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## ABBREVIATIONS AND ACRONYM

AMAN	Palestinian Coalition for Accountability and Integrity	OECD-DAC	Organization for Economic Cooperation and Development – Development Cooperation Directorate
BLIs	Base-Line Indicators	OPCS	Operations Policy and Country Services
CFAA	Country Financial Accountability Assessment	PA	Palestinian Authority
CoC	Chambers of Commerce	PCBS	Palestinian Central Bureau of Statistics
CPAR	Country Procurement Assessment Report	PCU	Palestinian Contractors Union
CPIP	Country Procurement Issues Paper	PECDAR	Palestinian Economic Council for Reconstruction and Development
CTA	Central Treasury Account	PER	Public Expenditure Review
CTC	Central Tenders Committees	PFM	Public Finance Management
CTD	Central Tenders Department	PIF	Palestine Investment Fund
CU	Contractors' Union	PIUs	Project Implementation Units
DFID	Department for International Development	PLC	Palestinian Legislative Council
EA	Engineers' Association	PRDP	Palestinian Reform and Development Fund
EU	European Union	PS	Private Sector
FDA	Food and Drug Administration		
AFD	Agence Française de Développement	SAACB	State Audit and Administrative Control Bureau
FIDIC	Fédération Internationale des Ingénieurs-Conseils	SBDs	Standard Bidding Documents
GCC	General Conditions of Contract	SIDA	Swedish International Development Cooperation Agency
GCI	General Control Institute	TI	Transparency International
GDP	Gross Domestic Product	TTL	Task Team Leader
GMP	Good Manufacturing Practice	UNICEF	United Nations International Children Emergency Fund
IAD	Internal Audit Department	UNICITRAL	United Nations Commission on International Trade Law
IDF	Institutional Development Fund	UPPI	Union of Palestinian Pharmaceutical Industry
IMF	International Monetary Fund	USAID	United States Agency for International Development
IPR	Independent Procurement Review	USD	United States Dollars
MoEHE	Ministry of Education and Higher Education	VAT	Value Added Tax
MoF	Ministry of Finance	WB	World Bank
MoLG	Ministry of Local Government	WB&G	West Bank and Gaza
MoPWH	Ministry of Public Works and Housing	WHO	World Health Organization

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# PREFACE

## ***Basis of the Report***

A number of themes underpin much of the public procurement in the West Bank and Gaza (WB&G). The public sector contracts are on top of these themes, being an important source of business for many local suppliers, contracting firms and consultants who represent the future prospects for WB&G as they have been throughout the history of this area. Fair access to efficient public sector procurement is another important theme that would give considerable impetus to their growth and would require a domestic marketplace which is healthy, open to free competition and seen as the cornerstone of the Palestinian economy.

The Palestinian Authority (PA) and the Bank conducted the first Country Procurement Assessment Report (CPAR) for WB&G in 2004 aiming at analyzing the public procurement system, including its policies, organization, procedures, and practices. The CPAR Action Plan provided recommendations to assist the PA in developing its capacity (i) to plan, manage and monitor public procurement effectively; (ii) to improve accountability, integrity, and transparency, (iii) to prevent corruption; and (iv) to harmonize the national procurement law and regulations with internationally accepted principles and practices. Subsequently, the Bank provided the PA with an Institutional Development Fund (IDF) Grant for procurement reform covering among other improvements, the drafting of a new national procurement law and implementing regulations.

The CPAR of 2004 also highlighted principal shortcomings, among which (i) the existing procurement law and regulations are fragmented and incomplete and their implementation by various PA units is inconsistent.; (ii) there is a general lack of common guidelines, rules and technical standards; (iii) no national standard bidding documents are available, resulting in a mixture of donor-based Standard Bidding Documents (SBDs) that are commonly used even as the basis for national procurement; (iv) there is an absence of routine reporting of procurement activities to a central authority, (v) no independent body with specific responsibility to investigate complaints by bidders about procurement processes; and (vi) the capacity of civil service staff working in public procurement is limited and needs substantial strengthening.

More recently, the three-year Palestinian Reform and Development Plan (PRDP) for 2008-2010 adopted by the PA envisions a process of realistic reforms centering on control of expenditures with a medium-term set of reforms across sectors to bring the PA back onto a path of financial sustainability. The Bank has expressed its support of the PA's PRDP process and the related policy reforms, including the Public Procurement System.

The Operations Policy and Country Services (OPCS) paper of February 2008 entitled “*Use of Country Procurement Systems in Bank-Supported Operations*” describes a piloting program on the use of country procurement systems in Bank-supported operations. As a first step, the paper sets out a methodology for identifying a group of countries and a set of projects within those countries, in which national procurement systems are of sufficient quality and capacity to achieve generally the same results as the application of the Bank’s set of procurement policies and guidelines. This requires an assessment in three stages, among them a review of procurement diagnostic work, such as the status of the implementation of the respective action plans of the CPAR, Country Financial Accountability Assessment (CFAA) and the Public Expenditure Review (PER). Based on the results of the assessment, in addition to assessments of the existing national procurement system and associated fiduciary risks, the Bank would determine governments’ commitments to strengthening the countries’ procurement systems and open dialogue with countries on participating in the piloting program.

Taking the above into consideration, this Country Procurement Issues Paper (CPIP) takes stock of the current procurement system in WB&G, including new developments since the CPAR of 2004, broadly following the approach and methodology of the aforementioned OPCS paper. Recognizing that much remains to be done in pursuit of the above themes and the CPAR recommendations and noting that a sound public procurement system is an essential pillar of effective governance, this paper emphasizes the importance of improvements to address the future of public procurement in WB&G,, including increasing opportunities for its suppliers, contractors and consultant to grow and prosper.

### ***Main Aim, Objectives and Scope***

The main aim of the CPIP is to assess the current state of public procurement in West Bank and Gaza in the form of a ‘‘snap shot’’ and accordingly, to provide a partial assessment, broadly along the lines of the OPCS paper that would address the following objectives:

- Assess the latest progress with regard to the procurement reform recommended by the 2004 CPAR and the commitment of the Palestinian Authority (PA) to pursue the reform.
- Report on the link between public sector procurement and the local private sector, in terms of competitiveness, performance, constraints, and commercial practices affecting public procurement.
- Compile a set of recommendations that would strengthen procurement arrangements and functions under future Bank-financed operations in

the WB&G. These could also serve as basis to suggest specific improvements in current procurement processes, as well as next steps towards the achievement of a procurement system that meets internationally recognized standards.

### **Limitations**

The assessment of the current procurement system was carried out within the framework and methodology of the aforementioned OPCS paper on the use of country systems, as it provides a suitable guidance for this work and is part of an important institutional initiative from which the WB&G may eventually benefit. On the other hand, the assessment is limited to the first stage only, and covers the review of the current procurement practices followed by the procuring entities within the PA's ministries and the private sector, in addition to the review of the public finance management (PFM) system.

Unlike the usual practice employed during CPAR missions, there was limited participation by PA counterparts, mainly through interviews, as this paper is being presented as an internal issues paper for review and consideration. However, certain key findings may eventually be shared with the PA.

Due to the lack of updated information on the volume of the public procurement during the last four years, the mission could not assess the link between the public procurement and the overall public sector. Since the start of the political crisis in 2006, most of public procurement was implemented under donor-financed projects. The PA's budget has suffered a drop of donors' direct support during the period of 2006-2007.

### **Methodology**

Using the CPAR of 2004 as a starting point, the CPIP examined whether the improvements recommended in 2004 were implemented. Most prominently among these recommendations, the current status of procurement reform in the West Bank and Gaza was examined.

In terms of methodology, the current state of public procurement in West Bank and Gaza was also assessed through applying Stage I of the OPCS paper entitled: "*Use of Country Procurement Systems in Bank-Supported Operations*". This methodical assessment relies mainly on the most pertinent 54 sub-indicators and a benchmarking tool developed by the Organization for Economic Cooperation and Development – Development Cooperation Directorate (OECD-DAC), World Bank Round Table on Strengthening Procurement Capacities in Developing Countries. These sub-indicators, which are summarized in Annex 1 to 4, formed the basis for identifying, in broad terms, the strengths and weaknesses of the current procurement system in the WB&G.



Taking into consideration the risk of subjective judgments of certain features of the current procurement system and in order to ensure consistency and comparability of the findings of this report, the mission attempted to balance the findings obtained during these assessments against information gathered during the interviews with PA officials and the private sector. Furthermore, to ensure the credibility of the information, the mission checked the information through the review of related documents including regulations, decrees and instructions which are currently applied to public procurement, albeit, inconsistently as earlier reported in the CPAR. This helped in establishing the scores for the sub-indicators, including PA's articulated reform priorities versus the existent strength and weaknesses of the public sector

The mission arranged for the collection of the information required for the assessment and identified the stakeholders to be interviewed in advance, taking into account the information availability and reliability. The mission was assisted by the Ministry of Finance that facilitated access to information. Physical access to Gaza due to the current political situation was an obstacle which the mission managed to overcome through interviews via video and audio conferences. This ensured the coverage of the sources of procurement information in Gaza

Interviews were conducted with the Ministry of Finance (MOF), Ministry of Public Works and Housing (MOPWH), Ministry of Education and Higher Education (MOEHE), Ministry of Health (MOH), Ministry of Local Government (MOLG), in addition to project implementation units (PIUs) and the private sector (PS) represented by the Chamber of Commerce (CoC), the Contractors' Union (CU), the Engineers' Association (EA), and the Union of the Palestinian Pharmaceutical Industry (UPPI). These organizations were selected based on the interviewees' known involvement in the procurement of goods, works and services under the national budget and through donor funds. The interviews focused, among other issues, on the time required for typical transactions, approvals, clearance processes and handling of payment obligations under awarded contracts (complete list of the questions is attached under Annex 6). The interviewees' views of problems and constraints were particularly solicited in connection with the current procurement system and the perception with regard to the procurement reform, mainly the new draft law.

## ***Acknowledgment***

The CPIP mission expresses its appreciation to Mr. Mazen Jadallah, the Director General of International Relations and Projects, at the Ministry of Finance, and his team for the assistance extended during the mission work. The team extends appreciations to thank all the various government officials, private sector representatives and all donor representatives for making the time to meet with the mission members and assisting with the required information. Their names are listed in Annex 8.

