid Preparation Time: For bid preparation the Law provides 45 calendar days from the date of publication of tender announcement. This period may be reduced to 15 calendar days for specified reasons other than the intention to weaken competition. The same schedule applies to prequalification of bidders. Tender documents are required to be sent to bidders within 7 days from the date of bidder's request and on payment of prescribed fee.

9. Bidding Documents: The Law requires bidding documents to contain: (i) instructions to bidders for bid preparation; (ii) qualification requirements and the supporting documents; (iii) technical specifications and other requirements; (iv) additional services to be provided; (v) delivery schedule; (vi) evaluation criteria and methodology for award; (vii) draft contract or list of its main conditions; (viii) criteria for evaluation of alternative bids if permitted; (ix) bid pricing methodology (inclusive or exclusive of transport, insurance, tariffs, taxes, etc.); (x) bid currency; (xi) language(s) of bid; (xii) bid and performance security requirements and conditions of their return to bidders; (xiii) place, method, and deadline for bid submission; (xiv) procedure for clarifications; (xv) the required bid validity period; (xvi) place, date and time of bid opening; (xvii) name(s) and position of person(s) authorized by procuring entity to communicate with bidders; (xviii) reference to standards - national or international; and (xix) inclusion of the equivalent clause in case reference to specific brands or manufacturer or design are included.

10. Amendments to Bidding Documents: A procuring entity is permitted to make changes in bidding documents up to 3 days prior to the bid submission deadline either on his own or because of bidder inquiries.

11. Language: Unless a procurement procedure is restricted to domestic bidders only, all tender announcements, bid invitations, prequalification, and bidding documents, contracts, are required to be prepared in Ukrainian and one foreign language used in international trade. Bids are required to be submitted in the language(s) specified in bidding documents. The text in Ukrainian language prevails.

12. Clarifications and Communications between Bidders and Procuring Entities: The Law states that only the written statements and communications are valid and therefore, all exchange of information in a form other than in writing must be confirmed in writing. A bidder is permitted to request clarification up to

7 days of the bid submission deadline and the procuring entity is required to respond within three working days.

13. **Bid Submission:** Bids are to be submitted in sealed envelopes and a procuring entity is required to issue a receipt indicating the date and time of delivery of the bid. All bids must accompany a proof of bid security, if so required. Late bids are returned to bidders unopened.

14. **Bid Security:** Under the Law, the maximum amount of bid security is 1% for works and 5% for goods and services. Bid security requirements are included in the bidding documents. Bid security may also be submitted on behalf of a bidder by another entity subject to prior approval of the procuring entity. Normally, bid security is to be returned to unsuccessful bidders within 10 days after the expiry of the bid security validity. Bid security of a bidder is forfeited if it withdraws or changes its bid after bid submission or in case a winner refuses to furnish performance security or sign the contract.

15. **Performance Security:** Under the Law the maximum amount of performance bond should not exceed 15% for goods and services and 5% in respect of construction works.

16. **Bid Validity:** Bids shall remain valid for the period indicated in bidding documents. After the expiry of this period a procuring entity may require bidders to extend the validity of their bids. However, a bidder may reject such a request without losing his bid security.

17. **Bid Opening:** Bids are required to be opened in the presence of bidders or their representatives on the day, time and place indicated in bidding documents. The information read out at the bid opening includes name and address of each bidder and the price of each bid. The Law permits procuring entities to request bidders details of their bids and correct arithmetic errors upon written request from a bidder.

18. **Bid Evaluation:** Bids are to be evaluated according to the evaluation criteria indicated in the bidding documents. The Law defines the following criteria: price, delivery period, quality, post sale service, conditions of payment, economic advantage, maintenance costs, technology transfer and training, and use of local resources and manpower. If a criteria other than the price are used to determine successful bid, the bidding document should define their monetary value or the share of such criteria in the bid evaluation as a whole.

19. **Rejection of Bids:** A bid may be rejected if it fails to meet the qualification requirements and other conditions specified in the bidding documents; fails to agree to the correction of arithmetic errors; or if there is an evidence of a bidder being involved in corrupt practices. A procuring entity may also reject all bids if the bidding documents so provide.