The mission is extremely thankful to Mr. A. David Craig, the Country Director for West Bank and Gaza and Mr. Faris\_Hadad Zervos, Deputy to the Country Director for their solid backing to the whole mission. Special thanks to the peer reviewers Ms. Yolanda Tayler and Mr. Amadou Tidiane Touré for their review and valuable comments.

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## EXECUTIVE SUMMARY

This CPIP assesses the current state of the procurement system of the public sector, and to a certain extent, the private sector in the WB&G. It focuses on the improvements since the CPAR of 2004, the progress in the procurement reform as an important initiative to improve the performance and efficiency of the public procurement in the WB&G. The CPIP also outlines recommendations that could serve as a basis to suggest improvements in the public procurement in the WB&G.

The assessment of the procurement system was carried out within the framework and methodology of the OPCS paper entitled “*Use of Country Procurement Systems in Bank-Supported Operation*” as it provides a suitable source of guidance for this work and is part of an important institutional initiative from which WB&G may eventually benefit.

**On the current state of the procurement system**, the CPIP confirmed the 2004 CPAR findings with regard to the existing legal framework for public procurement as being both incomplete and insufficiently robust to provide for a clear, rules-based environment for conducting public procurement. The assessment of the current public procurement system based on the OECD-DAC tool concluded that **the current public procurement system in WB&G does not meet the requirements to be selected for the next stages of the piloting program for the use of country systems**. Efforts should be continued in assisting PA to implement its procurement reforms and develop a medium-term plan of recommended corrective action. In addition to the Bank, a number of donors met by the CPIP mission have already expressed interest in providing funding for this purpose.

**On the implementation of the recommendations of the CPAR of 2004**, the CPIP noted partial implementation of these recommendations, chief among them is the drafting of the new procurement law and its implementing regulations. However, several recommendations included in the CPAR Action Plan were not implemented as of May 2008. These include (i) establishment of an independent public procurement agency under the new procurement law; (ii) standard bidding documents based on the new law and regulations; (iii) user’s manual and guidelines; (iv) procurement training needs assessment and development of a national training program; (v) establishment of a general register for procurement information; (vi) mechanisms to ensure availability of funds before any procurement process is commenced.

**On the progress in the implementation of the procurement reform**, the changes in the Government since 2006 have delayed the ratification and

enactment of the law and regulations and prevented progress and successful completion of the other reform activities. The IDF grant was closed in January 2008 with considerable progress in the first activity, however with insignificant accomplishments with regard to the other three agreed procurement reform activities. On the new law, the CPIP reported the following:

- The drafts of the new law and regulations were introduced in two workshops to representatives of PA units as well as civil society in February 2006. These workshops were successful and provided valuable feedback through open discussions under the leadership of MoF.
- The MoF is currently taking the necessary steps for the enactment of the law; the new target date for the enactment of the new law by presidential decree, as reported by the MoF during the CPIP mission, is June 2008. Once the law and regulations are ratified, they will create a path mandated by law for the other activities to be acted upon by the PA.
- The Bank informed the MoF of its availability to review the final draft of the procurement law and regulations prior to their enactment, in case any changes have been introduced since the Bank last reviewed these key documents, more than two years ago; to date, PA has not yet asked for further Bank assistance in this regard.

**The CPIP suggests the key recommendations outlined below:**

**On the implementation of the procurement reform, the PA needs to carefully address** the efficient implementation of the new law and regulations as well as the compliance of procuring organizations. This constitutes both a challenge and a factor of success of the implementation of the procurement reform. To this end, key procurement reform milestones need to be updated and efforts should focus on the following main areas:

- Establishment of the Public Procurement Authority;
- Introducing the law in its final enacted form in public sessions.
- Preparation of the national standard bidding documents and manuals to sustain the improvements of the procurement law;
- Establishment of an efficient procurement monitoring and control procedures;
- Preparation of a national training strategy and programs for public procurement;

**On the procurement performance of the Bank's portfolio:** The performance of the Bank's portfolio in WB&G is in overall satisfactory, with a disbursement rate higher than the region's average. However, the procurement performance of the implementing agencies is still weak and impacts the efficient and timely handling of procurement. According to the assessment, the current country procurement risk remains very high.

In order to strengthen the procurement performance of World Bank financed projects, the Bank should; a) undertake an assessment of the institutional capacity of all agencies involved in project implementation; b) review the risk assessment during implementation to revise Bank's review threshold; c) for emergency operations, refer to streamlined procedures OP8.00; d) bidding documents for major procurement activities should be prepared prior to project's effectiveness; e) conduct regular capacity building targeted workshops and f) conduct procurement post reviews on a regular basis during supervision missions.

## **A. BACKGROUND**

### ***A.1 The Country Economic Situation<sup>1</sup>***

The Palestinian economy has been declining since 2000, as it was affected by the strict closures imposed by Israel and by the political situation in the WB&G. The economy recovered slightly in 2004 and 2005, but fell again in 2006 when the international direct aid was cut off as a result of the election of the Hamas government. According to the Palestinian Central Bureau of Statistics (PCBS), both public and private investments have fallen to low levels since 2006 as government funds paid for salaries and covered operating costs. The lack of investment negatively affected the Palestinian economy and resulted in more dependence on international aid.

Unemployment has also been increasing, especially in Gaza where the siege and restrictions on imports and exports are very pertinent. The Hamas takeover of Gaza added to the economy decline, increased the unemployment and consequently amplified the number of people living in poverty. This situation affected dramatically the industrial operations in Gaza.

In order to improve the situation, the PA has initiated the Palestinian Reform and Development Plan (PRDP) aiming at introducing sector reforms and enhancing efficiency. Yet, with these measures, there are still obstacles facing the growth of the Palestinian economy.

In spite of the above economic inflow, the overall economic situation still remains very dire. The Israeli Palestinian conflict, adding to it the Fatah/Hamas dispute constitutes a major challenge in the face of the Palestinian economy and development. The Israeli Authorities continue to impose restrictions on movement and access, furthermore, the settlement expansion has not ceded. The overall surrounding conditions are far from conducive to a stable economic environment.

Poverty is still a major issue and unfortunately, is increasing. In Gaza, approximately 33% of the active work force is unemployed and further deterioration is expected due to the continued closure regime. In the West Bank, the unemployment is around 19 %.

The economic and social implications of the crisis have major deteriorating effects on the performance of the social sector as a whole. Given the

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<sup>1</sup> *West Bank and Gaza Economic Development and Prospects- March 2008*

inadequate domestic revenues, the operating budgets function under extreme pressure. This inevitably leads to a disruption and decline in the social service provision. The standard of the health services has dropped especially that the restrictions on movement of goods and services have had a major impact on the availability of medical supplies and drugs. Another factor interrupting the health service provision is the strikes. The education sector faces problems similar to those in the public health sector. Financial resources are inadequate to maintain the operation of the school system in addition; the wage bill constitutes a large portion of the operating expenditures, hence limiting the available resources.

## **A.2 Country Context**

The Palestinian Territories have witnessed several determining events during the last few years. The impact of these events has largely shaped the current situation of the country. At the economic and social level, and prior to 2006, lots of efforts were exerted by the PA in order to straighten the economic and social issues. On the ground, positive consequences on the social and economic indicators were witnessed. However, this change was not long lasting, since as of the victory of Hamas in the elections, the donor community completely withdrew its support which immediately led to severe and drastic impact on the economic and social lives of the Palestinians as a whole. In an attempt to remedy the situation, the vision shifted towards implementing emergency programs by the PA, rather than developmental, provided that such programs be funded through the Office of the President. The political situation took a turning point when Hamas took over the Government and security positions in Gaza. As a result, in June 2007, President Abbas declared Hamas authority in Gaza as illegal and swore in a new Caretaker Government.

Both the international Community and Israel supported the new Caretaker Government through resuming the channeling of funds by the donors and full transfer of Palestinian clearance revenues and accrued interest by the Israeli Authorities.

## **B. The CPAR Action Plan of 2004 and Procurement Reform**

This section presents a follow up on the implementation of the CPAR Action Plan and a brief on the status of implementation of procurement reform in the West Bank and Gaza.

### ***B.1 Implementation of the CPAR Action Plan***

The 2004 CPAR Action Plan, which was agreed by the Bank and the PA as a way to improve procurement policies and practices in the country provided recommendations to:

- Develop procurement capacity;
- Plan, manage and monitor public procurement more effectively;
- Improve accountability, integrity, and transparency and prevent corruption;
- Harmonize the national procurement law and regulations with internationally accepted principles and practices.

Table 1 below summarizes in more detail the series of recommended actions included in the 2004 CPAR Action Plan and their present status, as collected, analyzed and concluded by the CPIP mission,.



**Table 1**  
**Status of implementation of the 2004 CPAR Action Plan**

Areas of Reforms	Recommended Actions	Timetable	Responsible Entities	Technical assistance	Implementation status
<b>Pillar 1: Legal and Regulatory Framework</b>	Development of a single unified Procurement Law based on the UNCITRAL Law, together with specific regulations for goods, works and services.	1st year	MOF	Supported under IDF	The final draft of the new procurement law and regulations are in the stage of final review.  The enactment of the new Law by a Presidential Decree is expected by June 2008; and the implementing regulations are expected to be issued by the Government within three months of the date of the law enactment.
<b>Pillar 2: Procurement Procedures and Practices</b>	Develop standard NCB bidding documents and standard contract formats for goods and works.	2nd year	MOF	Supported under IDF	Not yet implemented
	Develop standard Request for Proposals and standard contract formats for selection of consultants.	2nd year	MOF	Supported under IDF	Not yet implemented
	<i>Develop manual of procedures</i> Develop and issue guidelines and user manuals to ensure efficient common procurement practices throughout the PA and compliance with the laws and regulations	3rd year	MOF	Supported under IDF	Not yet implemented
	VAT treatment: Development of a practical method of VAT treatment other than the zero exemption of VAT for donor-funded procurements to ensure contractors/suppliers/consultants can easily reclaim input VAT and do not inflate their bid prices	1st year	MOF	Not requested	Not implemented

Areas of Reforms	Recommended Actions	Timetable	Responsible Entities	Technical assistance	Implementation status
	Revise the MOF Supplies Catalogue bidding documents according to the CPAR team comments so that it could be used for WB-financed projects.	1st year	MOF	Not required, as Catalogue was developed and is being maintained solely by MOF	Some improvements have been introduced, especially to technical specifications but bidding procedures will have to be aligned with the new procurement law and regulations.
	Extending the use of the MOF Supplies Catalogue to Local Government organizations.	2nd year	Cabinet, MOF and MOLG to facilitate the issue of a Presidential decree.	Not required	Not yet implemented
	Filing: Procurement documents covering all stages of procurement process should be complete and be kept in once place within each implementing agency.	1st year and continuing	All PA institutions to participate; MOF to coordinate and assure compliance.	Not required	MOF and all PA institutions are participating and making progress
	Record-keeping: Until the PPA is established, collect procurement information on all projects financed under the PA budget as well as all donor financed projects to the PA regardless of whether grants, credits or loans.	1st year and continuing	MOF; once PPA is established PPA takes over.	Not required	Not yet implemented. There is still no general register for procurement information. The process has been started by MOF..
	In the interests of transparency and accountability, the GCI Annual Report should be formally published each year.	1st year and continuing	PA Ministers Cabinet and GCI	Not required	Annual Report of 2006 was recently published and posted on website.