20. **Cancellation of Bidding Process:** The Law permits the cancellation of the tendering process if: (i) less than two bids are received; (ii) all bids are rejected; (iii) the price of the "most favorable bid" exceeds the procuring entity's allocated amount; and (iv) change in the needs of the state due to unforeseen circumstances. The cancellation with reasons is to be announced in the VDZ bulletin as well as intimated to all bidders within 3 working days of the decision to cancel the bidding.

21. **Contract Award:** The Law requires a procuring entity to accept the "Best" bid and intimate the successful bidder within 5 calendar days after the conclusion of the tender. A procuring entity is also required to publish in VDZ bulletin, within one week, an announcement regarding the tender results, including the name and location of the successful bidder. The Law also requires the conclusion of the contract with the winning bidder within 14 working days. If the successful bidder refuses to sign the contract, the procuring entity shall determine the best bid from among other bids if they are still valid and unless all bids have been rejected.

22. **Procurement Contract:** A procurement contract becomes effective upon its signature by the procuring entity and the successful bidder and is required to be in compliance with Articles 1540-06 of the Civil Code. A procuring entity is required to furnish a copy of such contract to the PPO, if so requested.

23. Contract Amendments and Revocation by Procuring Entity: The Law permits procuring entities to make changes to or withdrawal from any procurement contract, with the concurrence of PPO, if such action is necessitated by changes in state procurement needs. The procedure for such changes or revocation is specified in the Civil Code. In such cases, the procuring entity shall pay for the part of the contract actually carried out and to reimburse the contractor/supplier for the "non-received revenues". If a procuring entity is unable to satisfy contractor/supplier claims or to respond to such claims, the contractor would have the right to go to a court of law or arbitration.

24. Procurement Complaints and Appeals: The Law permits bidders to appeal against violation of procurement procedures specified in the Procurement Law. The Law however does not permit appeals against: (i) choice of a particular procurement procedure; (ii) application of domestic preferences; and (iii) decision to reject all bids. Upon receipt of an appeal or complaint, all other bidders are also invited to put in their claims for consideration. A complaint/appeal can be submitted to either the concerned procuring entity or the PPO before a procurement contract is concluded. Procuring entities are required to suspend the procurement procedure for a maximum of 15 calendar days and to also notify all the bidders about the complaint/appeal and the time and place of its consideration. Procuring entities are required to take a decision on such appeals/complaints within 15 calendar days from the date of receipt of such complaints. If a procuring entity takes a decision on an appeal/complaint it is required to submit to PPO within 3 working days. In case of violation of a procurement procedure or discrimination among bidders, the PPO is authorized to declare the results of the bidding invalid and to instruct the procuring entity to initiate a new procurement procedure which shall be binding. Any such decision shall constitute the basis for a bidder to file, within 15 calendar days, a suit in a court of law or court of arbitration for the reimbursement of costs related to participating in the tender. A copy of such decision shall also be sent to other bidders who submitted claims within 5 working days after such decision. If the procuring entity or the PPO are unable to arrive at a decision within the prescribed time, the bidder(s) shall be free to seek redress through a court of law or arbitration. The appeal/complaint may not be considered by the procuring entity or the PPO if it was submitted later than 15 calendar days from the date of the decision which is being appealed against.

25. Anti-Corruption Measures: The Law requires rejection of a bidder's bid, with the concurrence of PPO, if it offers, gives or agrees to give any official or former employee of a procuring entity or another state authority a reward in any form for influencing the decision making in respect of successful bidder or the application of a specific procurement procedure. Furthermore, bidders can be debarred from bidding if they or any of their official were convicted of procurement related crime or corruption. The bidder is required to be notified within 7 calendar days after the decision. The Law further holds procuring entities, tender organizers, and participants liable to administrative or criminal action for any violations of the PPL and other regulations.