Areas of Reforms	Recommended Actions	Timetable	Responsible Entities	Technical assistance	Implementation status
	Ensure availability of funds in the budget: A formal provisional certification of the current availability of funds should be obtained before any procurement process is commenced.	1st year and continuing	MOF	Not required. Internal MOF process.	Not yet implemented It is expected that the new PFM system recently launched by MOF will ensure that each project will have available fund before starting the tendering process
<b>Pillar 3: Improve the institutional Framework</b>	Decide where the Public Procurement Authority (PPA) should be located.	1st three months	The PA ministers cabinet	Not required	Not yet implemented Will be determined after the enactment of the new law.
	Establish an Independent Public Procurement Authority (PPA).	Concurrent with the enactment of the new law.	Cabinet and President	Not required	Not yet implemented Depends on enactment of new law which mandates independent PPA.
	Clarify the status of the Palestinian Economic Council for Reconstruction and Development (PECDAR) in relationship with other line ministries and the MOP and the MOPWH in particular and establish a reporting mechanism between PECDAR, MOF, MOP, General Control Institute (GCI) and the PPA once established.	1st year	The PA ministers cabinet	Not required	Not implemented .
<b>Pillar 4 : Develop procurement capacity of Government staff</b>	Conduct a procurement training needs assessment.	1st year	MOF	Supported under IDF	Not yet implemented Depends largely on institutional rearrangements mandated by new law.
	Establishment of a partnership between the Public Procurement Authority and other training and academic institutions to develop a training program on procurement and project management.	3rd year	PPA	Requires substantial technical assistance with long-term funding of training program	Not implemented

Areas of Reforms	Recommended Actions	Timetable	Responsible Entities	Technical assistance	Implementation status
	Training staff of ministries on basic procurement	1st year	MOF	Supported under IDF	Not implemented, except for occasional training workshops provided by Bank procurement staff
	Follow up on the recommendations of the procurement training needs assessment.	2nd year and continuing	PPA	Requires substantial technical assistance	Not implemented

## ***B.2 Status of the Procurement Reform***

The PA initiatives in implementing procurement reforms have been carefully examined. In order to support one of the most critical 2004 CPAR recommendations, the Bank approved in July 2004 an Institutional Development Fund Grant (IDF) in the amount of US\$385,000 for critical aspects of procurement reforms in WB&G. Specifically, the IDF Grant supported the following activities:

- Drafting and enacting a new procurement law and implementing regulations,
- Preparation of national standard bidding documents and a national procurement manual,
- Establishment of an independent Public Procurement Authority and
- Strengthening the procurement capacity of the PA ministries through the implementation of a continuous and targeted public procurement training program.

The reforms were launched with an encouraging effort by the PA, with Bank support, to draft the new national procurement law and detailed implementing regulations. This effort was conducted under the professional guidance of an international legal expert and a task force of counterparts from the MoF. After several months of fruitful cooperation, the drafts of the new law and regulations were introduced in two workshops to representatives of PA units as well as civil society in February 2006. These workshops were successful and provided valuable feedback through open discussions under the leadership of the MoF. The new law, being fully consistent with international standards and the Bank's principles of procurement responded well to the need for improvements in transparency, fairness, economy and efficiency in all aspects of public procurement.

The changes in the Government since 2006 have delayed the ratification and enactment of the law and regulations and prevented successful completion of the other reform activities. The IDF grant was closed in January 2008 with considerable progress in the first activity but without significant accomplishments with regard to the other three agreed procurement reform activities.

The new target date for the enactment of the new law by presidential decree, as reported by the MoF during the CPIP mission, is June 2008. The MoF is currently taking the necessary steps for the enactment of the law. Once the law and regulations are ratified, they will create a path mandated by law for the other activities to be acted upon by the PA. The Bank offered the MoF its availability to review the final draft of the

procurement law and regulations prior to their enactment, in case any changes have been introduced since the Bank last reviewed these key documents, more than two years ago. To date, PA has not yet asked for further Bank assistance in this regard.. Through meetings with the donor community, the CPIP mission confirmed the continued strong support and interest of the donors in the enactment of the new procurement law and regulations. It also took note of the remarkable willingness of the donors to contribute to the essential technical assistance needed by PA for the successful and complete implementation of procurement reforms.

## **C. ASSESSMENT OF THE CURRENT PROCUREMENT AND FINANCIAL MANAGEMENT SYSTEMS**

The West Bank and Gaza current procurement system has been assessed through extensive interviews with PA officials and the private sector as well as through the OECD-DAC benchmarking tool developed in the OPCS paper of February 13, 2008, entitled: “*Use of Country Procurement Systems in Bank-Supported Operations*” (Stage I).The assessment focused on the qualitative aspects of the system using four Pillars: (i) legal and regulatory framework for procurement; (ii) institutional framework and management capacity; (iii) operations and market practices, and (iv) integrity and transparency. The assessment identified weaknesses in the current procurement system and shortfalls in its conformance with generally accepted international practice.

In addition to the follow up on the CPAR recommendations and the assessment of the status of the procurement reform in the West Bank and Gaza, which constitutes a review of the procurement diagnostic work (Section B of this paper) stage I of the assessment covers: (i) review of PFM system, ( ii) assessment of procurement systems at country level.

### ***C.1 Assessment of the Procurement System at the Country Level.***

The Base-Line Indicators (BLIs) proposed by the OECD-DAD were applied during this assessment, as explained in the methodology section above. These present a “snapshot” comparison of the actual system that is currently in place against the international standards that the BLIs represent.

Each of the above mentioned pillars has a number of indicators and sub-indicators. The OECD-DAC suggested assessment based on a scoring

system which ranges from 3 to 0 for each baseline sub-indicator (for the total of 54 sub-indicators). A score of 3 indicates full achievement of the stated standard. A score of 2 is given when the system exhibits less than full achievement and needs some improvements in the area being assessed and a score of 1 is for those areas where substantive work is needed for the system to meet the standard. A rating of 0 is the residual indicating a failure to meet the proposed standard.

The 54 sub-indicators, quoted below from the OPCS paper, are grouped in the following four categories:

- 17 core sub-indicators which should be assessed to meet the criteria of the corresponding benchmarks indicated for a “3” rating;
- 10 sub-indicators which could be assessed to only meet the criteria of the corresponding benchmarks indicated for a “2” rating, provided the country agrees to put in place an action plan of corrective measures to bring those sub-indicators to a “3” benchmark rating during implementation;
- 25 sub-indicators which should be assessed to meet the criteria of the corresponding benchmarks indicated for a 2” rating; and ;
- 2 sub indicators (4-d and 10-e, regarding respectively the regulatory body and the complaints review body) for which only a “3” or “0” rating can be obtained.

In order to reach a conclusion about the current procurement system in the West Bank and Gaza, each of the four pillars, indicators and sub-indicators were assessed and scored by the CPIP mission team. The indicators and respective scores are presented in annexes 1 to 4. A narrative summary based on these indicators is provided under Subsections C.1.1 to C.1.4 below.

### **C.1.1 Existing Legal and Regulatory Framework**

The assessment under this sub-section covers Pillar 1 in relation to the legal framework that governs public procurement in the country *at the present time*, including applicable laws, acts, decrees, recorded legal opinions, etc.. This entire set of legal instruments is designated as the current legal framework and should not be confounded with the new procurement law and regulations which have yet to be enacted.

Public procurement in the WB&G has not changed since 2004 and is still governed by two principal laws (Law No. 9 of 1998 on General Supplies, and Law No. 6 of 1999 on Procurement of Public Works). The weaknesses and gaps reported by the 2004 CPAR concerning the uniformity and consistency by which the existing legal and regulatory framework covers

public procurement as carried out by the PA, are still as evident as they were in 2004. Among these are:

- Lack of a central public procurement agency to oversee and supervise procurement at all levels;
- Absence of procedures for pre-qualification or systematic post-qualification of contractors;
- Absence of any rules governing the procurement of consulting services, as well as procurement carried out by publicly owned enterprises;
- Lack of implementing regulations supporting the Law No. 6 of 1999 on Procurement of Public Works;
- Absence of rules and procedures providing access to the proper authority for bidders who want to lodge complaints, request reviews of procurement decisions and seek relief, at any point during the procurement process.

On the other hand, with regard to Pillar 2, there has been some progress. These new developments will tend to fill the voids in the currently available implementing regulations and documentation:

The preparation and introduction of SBDs for works based on FIDIC 99. These were adopted following the Cabinet Decree in 2006. These bidding documents have been recently amended to allow for price adjustment in works contracts in order to address the recent problem faced by the local contractors due to the cost increase of construction material and the devaluation of the US dollar against the New Israeli Shekels (NIS).

- The recent initiative to develop similar standard documents for the selection of consultants in the WB&G. This has been initiated by the Ministry of Public Works and Housing (MOPWH) and the Engineers' Association, in order to provide for the selection of consultants based on transparent qualitative criteria and the introduction of General Conditions of Contracts for consulting services.
- The bidding documents for general supplies have been slightly improved in terms of general conditions and technical specifications requirements.

There is still no national procurement manual to be followed by all PA contracting entities. However, this was one of the shortcomings recently flagged in the State Audit and Administrative Control Bureau (SAACB) annual report; a sign of increased awareness and openness.



For further information on the assessment summary of the baseline indicators and the scores for Pillar I, please refer to Annex 1 *Existing Legal and Regulatory Framework for Procurement*

## **C.1.2 Institutional Framework and Management Capacity**

### ***Institutional and Regulatory Role***

The situation reported by 2004 CPAR did not change much in regard to the institutional framework and the management capacity either. There is still no single agency or central authority to lay down uniform and consistent policy, rules and procedures in public procurement, and ensure clear and enforceable sanctions and enforcement mechanisms. The existing legal framework has entrusted the Ministry of Public Works and Housing (MOPWH) and Ministry of Finance to respectively oversee and coordinate procurement of works and services and general supplies. However, this provision was not enforced in public works procurement, as the Central Tenders Department (CTD) in the MoPWH (expected to play the primary role in this function) was not fully staffed nor totally operational.

A slow enforcement of the CTD has been initiated in 2005 and has allowed for partial compliance with the provisions of the law with regard to procurement of works above US\$150,000. During the current fiscal year, CTD and the Central Tenders Committees (CTC) have handled an average of 10 bidding processes per month for large and medium infrastructure contracts estimated to cost above US\$ 150,000 (mainly for schools and water supply projects). However, the staffing of the CTD (5 engineers) is still insufficient and does not allow for handling the whole procurement processes for all line ministries. In practice, the procurement departments in the concerned line ministries do all the work that the CTD and Central Tenders Committees are supposed to do. Hence, there is now a mechanism in place that would permit progress but with insufficient capacity and recognition to actually achieve progress.

For further details on the assessment summary of the baseline indicators for Pillar II, please refer to Annex 2 *Institutional Framework and Management Capacity*

### **C.1.3 Procurement Operations and Market Practices**

Apart from a limited number of government entities (General Supplies Department in the MoF, MoPWH, MoEHE and PECDAR), the procurement competence among government staff is inadequate. The public procurement capacity has been severely affected by the political and economic crisis which resulted in the turnover of qualified procurement officers to the private sector and/or abroad. A similar situation was faced in the PIU's implementation of Bank-financed projects, where many staff changes took place in the last few years. Consequently, it is presently very difficult to locate the required procurement expertise in local market..

The procurement capacity of some line ministries, such as the MoH, has been further affected by the new political situation in Gaza. Prior to the recent political developments affecting Gaza, most of MoH procurement activities were implemented by the Ministry's Procurement Department in Gaza which had accumulated an experience of many years in drugs procurement. A new Procurement Unit was established in 2007 in the West Bank which is in charge of centralized procurement for the whole Ministry. The capacity of the new staff is very limited. The European Union (EU) has provided Technical Assistance to support the building of procurement capacity of this new unit. Also, for the first time, a Special Tender Committee was established by Cabinet Decree to handle the major tendering process launched in January 2008 for the procurement of pharmaceuticals, medical and lab disposables. The Committee is chaired by the Minister of Health and includes representative of the MoH (Procurement Unit), MoF, MoP, Ministry of National Economy and State Audit and Control Bureau. Other specialized pharmaceutical such as vaccines have been procured through the United Nations International Children's Emergency Fund (UNICEF).

To date, there has been no institutionalized and sustainable effort on procurement capacity building. Notwithstanding some training delivered under donors-financed projects, there appear to be few properly trained procurement staff in the majority of the PA contracting authorities. It should be mentioned, however, that the Ministry of Local Government, with the assistance of Government of Japan, has recently established a training center in West Bank (Jericho) for local government staff. The training program is mainly focused on administrative and project management with a module on procurement. The 2004 CPAR action plan, supported by an IDF grant, provided for a comprehensive training program at all levels of PA institutions with the possible introduction of

a continuous process with a view to establishing a cadre of procurement professionals. In spite of the Bank's several attempts to encourage the PA to use the funds for the training of procurement professionals, the training activity did not take place prior to the closing of the Grant in January 2008.

### ***Safekeeping of Procurement Records and Documents***

There are no norms nor procedures for the safeguarding of procurement records and documents that would apply to all PA ministries. In the current practice, procurement filing is still left to the discretion of each ministry. There is still no General Procurement Register in place. The CPAR 2004 recommended that until the implementation of the procurement reforms, the MoF would collect procurement information on all projects financed under the PA budget as well as all donor financed projects to the PA regardless of whether they are funded by grants, credits or loans. However, this recommendation has not been fully implemented.

### ***Procurement Cycle Management***

The procurement cycle has been assessed based on interviews and random sample reviews of documents with the main procuring entities. The mission was unable to carry out an in-depth analysis conducted on a broad statistical scale, comparing many processes for contracts of different sizes carried out by various entities, locally financed as well as donor financed; to a large extent, this would be performed in the context of a procurement audit or IPR. The detailed findings for the main steps of the procurement cycle, as reviewed by the CPIP mission, are summarized below. However, the average processing time used by PA procuring entities from advertisement to signing of contracts has improved and now observes the same standards, irrespective of the source of funding

To begin with, in the current practice, there is no procurement planning, either at the time of preparing the budget nor after receiving it.

- ***Advertising:*** Currently all tender notifications for contracts, other than single source and shopping, are published for more than one (1) day in at least two (2) widely circulated national newspapers. There is no general government portal for the posting of all public procurement opportunities. However, some ministries do post the tenders notifications on their websites. Some professional associations such as the Palestinian Contractor

Union and the Engineers Association do also post the public procurement opportunities on their website and assure that their members are notified.

- *Time for bid submission and validity:* The existing regulations do not clearly specify the minimum time for bid submission. In practice, this time ranges between 2 to 4 weeks for national and international bidding for works and goods. The current framework stipulates that bids should be valid for 30 days from the submission date. In practice, this period is extended to 90 to 120 days for works contracts.
- *Bid opening and evaluation:* The current legal framework does not call clearly for immediate opening of bids on the stipulated date and time. It provides however for public bids openings in the presence of bidders' representatives who wish to be present. The time required for the completion of the bid evaluation varies depending on the nature and size of the contract. In current practice, it takes one (1) week in average.
- *Contract award and signing:* For supplies contracts, the current law stipulates that the procuring entities should post the recommendation to award on the entity's notice board for four (4) working days, for any objections by the bidders. If no complaints are submitted, the contract will be signed with the winning bidder. In general, the award and signing of contract take in average one (1) week.

### ***Contract Management***

Appropriate contract management is exercised by few government entities, especially for donors-funded projects. The Annual Report of State Audit and Administrative Control Bureau of 2006 has reported weaknesses in contract management in most PA entities. Contracts' monitoring is done manually in almost all the procuring entities and there is no general register. Delays in payment are still frequent and constitute the major cause of concern for the business community. These delays result in bidders continuing the practice of bid price inflation in order to compensate for the risk of long delays in payment. Among reported causes, are the budget unavailability and the lengthy internal control of payment processing.

Contract management of imported goods continues to face the same difficulties reported in 2004 CPAR which are mainly due to border closures, the continuing restrictions on movement and the rules and

regulations imposed by Israel for imported goods. The negative effects of the border closure with Israel are more acute in Gaza where constant shortages of goods and construction material are experienced.

The Israeli MOH requirement for the registration of any imported drugs in Israel, before being allowed to leave the port of import for destinations in WB&G, is still hindering pharmaceuticals procurement in WB&G. The only exception to this requirement is made, when drugs are imported as donations for the exclusive use in the WB&G .

Few line ministries such as the MoF and MoH (which carry out larger amounts of goods procurement) have qualified staff who receive and inspect the goods. For pharmaceuticals and medical disposables, the MoH relies on the very few competent and equipped local labs (Bir Ziet University, Najjah University) for the inspection of physical and chemical proprieties of drugs. However, the MoH and local labs are not equipped to perform complex tests (e.g. bio-equivalency) and no third party is outsourced to carry out the testing, due to budgetary shortages. In an attempt to overcome this difficulty, a Cabinet Decree issued in 2006 has set forth the testing requirement of such drugs (international standards, such as Agence Française de Developpement (AFD), EU, Israel, Japan, etc.) and these requirements are now specified in the bidding documents issued by MOH.

### ***Integration of Procurement with Budgeting***

Law No 9 –General Supplies, provides for the availability of funds prior to launching the bidding process. In actual practice, this is only extended to works and services. The lack of procurement integration with budgeting is still apparent given the decisions to prepare procurement plans for which the budget has not been ascertained. A recent initiative by the MoF has been announced which will ensure that each project has available funds allocated before launching the tendering process.

### ***Private Sector Participation in Public Procurement***

WB&G has a relatively small private sector generally dominated by a few well established firms. It is organized around the main professional association such as the Palestinian Chamber of Commerce, Palestinian Contractors Union (PCU) and Engineers Associations. These institutions are well organized and appear to have substantial leverage with the Government. Given their skills and influence, they are important stakeholders in the system. They successfully lobbied for the adoption of the unified bidding documents for works in 2006 and its recent amendment in March 2008. They have also participated in the

discussion of the new procurement law and expressed to the mission their strong support for the procurement reform and its prompt implementation.

The interviewed private sector representatives articulated several key difficulties faced by their respective sectors, as follows:

- i) Decrease of business opportunities: In addition to the small size of the Palestinian market, the volume of works continues to decrease due to the severe political and economic crisis. As a result, many contactors have left for other Arab countries (Gulf countries, Jordan);
- ii) Contracts price (under pricing): The current profit margin ranges between – 5 % and + 5%. Some contractors aim at staying in business only and therefore choose to reduce their prices to unsustainable levels, covering the overheads only.
- iii) Bid and performance security: Bid security is required even for very small contracts which actually discourages competition among bidders, particularly, small local contractors. The local banking system is not accessible to small contractors, making it very difficult for them to obtain the required bid securities. Moreover, banks are requiring bidders to have the equivalent value of the bid security in the bidder's bank account as collateral, before issuing the bid security. This adds to the challenges of small contractors and suppliers, already suffering cash liquidity related problems.
- iv) The unreasonable period for bid validity (sometimes, 120 days) in addition to the frequent requests from the responsible ministry for the extension of the bid validity period. This impacts the price offered by the bidders at the date of bids submission and makes the bidding on the few available projects extremely difficult and risky for local contractors.