Attachment 4

UKRAINE
COUNTRY PROCUREMENT ASSESSMENT REPORT
TECHNICAL ASSISTANCE PROGRAM²

Items	Estimated Cost (US\$)
<u>Reforming Public Procurement System</u>	
▪ Assistance for making amendments to legislation/regulations	96,000
▪ Assistance in drafting regulations/procedures/methodologies for implementation of law	60,000
▪ Assistance in drafting country specific bidding documents	30,000
<u>Institutional and Capacity Building</u>	
▪ Strengthening capacity of Public Procurement Office	100,000
▪ Developing strategy and action plan for independent charter of PPO	99,000
▪ Improving inter-agencies coordination and delegation mechanism	66,000

² Does not include Government contribution

Items	Estimated Cost (US\$)
<u>Professional and Training</u> <ul style="list-style-type: none"> ▪ Drafting training programs/methodologies and manuals/materials ▪ Training of procurement entities in application of law/regulations, training of trainers ▪ Information outreach to business community 	<p>66,000</p> <p>33,000</p> <p>33,000</p>
<u>Information Technologies Support:</u> <ul style="list-style-type: none"> ▪ Assistance in establishing information database and web-site of Public Procurement Office ▪ Information support to private sector ▪ Assistance in automatization of procurement process <p style="text-align: right;">Total</p>	<p>33,000</p> <p>33,000</p> <p>66,000</p> <p>715,000</p>

UKRAINE

COUNTRY PROCURMENT ASSESSMENT REPORT

LIST OF PERSONS MET

ORGANIZATION	NAME	TITLE
Ministries:		
Ministry of Economy	Mr. Victor Kalnyk	Deputy Minister
Public Procurement Office	Ms. Nadiya Obushko	Head of Department
	Mr. Olexander Shatkovskiy	Specialist
	Mr. Sergei Yaremenko	Specialist
	Mr. George Briushyn	Specialist
Department of International Development	Mr. Andrei Nikitoo	Division Head
Ministry of Finance	Mr. Igor Shevlyakov	Deputy Head
Dept. of Int'l Economic Relations	Mr. Yuriy Gabidulin	Specialist
Dept. of Budget	Mr. Anatoly Maksyuta	Department Head
Ministry of Health	Mr. Olexander Korotko	Deputy Minister
	Mr. Yuriy Polyachenko	Deputy Minister
	Ms. Nelly Pavelko	
	Ms. Zhanna Tsenilova	Division Head
	Mr. Vasyl Mykhalchuk	Deputy Head
Ministry of Fuel and Energy	Mr. Olexander Shapovalov	Department Head
Ministry of Justice	Mr. Vadym Demchenko	Department Head
	Ms. Oksana Osmak	Consultant
	Mr. Andriy Galyapa	Consultant
Ministry of Transport	Mr. Arkadiy Demidenko	Deputy Minister
	Ms. Lina Yevgrafova	Department Head
State Administrations, Agencies, and Institutions:		
State Treasury	Mr. Mikhail Berdiy	Deputy Head
	Ms. Natalia Pashyna	Specialist
	Mr. Vasyl Bonislavsky	Specialist
	Mr. Olexander Nikolayev	Specialist
State Customs Service	Mr. Anatoliy Prikhodko	Department Head
	Ms. Nadiya Sinkevich-Davidets	Deputy Head
	Ms. Irina Lyadenko	Deputy Head
State Committee on Building Industry	Mr. Anatoliy Berkuta	Deputy Head
	Mr. Petro Grokhovsky	Specialist
State Committee on Reg. Policy	Mr. Gennadiy Bilous	Department Head