### ***The Pharmaceuticals Industry***

Due to the mandatory special requirements and international standards for pharmaceutical production, including the Good Manufacturing Practice (GMP) certificate, most Palestinian companies have invested heavily in state of the art manufacturing facilities and equipments to meet standards and required production procedures. Total investment by the local manufacturers during the past five years exceeded USD 50 millions. More investment and development are needed in order to

comply with the required standards and take advantage of more exports opportunities.

A project funded by the United States Agency for International Development (USAID) and implemented by the Palestinian MoH, with the technical assistance of the World Health Organization (WHO), has allowed for the development of a GMP manual; an extensive GMP audit completed by the MoH with the assistance of American expertise in GMP and FDA regulations. As a result, four companies out of six have obtained GMP compliance certification in 2008.

The pharmaceuticals industry in WB&G was recently affected by a reported case of fake medicine fraudulently introduced and put into the Palestinian market. The fake drugs included anti cancer and other lives saving medication. The pharmaceutical industry is concerned about the effect of these widely published reports on the reputation of its emerging local industry and is taking steps to ensure that high standards are maintained by its members.

There are no formal rules regulating procurement in the private sector and commercial transactions. Generally, private sector companies do not have written rules or procedures for procurement. They maintain lists of qualified suppliers and updated prices, conduct market surveys, and normally request several quotations. Negotiations of all aspects of the contract are a common feature. There are also well established business relationships between local suppliers and local and international manufacturers.

For further details on the assessment summary of the baseline indicators for Pillar III, please refer to *Annex 3 Procurement Operations and Market Practices*.

#### **C.1.4 Integrity and Transparency of the Public Procurement System**

##### ***Arbitration***

An arbitration law is in existence (Law no 3, 2000). Parties to a contract can refer and agree in their contract to settle any disputes by arbitration under the rules provided by this law. However, the Law refers to the Arbitration Chamber of Jerusalem which does not exist yet. The Law has been recently amended to allow for the registration of more arbitration entities. A joint action by the PCU and Engineers and Lawyers Associations is currently carried out in order to establish a "Palestinian Arbitration Chamber", a project that is supported by the



Italian Government. In addition, Engineers Association branch in Gaza has established in August 2005 the “Engineering Arbitration Center” in accordance with the provisions of Law no 3. The Center is specialized in arbitrating disputes of engineering related contracts. The association has applied for the formal registration of the center with the Ministry of Justice following the amended regulation of Law no 3 mentioned above. This would allow parties to legally refer to the center in the arbitration clause under their contract. The Association center has issued its own rules and procedures which are inspired from similar centers in the region. The ministry of Justice has established a roster of qualified arbitrators.

### ***External and Internal Audit***

The SAACB established by law no 15-2004, is currently responsible for the external audit of all the government entities including public corporation and companies, local government and universities and colleges. The law establishing the SAACB provides for the audit of the procurement process. The 2006 annual report recently published and posted in the SAACB website has reported some weaknesses in the implementation of the public procurement by some line ministries and has recommended corrective measures. However, there is no apparent mechanism for the enforcement and follow-up on findings and recommendations of the control.

Internal audit of all PA ministries is the responsibility of the MoF through its Internal Audit Department (IAD). Internal auditors are currently stationed in each line ministry and report to the IAD. However, their control covers mainly the financial aspects such as availability of funds of the reposed expenditures and the payments authorizations supporting documents.

### ***Anti-Corruption***

There are still no laws or regulations providing for specific provisions on fraud and corruption in public procurement in WB&G. The only reference for such measures are found in the MoLG regulation on works procurement by the local government which prohibits local government employees or their relatives from engaging in any activities leading to personal gain. However, the enactment of Law no 1- 2005 on Illegal Profit in 2005 has partially filled the gap in WB&G anti-corruption legal framework. The Law considers financial gain by a civil servant or spouse, or by a legal entity that belongs to a civil servant as illegal profit. It includes provisions for the obligation for disclosure for those in

decision making positions and on the obligation of civil servant for reporting fraudulent and corrupt behavior.

There is also an emerging role of the Palestinian civil society represented by the Palestinian Coalition for Accountability and Integrity-AMAN in the promotion of values and systems of accountability, transparency and integrity in WB&G. AMAN, presently, the Palestinian National Chapter for Transparency International (TI), focuses also on fraud and corruption in public procurement. It is taking the lead by holding discussion and workshops around Palestinian laws relating to public procurement institutions, methods implemented within these institutions, violations, and problems related.

For further details on the assessment summary of the baseline indicators in Pillar IV, please refer to Annex 4 *Integrity and Transparency of the Public Procurement System*

## **C.2 Public Financial Management System<sup>2</sup>**

According to the last CFAA conducted in 2004, the Palestinian Financial Management Systems (PFM) system is judged to be adequate insofar as the World Bank's criteria and standards for approval of a general budget support operations are concerned. The CFAA has also concluded that the fiduciary risk level in the Palestinian PFM system was significant due to weaknesses in the PFM systems. Recent International Monetary Fund (IMF) reports state that the PA's PFM system has returned to the level that it was in prior to the most recent election and cut off in direct aid.

The CFAA and later follow-ups (by the Bank and other donors) reported major improvements in the PFM systems of WB&G. Notable improvements in the PFM include: a) the launch of the new accounting system that will consolidate the budget implementation process, strengthen the payment controls and improve the fiscal reporting; b) all PA revenues are now paid into the Central Treasury Account (the CTA); c) an orderly system of budgetary appropriation is now in force; d) the MoF is exercising firm control over budget expenditures and has initiated a program to place financial controllers in each line ministry; e) the MoF launched a program to develop an ex post internal audit department in the MoF; f) control over the civil service payroll has improved significantly; g) a system of direct salary deposit; h) the establishment of the Palestine Investment Fund (PIF) has brought all PA equity holdings, including virtually all state-owned enterprises (SOEs), within a centralized and commercially-oriented management framework.

Much more remains to be done to further consolidate progress and address the challenges before the PFM systems due to the lack of adequate public aggregate financial statements, inadequate external and internal auditing, and underdeveloped oversight role of the Palestinian Legislative Council (PLC). A Program and Timetable for Improving Palestinian PFM includes: a) the completion of the transformation of line ministry and agency bank accounts into zero-balance accounts; b) better integration of donor programming into the annual development budget which will require a much enhanced level of effort by donors to harmonize their planning, disbursement and procurement procedures with those of the PA.; c) internal audit development is already underway, but requires some time before an adequate internal audit system begins to operate effectively and to show results; d) developing the capacity of the new external audit institution to a satisfactory level will require 2-3

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<sup>2</sup> *MNAFM brief on WB&G PFM*

years of well-monitored capacity development; e) improved cash management and forecasting is difficult to envisage under current emergency conditions, but should be a point of focus once there is a return to more “normal” conditions.

It should be noted that these measures have all been identified by the PA itself as PFM reform objectives in the newly proposed Palestinian Reform and Development Plan PRDP 2008 – 2010.

**Progress in implementing the emergency measures in public financial management (PFM), initiated by the Palestinian Authority in 2007, has been impressive despite the difficult political environment.** Pre-2006 cash controls have been restored through reestablishing the government banking arrangements, and the budget process have been rebuilt through adopting the 2007 emergency budget, preparing a draft 2008 budget, and restoring fiscal reporting.

### ***C.3 Findings based on OECD-DAC Assessment Tool***

Annex 1- 4 examine the indicators used in the OECD-DAC Assessment Tool in detail and compare the assessment score ratings for WB&G with the benchmark score ratings, as per the methodology in the OPCPS paper. The results of these findings and scorings are displayed in Annex 5.

In brief, the information detailed in Annexes 1- 5 leads to the following conclusions::

- The current system overall does not meet the requirement of a “3”<sup>3</sup> rating for the seventeen core sub-indicators. None of the seventeen core sub-indicators received a “3” rating.
- Only a few sub indicators in category (b) and (c) even meet the criteria for a “2” rating;

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<sup>3</sup> Scoring is done at the subindicator level, according to a defined scoring criterion, on a 0-3 scale; a score of 3 indicates full achievement of the stated standard. A score of 2 is given when the system exhibits less than full achievement and needs more improvements in the area being assessed, but still reflects substantive compliance with the standard.

- The current system also obtained a “0” rating for two sub-indicators 4-d and 10-e regarding respectively the regulatory body and the complaints review body ( only rating “3” or “0” can be obtained)

On the basis of these ratings, WB&G does not meet the criteria for being selected for the long list of the candidate countries to be considered for the next stage of the pilot program..

These ratings also reconfirm the findings of the 2004 CPAR. The need for the PA to reform the legal and regulatory framework for public procurement is still a very critical issue, just as stated in the recommendations made four years ago.

## **D. Performance on Bank-financed Projects**

### ***D.1 World Bank Portfolio in WB&G***

The IDA active portfolio for WB&G includes 12 projects with total commitments of US\$ 165 million (as of May 20, 2008). The majority of support is concentrated on water & sanitation, education, solid waste, municipal finance, land administration and the NGO sector. In addition, four projects have been approved by the Board in April 2008 (in the amount of USD 37 million) to provide additional Financing for 2 ongoing projects and support two new projects. Annex 6 presents the summary of the current portfolio.

In April 2008, the World Bank Board of Directors approved US\$ 55 million in replenishment of the Trust Fund for WB&G and accordingly the World Bank aims to achieve the following objectives: (i) improve governance and support fiscal reform (ii) support health education and social safety nets for the most vulnerable, (iii) support economic and private sector development and (iv) support for public infrastructure development. To date, the Trust Fund for WB&G has been replenished six times for a total allocation of US\$510 million most recently in December 2006. As of April 1, 2008, resources have been committed to 36 projects.

The World Bank has recently signed a Grant Agreement with the Palestinian Authority for the PRDP-TF. The PRDP-TF is part of the overall donor effort to alleviate the Palestinian fiscal crisis and support implementation of the Palestinian Reform and Development Plan 2008-2010. Both the Government of Norway and the UK Department for International Development (DFID) contributed to the currently available

PRDP-TF funds totaling \$83.8 million. Additional contributions to the fund have been pledged and further disbursements are planned for later this year.

## ***D.2 Country Portfolio Review (January 2008)***

The WB&G Portfolio Review carried out in early 2008 has reported an improved performance in the portfolio management and implementation compared to the situation of the last two years. The success rate is of 65 % and disbursement ratios around 25-35, far above worldwide averages (which are 22%). The number of projects at risk was on a downward trend with six (out of 11) at the beginning of 2007 to one (out of 12) at the beginning of 2008. However, the review concluded that the very difficult working conditions, particularly in Gaza, still make long term institution and capacity building objectives difficult to achieve. The CPPR has also noted an improvement in the procurement management through PIU's compared to the situation in the last two years, but the PIUs' procurement capacity remains a concern in the implementation of Bank-financed operations in WB&G. Despite the continued efforts of the Bank and other donors in providing procurement capacity building, the current capacity of most implementing agencies remains weak. One of the main reasons is the high turnover of PIU staff and the difficulties to find qualified procurement staff in the local market.

## ***D.3 Procurement Post Reviews***

An Independent Procurement Review (IPR) was conducted in 2006 by the Bank in addition to regular Ex-post reviews which were conducted during the period 2005-2008 for the portfolio active projects. No major procurement problems or cases of misprocurement<sup>4</sup> were reported by these different reviews. However, several shortfalls were pointed out including issues related to quality of bidding and contracts documents, inappropriate use of post qualification requirements, inadequate procurement filing and delays in contracts payments.

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<sup>4</sup> However, two cases involving procurement subject to prior review are currently under investigation and could potentially lead to a declaration of misprocurement.

#### **D.4 Risk Assessment**

Any assessment of risk in a country's national public procurement system should be based on the stage of development of its legislative framework, the effectiveness of its regulatory institutions, and the strength of its enforcement regime, the capacity of its institutional and human resources and the threat of corruption. Measured against these parameters, the environment for conducting public procurement in WB&G is still characterized by a high level of risk, specifically, for the following reasons:

- The existing legal framework for public procurement is both incomplete and insufficiently robust to provide for a clear, rules-based environment for conducting public procurement.
- Most ministries have understaffed organizational units to undertake procurement, and staff, who handle the task, frequently do so without proper training.
- The enforcement regime for procurement is weak, including internal and external auditing and dispute resolution.
- Anti-corruption legislation exists only to a very limited extent.

### **E. SUMMARY OF FINDINGS AND RECOMMENDATIONS**

This section summarizes the main findings of the CPIP in connection with the current status of public procurement in WB&G. It deals also with recommendations for the achievement of a procurement system that meets internationally recognized standards.

#### **E.1 Findings Concerning the Current Public Procurement**

- a) Weaknesses and gaps reported in the CPAR of 2004 are still dominant. The most important weaknesses relate to:
  - The institutional and regulatory functions: the situation reported by 2004 CPAR has not changed much in regard to the institutional framework and the management capacity. There is still no single agency or central authority to lay down uniform and consistent policy, rules and procedures in public procurement, and ensure clear and enforceable sanctions and enforcement mechanisms.

- Absence of procedures for pre-qualification or systematic post-qualification of contractors;
  - Absence of any rules governing the procurement of consulting services, as well as procurement carried out by publicly owned enterprises;
  - Lack of implementing regulations supporting the Law No. 6 of 1999 on Procurement of Public Works;
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- Absence of rules and procedures providing access to the proper authority for bidders who want to lodge complaints, request reviews of procurement decisions and seek relief, at any point during the procurement process.
- b) No national procurement manual to be followed by all PA contracting entities.
- c) Procurement competence among government staff is not adequate. Public procurement capacity has been severely affected by the political and economic crises. Furthermore, there has been no institutionalized and sustainable effort on procurement capacity building, except for some training delivered under donors-financed projects.
- e) No norms and procedures for the safeguarding of procurement records and documents that would apply to all PA ministries. In the current practice, procurement filing is still left to the discretion of each ministry. No General Procurement Register in place.
- f) Contract Management: Contract management is done in an appropriate manner by only a few government entities, especially for donors-funded projects. Delays in payment are still frequent and constitute the major cause of concern for the business community.
- h) Integration of procurement with Budgeting: Law No 9 –General Supplies provides for the availability of funds before launching the bidding process. In actual practice, this is only extended to works and services. The lack of integration of procurement with budgeting is still apparent.

In terms of improvements since the CPAR of 2004, the assessment revealed the following:

- Progress has been made in terms of introducing standard bidding documents for works based on FIDIC 99.
- Recent initiative to develop similar documents for the selection of consultants.



- Improvements in the bidding documents used for general supplies, including improved technical specifications.
- Procurement Management Cycle. The average processing time used by PA procuring entities from advertisement to signing of contracts has improved and now observes the same standards, irrespective of the source of funding.
- Contract management has improved but mainly in relation to donor-funded projects.
- The MoF has announced an initiative to ensure that each project has funds allocated in the budget, before initiating the bidding process.

## ***E.2 Recommendations for the Current Procurement System***

Although the final versions of the new procurement law and implementing regulations will not be available for review, until enacted, it is anticipated, based on the Bank's technical assistance in drafting these key documents, the expected, immediate improvements in the country's procurement system will not only resolve most of the identified major issues that affect public procurement at the present time but will, in a more general sense, fully uphold this guiding principle. In the interim, the following issues and recommendations have been derived from this CPIP mission:

- The process of procurement is becoming onerous on the bidders, whether the bid invitation is for large or for small contracts. The bidders are being asked to present bid securities and insurance policies even for small jobs. This excessive burden on all businesses, but especially small firms, discourages bidding for public contracts. The paperwork demanded in submitting bids is growing in size and volume and no efforts are being made to minimize it.

**Recommendation:** Reduce the burdens and the paperwork for submitting bids in general but in particular, for small contracts.

- Lack of consistency in applying bidding procedures is confusing to bidders and causes duplication.

**Recommendation:** Establish uniform regulations, procedures and documentation. The example of the unified bidding and contract documents adopted in 2006 for works should be extended to the procurement of goods and services.

- There is a trend at present among public sector organizations towards creating a list of qualified contractors. After going through a qualification process – qualified contracting firms are listed as “approved contractors” by the Contractors’ Union and the Ministry of Public Works and Housing. However, regular renewals of qualified contractors do not require thorough assessments of changes in the contractor’s organization.

**Recommendation:** Introduce a more systematic method for updating the information on contractors, before renewing the contractor’s status as a qualified contractor, using models of other countries.

### ***E.3 Findings and Recommendations for Procurement Reform***

The Bank should be prepared to continue its efforts in assisting PA to implement its reforms and develop a medium-term action plan. The Bank should also work closely with other donors to develop, coordinate, and finance a wide-ranging capacity-development program to support the country in strengthening its procurement system. A number of donors met by the CPIP mission have already expressed interest in providing funding for this purpose and will discuss their commitment with the Bank once the capacity-building needs have been identified.

However, the enactment of the new law constitutes in fact, the critical path of the whole reform process.. The PA’s commitment to move forwards with the enactment of the new law and regulations has been reaffirmed recently and is widely known in the Government and civil society. The legal difficulty of enacting this law in the absence of a functioning parliament is currently being explored; in that effect, the law may be enacted through Presidential Decree. The challenges the PA will be facing are to ensure an efficient and complete implementation of the new law and regulations and to obtain full compliance of procuring organizations. The role of the Government in this regard is in the context of speedy follow-up action after the enactment of the new procurement law and regulations.

To this end, the key procurement reform milestones should be updated and efforts should be focused on the following main areas:  
This would focus on the following areas:

- (i) The law and the regulations which were last reviewed in workshops with civil society two years ago need to be re-introduced in a public session in their final enacted form.

- (ii) Strengthening the institutional arrangements of public procurement system through:
  - The establishment of the Public Procurement Agency and initiation of its work/role as defined by the new law and regulations ,
  - The upgrade of the institutional capacity of the two main Procurement entities (The General Supplies Department in MOF and the Central Tenders Department in MOWPH)
  - Provide the required training and IT equipment to these relevant institutions
  
- (iii) The preparation and use of the standard bidding documents, based on the newly enacted law. This would ensure consistency and transparency in the public sector procurement processes. It would also obviate the need for using the bidding documents supplied by various donors in domestic bidding.
  
- (iv) Establishment of a procurement information and monitoring system for all procurement processes, contracts awarded and progress on disputes to support an annual report on procurement to Government and a quarterly bulletin on all tender advertisements and contracts awarded.
  
- (v) The preparation of a national training strategy for public procurement, covering all the levels of administration. The Central objective of this strategy should be the creation of a training system which is self-sustainable in the long term.
  
- (vi) Strengthen the capacity of key PA procurement entities, NGOs and private sector in public procurement:
  - Conduct training on use of the new procurement law, regulations and standard bidding documents for both public and private sectors
  
  - Conduct workshops on procurement of goods, services and consultant services per the new procurement law for the public sector
  - Train private sector in the preparation of bidding documents and proposal submission to increase their awareness of bidding opportunities, to explain the new procurement law and regulations, and to train them in the preparation of responsive bids.
  - Run training sessions on procurement auditing

#### ***E.4 Findings and Recommendations for Private Sector Participation in Public Procurement***

The interviews with representatives from the Chamber of Commerce, the Contractors Union and the Engineers' Association revealed their perception and business concern of current procurement practices in PA units and the difficulties in complying with requirements for bidding. The following issues expressed by the private sector can be highlighted:

- Decrease of business opportunities, due to political and economic crises particularly the decrease in the PA's public investments as a result of the drop of donor's aid in the aftermath of the 2006 election and the Hamas Government.
- Low contracts pricing (under pricing), due to fierce competition between large numbers of small contractors on very small contracting opportunities.
- Lengthy periods and difficulties to comply with the requirements of bidding processes; Bid security is required even for very small contracts which actually discourages competition among bidders, particularly, small local contractors, who suffer cash liquidity problems.
- The demands for high levels of professional indemnity insurance, sometimes amounting to thousands of dollars in premiums.
- The unreasonable period for bid validity (sometimes, 120 days) have made bidding on the few available projects extremely difficult and risky for local contractors, because of the high financial cost of these securities and the constant price inflation. Insufficient and untimely information about bidding opportunities were made available by some PA units.