ORGANIZATION	NAME	TITLE
State Committee on Communications	Mr. Anatoliy Klikich	Department Head
	Mr. Vitaly Balyuk	Specialist
	Mr. Oleg Yakymchuk	Specialist
State Committee on Standardization, Metrology and Certification	Mr. Leonid Vitkin	Department Head
State Property Fund	Mr. Sergiy Korniets	Department Head
State Accounting Chamber	Mr. Vitaliy Melnychuk	Deputy Chairman
	Mr. Yuriy Ivanenko	Chief Controller
	Mr. Vyacheslav Pilipenko	General Auditor
Kyiv City Administration	Mr. Victor Padalka	Deputy Head
	Mr. Vyacheslav Mukhin	Department Head
Odessa Oblast Administration	Mr. Victor Primak	Deputy Head
	Ms. Antonia Samotuga	Proc. Dept. Head
	Mr Victor Tkachenko	Specialist
	Mr. Alexi Zaborskiy	Specialist
Academy of Public Administration	Mr. Olexiy Yakubovskiy	Director
	Mr. Anatoly Rybak	Professor
Implementing Agencies:		
Export Development Project	Mr. Ildar Usmanov	PIU Head
	Mr. Anatoliy Solodovnik	IT Dept Head
Ozone Depletion Project	Mr. Olexander Shevchenko	PIU Head
	Mr. Victor Morozov	Specialist
	Mr. Michael Chyzenko	Specialist
	Mr. Nickolay Kosharuk	Specialist
	Mr. Gennady Geyer	Specialist
Enterprise Development Project	Mr. Valery Shepel	PIU Head
	Mr. Victor Bekh	Deputy Head
Kyiv District Heating Project	Mr. Valeriy Deineko	PIU Director
	Mr. Alexander Sylakin	Consultant
	Mr. Sergurda Johnson	Consultant
Treasury System Project	Mr. Konstatyn Stanitsky	PIU Head
Hydro Power Rehab. Project	Mr. Victor Lyssykh	PIU Head
	Mr. Victor Doroshenko	Specialist
	Mr. Yuriy Shaklyuk	Specialist
Statistics Modernization Project	Mr. Nikolay Chaban	PPU Head
	Ms. Tatiana Zinchenko	Consultant
	Ms. Larisa Iskra	Consultant
Tax Admin Modernization Project	Mr. Olexander Ganzin	PPU Head
	Mr. Dmytro Frolov	Proc Specialist
International Agencies and Organizations:		
European Union	Mr. Tim Gould	Delegation Member
US Agency for Int'l Dev (USAID)	Mr. Christopher Crowley	Resident Rep
Swedish Int'l Dev. Agency	Ms. Katarina Fahlander	Resident Rep – SIPU

ORGANIZATION	NAME	TITLE
PriceWaterhouseCoopers	Mr. Gerry Parfitt	Senior Partner
Private Organizations, Non-Governmental Organizations (NGOs) and Consulting Firms:		
NORD Enterprise	Mr. Yuriy Belan	Director
JSC GEM	Mr. Valeriy Bazarnyy	Director
	Mr. Andrei Bogdansky	Deputy Director
	Mr. Alexander Karamushka	Deputy Director
	Mr. Vladimir Kobzev	Deputy Director
	Mr. Vladimir Sidorov	Deputy Director
JSC DEKA	Mr. Konstantyn Zshukov	President
JSC Odessa	Ms. Valentina Grosou	Director
Ukraudodor Corp.	Mr. Myroslav Klympush	Deputy Head
	Mr. Vasyl Davydovych	Dept. Head
Ukragroconsult	Mr. Sergey Feofilov	Director
Central Design Institute	Mr. Viktor Kamenev	Deputy Director
	Mr. Volodymyr Lykov	Dept. Chief
	Ms. Tatyana Karpenko	
Ukrainian-European Policy Center	Mr. Remi Duflot	Banking Expert
	Mt. Maxim Ljubinskiy	Financial Expert
League of Insurance Companies	Mr. Olexander Zaletov	Director
Kiev Chamber of Commerce and Industry	Mr. Nicolay Zazulsky	President
	Ms. Nonna Bushuyeva	Specialist
	Ms. Tatyana Potapenko	Specialist
Institute of Reforms	Mr. Viktor Pynzenyk	President
Freedom of Choice Coalition	Mr. Valdislav Kaskiv	Director
	Mr. Vasyl Pawlowsky	
	Ms. Bohdan Sikora	
	Mr. Ihor Marchenko	
	Mr. Ihor Piskalyuk	
Banks:		
National Bank of Ukraine	Ms. Tatiana Melnikova	Dept. Head
	Ms. Lada Rakityanska	Economist
	Mr. Volodymyr Kuchin	Division Head
	Ms. Zhabska	Dept. Head
	Mr. Alexander Kalinin	Sector Head
	Ms. Ludmila Labur	Economist
Citibank	Mr. Konstantin Seryogin	Manager
Ukraine EXIM Bank	Mr. Ildar Usmanov	Manager