### ***E.5 Findings and Recommendations for Strengthening Procurement Arrangements and Functions under future Bank-financed Operations in the WB&G***

The performance of the Bank's portfolio in WB&G is in overall satisfactory, with a disbursement rate higher than the region's average. However, the procurement performance of the implementing agencies impacts the efficient and timely handling of procurement as it is still weak and continues to face the same difficulties reported in the CPAR 2004. These difficulties mainly relate to the border closures, restrictions on movement and access of goods as well as the rules and regulations imposed by the Government of Israel for imported goods. It is worth noting that due to the recent political developments in Gaza, the negative effects of the border closure with Israel are more acute where constant shortages of goods and construction materials are experienced.

The CPIP assessment concluded that the current country procurement risk remains very high. Having this in mind, a need to strengthen the procurement performance of World Bank financed projects is crucial. The CPIP suggests that the Bank should ensure that the following steps are taken care of during the appraisal as well as the implementing stages:

- At appraisal of all new projects, undertake an assessment of the institutional capacity of all agencies involved in the project to implement procurement under Bank guidelines. Where capacity is found to be weak, put in place a detailed action plan to supplement and/or develop capacity to undertake procurement satisfactorily.
- The procurement risk assessment, being a dynamic process, should be reviewed later during project implementation and the Bank's review thresholds should be revised, if necessary.
- A detailed procurement plan should be prepared for every project at appraisal. Most importantly, it should be realistic with regard to the findings of the agency capacity assessment and avoid unachievable deadlines and transaction bunching periods. The plan should be updated regularly (at least twice a year), in order to identify and act upon slippages.
- For each new project, procurement arrangement would clearly require that bidding documents of major procurement activities

be prepared prior to the project's effectiveness in order to ensure an early and efficient implementation of the project procurement.

- Project launch workshops on new Bank projects should be expanded in scope and intensity, in order to explain project-specific procurement requirements.
- Every supervision mission should include a mandatory procurement post review in its aide-memoire.

## Annex 1

### Summary of Baseline Indicators in Pillar I- Existing Legal and Regulatory Framework for Procurement

Indicator/ Sub-indicator	Summary Assessment	Score
<b>Indicator 1. The Existing Legal and Regulatory Framework for Procurement</b>		
1 (a) - Scope of application and coverage of the regulatory framework and public access to legislation.	The existing legislative and regulatory framework is still more or less as described in the 2004 CPAR. It consists of 2 principle laws (Law No 9 of General Supplies and Law No. 6 of Public Works). Considerable gaps and fragmentation are still evident in the existing legal framework, chief among them are the absence of any rules governing procurement of consulting services and lack of implementing regulations and documentation for the law on Public Works.	2
1(b) - Procurement methods.	The existing legal framework includes a relatively clear definition of the permissible procurement methods and specifies the monetary thresholds and conditions for the use of each method. There is explicit requirement that open competitive bidding is the default method. The system does not provide for any specific standards for international competitive tendering. It is worth to mention that a unified bidding document for works based on FIDIC 1999 International Contract has been prepared and adopted in 2006.	2
1(c) - Advertising rules and time limits.	Tender announcements for contracts, other than single source are publicly advertised. The publication is mandated in two local newspapers, but there is no public procurement bulletin in WB/G The content of publication does include sufficient information on currency and payment method of tender fees, however, there is no clear statement in the laws on the minimum time for bids' submission.	1

<b>Indicator/ Sub-indicator</b>	<b>Summary Assessment</b>	<b>Score</b>
1(d) - Rules on participation and qualitative selection	The current laws and regulations allow for national preference to local suppliers and local firms but without fixing any reasonable amount or percentage. Also, in actual practice, preference is given to Palestinian firms and only joint ventures in which the Palestinian partner is the majority shareholder are permitted to submit bids for works and consultancy services. This condition is not enforced with regard to procurement of goods. These requirements are being followed closely by the Contractors' Union and Engineers' Syndicate. More recently, the practice stipulated in the law has been followed in the classification of contractors which includes the formation of a committee for classification consisting of representatives of line ministries, PECDAR, Contractors Union and Engineers Syndicate.	0
1(e) - Tender documentation and technical specifications.	National standard bidding documents for works were developed and adopted by the Cabinet in 2006 and recently amended in March 2008. The SBD is based on FEDIC99 General Conditions. In regard to technical specifications, the law does not refer to international standards, however, in practice a number of entities refer to international standards in their bids.	2
1(f) - Tender evaluation and award criteria	The legal framework is unclear on the evaluation criteria other than monetary terms. The possibility exists in the law that the committee could use criteria other than those specified in the tender documents for the evaluation of the bids. The evaluation of proposals for consulting services is not covered at all.	2
1(g) – Submission, receipt and opening of tenders	Though the laws does not require "immediate" opening of the bids, however it stipulates that the offers must be opened publicly by the tender committee which must meet in all its members or a majority of them.	2
1(h) – Complaints system structure and sequence	The laws does not provide for the right to review, the matters subject to review, the time framework for such reviews, nor the different steps in the review process. This was confirmed in the 2004 CPAR and has not changed.	0
<b>Indicator 2- Implementing Regulations and Documentation</b>		
2(a) – Implementing regulation that provides defined processes and procedures.	Implementing regulations are fragmented, incomplete and not updated regularly	0



Indicator/ Sub-indicator	Summary Assessment	Score
2(b) – Model tender documents for goods, works, and services.	In the absence of a complete legal framework, it is not possible to establish a model documents for works, goods and services. However, the standard documents for works adopted in 2006 include clauses that were based on FIDIC 1999 General Conditions.	1
2(c) – Procedures for pre-qualification.	The laws do not provide for pre-qualification at all. Pre-qualification is not used as a separate process to make the procurement for specific contracts efficient by ensuring only qualified participants are included.	0
2(d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion.	The law and the implementing regulations do not provide for contracting of consulting services. There are no procedures and methodologies for assessment of technical capacity and for combining price and quality.	0
2(e) – User’s guide or manual for contracting entities.	As confirmed by the CPAR, there is no separate User’s guide or manual and there is no requirement to have one.	0
2(f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts.	None of the items apply, however, since 2006, there are GCC included in standard tender documents for works which are based on FIDIC 1999 contracts	1

## Annex 2

### Summary of Baseline Indicators in Pillar II- Institutional Framework and Management Capacity

Indicator/ Sub-indicator	Summary Assessment	Score
<b>Indicator 3- Integration and mainstreaming of the public procurement system into the public sector governance system.</b>		
3(a) – Procurement planning and data on costing are part of the budget formulation and multiyear planning.	There is some coordination between budget planning and procurement plans for supplies catalogues items in the Ministry of Finance.	0
3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment.	Time lapse for payments to contractors and suppliers is a function of the availability of budget and can vary from 45 days to six months as previously described in the CPAR.	0
3(c) – Procurement actions not initiated without budget appropriations.	Only Law No. 9 concerning supplies provides for the availability of funds before solicitation of bids. In practice, this also applies to Works	1
3(d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	There is reporting t on spending, but there is no reporting on contracts implementation and completion. The existing procurement system is not capable Of providing regularly information on completion of contracts. There is only a single annual report on procurement which is not coordinated with budget execution or programming.	0
<b>Indicator 4- Normative and regulatory functions.</b>		
4 (a) – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework.	The regulatory framework for procurement does not exist at the moment The current legal framework does not provide for a single normative/regulatory body. There is only a form of a functional designation to two units within government namely the Central Tenders Department (CTD) of Ministry of Public Works and Housing (MOPWH) and General Supplies Department in Ministry of Finance..	0
4 (b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators)	There is no single agency to lay down uniform and consistent policy, rules and procedures in public procurement. Some of the normative functions are currently assigned to the MOPWH (Central Tenders Department) and Ministry of Finance (General Supplies Department) which respectively oversee and coordinate procurement of works and services and general supplies. Their responsibilities also include monitoring and providing procurement information.	0

<b>Indicator/ Sub-indicator</b>	<b>Summary Assessment</b>	<b>Score</b>
4 (c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b).	The capacity of the Central Tenders Department in MOPWH is still insufficient and does not allow for coordinating and handling the whole procurement processes for all line ministries	0
4 (d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	There is no separation between the normative and regulatory responsibilities and the operational role. The Central Tenders Department (CTD) and General Supplies Department are directly involved in the execution of procurement transactions	0
<b>Indicator 5. Institutional development capacity.</b>		
a) – System for collecting and disseminating procurement information and accessibility.	There is no national procurement information system. However, some line ministries keep information and some statistics on contract awards but it is not published or accessible.	0
b) – Systems and procedures for collecting and monitoring national procurement statistics.	There is no national system for collecting and monitoring procurement statistics	0
c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity.	There is no national strategy in place for capacity building, however, there are some initiatives by certain line ministries to include procurement in their training programs	0
d) – Quality control standards and staff performance evaluation for capacity development.	The civil service system does not have quality assurance or staff performance evaluation systems	0



### Annex 3

#### Summary of Baseline Indicators in Pillar III- Procurement Operations and Market Practices

Indicator/ Sub-indicator	Summary Assessment	Score
<b>Indicator 6. Efficiency of procurement operations and practices.</b>		
6 (a) – Adequacy of procurement competence among government officials.	Apart from a limited number of government agencies (General Supplies Department in MOF and Tender Department in Ministry of Public works), the procurement competence among government officials is inadequate	0
6(b) –Procurement training and information programs	There is no systemic training or information program for civil service staff and no program for procurement training at local training institutes, for the public and the private sector. However, Ministry of Local Government with the assistance of Government of Japan has recently established a training center in West Bank ( Jericho) for local government staff . The training program is mainly focused on administrative and project management and includes a session on procurement	0
6(c) – Norms for the safekeeping of records and documents related to transactions and contract management.	The current legal framework does not establish norms for the safekeeping of records and documents related to procurement. Some line ministries keep the documents but this is left to their discretion.	0
6(d) – Provisions for delegation of authority.	Delegation is occasionally present however, as reported in the CPAR, it is not formalized by rules and clearly defined written procedures	0
<b>Indicator 7. Functionality of the public procurement market.</b>		
7(a) – Effective mechanisms for partnerships between the public and private sector	The current economic situation hinders public private partnerships. Also, the legal framework does not provide for such arrangements. However, some spontaneous consultations with the private sector have taken place, more recently, during the preparation and adoption of the standard bidding documents for works and the recent problem faced by the Palestinian contractors with regard to the devaluation of the US dollar and its impact on construction materials and contracts prices	1

<b>Indicator/ Sub-indicator</b>	<b>Summary Assessment</b>	<b>Score</b>
7( b) – Private sector institutions are well organized and able to facilitate access to the market.	The private sector functions through the Palestinian Contractors' Union (PCU), the Chamber of Commerce, supported by the Ministry of Trade. In addition, the private sector is facing serious difficulties especially due to the political and security situation. PCU maintains on its web site a registry of classified contractors.	1
7( c) – Systemic constraints inhibiting the private sector's capacity to access the procurement market.	The persistent political and economic situation including closures, movement restrictions on Palestinians and commodities and the import restrictions imposed by Israel. All these constraints increase costs and risks and inhibit free access to the procurement market	1
7(d) – There are clear and transparent rules for determining whether to engage international or national markets, based on a sound development and business logic.	The main constraints for the participation of foreign firms are the security issues which increase costs, risks and lack of access.	1
<b>Indicator 8. Existence of contract administration and dispute resolution provisions.</b>		
<b>Indicator/ Sub-indicator</b>	<b>Summary Assessment</b>	<b>Score</b>
8 (a) – Procedures are clearly defined for undertaking contract administration responsibilities	The law is unclear on this. Some quality control and contract fulfillment monitoring rules are defined but they are rather not sufficient However, in practice, there are procedures for accepting goods and for supervising civil works. Supervision of civil works is carried out either by qualified government engineers or by independent consultants (individual/firms).	1

Indicator/ Sub-indicator	Summary Assessment	Score
8(b) – Contracts include adequate dispute resolution procedures.	<p>There is an arbitration law in the country (Law no3, 2000). Parties to contract can refer and agree in their contract to settle any disputes by arbitration under the rules provided by this law. However, the law regulation refers to an Arbitration Chamber which does not exist yet. A joint action by the PCU and Engineers and Lawyers Associations is currently carried out in order to establish "the Palestinian Arbitration Chamber" with the assistance of the Italian Government. They have also applied to the United Nations Commission on International Trade Law (UNCITRAL) for certification of the arbitration chamber. In addition, Engineers Association branch in Gaza has established in August 2005 the "Engineering Arbitration Center" in accordance with the provisions of Law no 3. The Center is specialized in arbitrating disputes of engineering contracts. The ministry of Justice has established a roster of qualified arbitrators. The PCU is also involved in disputes resolution in small contracts.</p>	1
8(c) – Procedures exist to enforce the outcome of the dispute resolution process.	Country has no procedures for enforcing the outcome of a disputes resolution process.	0

## Annex 4

### Summary of Baseline Indicators in Pillar IV- Integrity and Transparency of the Public Procurement System

Indicator/ Sub-indicator	Summary Assessment	Score
<b>Indicator 9. Effectiveness of control and audit systems</b>		
9 (a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement..	The system in WB/G provides for some adequate control and audit mechanisms and institutions to oversee the procurement function. The law establishing the State Audit and Administrative Control Bureau (SAACB) provides for the audit of the procurement process. However, the current general focus of the external audit is on the verification of the administrative and financial aspects. The law does not grant the SAACB full administrative and financial independency. MOF is in charge of the internal audit through its Internal Audit Department (IAD). Internal auditors are stationed in each line ministry and report to the IAD.	1
9 (b) – Enforcement and follow-up on findings and recommendations of the control.	The 2006 annual report recently published and posted on the SAACB website has reported some weaknesses in the implementation of public procurement by PA line ministries and has recommended corrective measures. However, there is no apparent mechanism for enforcement and follow-up on findings and recommendations of SAACB’s report. The above mentioned report has recommended that PA institutions should be fully committed to prompt responses to SAACB’s reports	0
9 (c) – The internal control system provides timely information on compliance to enable management action.	According to the finding of the SAACB annual report of 2006, the MOF reporting is not done on a timely basis.	0
9 (d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	MoF has the responsibility for internal audits of all ministries. Internal auditing of procurement is largely limited to financial auditing	0



<b>Indicator/ Sub-indicator</b>	<b>Summary Assessment</b>	<b>Score</b>
9 (e) – Auditors are sufficiently informed about procurement requirements.	The external auditors commonly have the support of their own procurement specialists. However, the audit reports focus primarily on financial issues	1
<b>Indicator 10. Efficiency of appeals mechanism.</b>		
10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	This function dealing with appeals was covered in the CPAR of 2004 and characterized as an essential part of procurement reform . It was recommended that appeals should be assigned to the new Public Procurement Authority (PPA) which has not been established to date. The establishment and functions of the PPA are defined in the new procurement law and implementing regulations, which are still awaiting enactment. .	0
10(b) – Capacity of the complaint review system and enforcement of decisions.	There is no complaint review system in place	0
10(c) – Fairness of the complaints system.	This cannot be determined at this time.	0
10(d) – Public access to decisions.	This cannot be determined at this time	0
10 (e) – Independence of the administrative review body.	This cannot be determined at this time	0

Indicator/ Sub-indicator	Summary Assessment	Score
<b>Indicator 11. Accessibility to information.</b>		
Publication and distribution of information.	There is no consolidated procurement public information system in PA; it was recommended in the CPAR of 2004 as a key transparency feature in procurement reform..	0
<b>Indicator 12. Ethics and anticorruption policy and measures.</b>		
12( a) - Legal provisions on corruption, fraud, conflict of interest, and unethical behavior.	There are no legal or administrative provisions that deal with corruption, fraud conflict of interest and ethics in government. The legal/regulatory framework does not establish a clear requirement to include language on corruption in bidding documents The only direct reference contained in the legal framework for procurement occurs in MOLG regulations on works procurement barring local government employees and their relatives from taking several kinds of actions leading to personal gain	0
12(b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices.	Not provided for in the current procurement legal framework	0
12(c) – Enforcement of rulings and penalties.	Not provided for in the current procurement legal framework.	0
12(d) – Measures exist to prevent and detect fraud and corruption in public procurement.	The only measures that refers specifically to procurement occurs in MOLG regulations on works procurement by local government employees or their relatives However, General Law No 1- 2005 on Illegal Profit , enacted in 2005 , considers financial gain by a civil servant or spouse, or by a legal entity that belongs to a civil servant as illegal profit	0

<b>Indicator/ Sub-indicator</b>	<b>Summary Assessment</b>	<b>Score</b>
12(e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors.	Professional associations such as PCU, Engineers Association and the Lawyers Association are supporting the enactment process of the new procurement law and regulations and have been involved in the dialogue with Government for the reform of the country’s procurement system. There is also an emerging role of the civil society promoting and supporting the creation of a procurement market which widely recognized for its integrity. The Palestinian Coalition for Accountability and Integrity- (AMAN) is taking the lead by holding discussion and workshops relating to public procurement institutions, methods implemented within these institutions, violations, and related problems.	2
12(f) – Mechanism for reporting fraudulent, corrupt, or unethical behavior.	There are no specific legal provisions dealing with reporting corruption in public procurement. However, Law No. 1/-2005 on Illegal Profit includes provisions on the obligation of civil servant for reporting fraudulent and corrupt behavior. .	2
12(g) - Codes of Conduct/Codes of Ethics for participant and provision for disclosure for those in decision making positions.	There is no code of conduct or ethics. However, Article 16 of Law No.1/2005 includes public disclosure requirements for those who are in decision making positions.	0

## Annex 5 - Summary Table

### Assessment Findings Based on the Indicators

Indicator/ Sub-indicator	Benchmark rating as per the Bank methodology	Rating as per the assessment of the Current PPS in WB&	Comments
<i>Indicator 1. The public procurement legislative and regulatory framework.</i>			
1 (a) - Scope of application and coverage of the regulatory framework and public access to legislation.	<b>3</b>	2	The mandatory '3' rating not achieved
1(b) - Procurement methods.	<b>2</b>	2	
1(c) – Advertising rules and time limits.	<b>3</b>	1	The mandatory '3' rating not achieved
1(d) – Rules on participation and qualitative selection	<b>3</b>	0	The mandatory '3' rating not achieved
1(e) - Tender documentation and technical specifications.	<b>3</b>	2	The mandatory '3' rating not achieved
1(f) - Tender evaluation and award criteria	<b>3</b>	2	The mandatory '3' rating not achieved
1(g) – Submission, receipt and opening of tenders	<b>3</b>	2	The mandatory '3' rating not achieved
1(h) – Complaints system structure and sequence	<b>3</b>	0	The mandatory '3' rating not achieved

<b>Indicator/ Sub-indicator</b>	<b>Benchmark rating as per the Bank methodology</b>	<b>Rating as per the assessment of the Current PPS in WB&amp;</b>	<b>Comments</b>
<b><i>Indicator 2- Implementing Regulations and Documentation</i></b>			
2(a) – Implementing regulation that provides defined processes and procedures.	<b>2</b>	0	The minimum ‘2’ rating is not achieved
2(b) – Model tender documents for goods, works, and services.	<b>2</b>	1	The minimum ‘2’ rating is not achieved
2(c) – Procedures for pre-qualification.	<b>2</b>	0	The minimum ‘2’ rating is not achieved
2(d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion.	<b>2</b>	0	The minimum ‘2’ rating is not achieved
2(e) – User’s guide or manual for contracting entities.	<b>2</b>	0	The minimum ‘2’ rating is not achieved
2(f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts.	<b>3</b>	1	The mandatory ‘3’ rating is not achieved
<b><i>Indicator 3- Integration and mainstreaming of the public procurement system into the public sector governance system.</i></b>			
3(a) – Procurement planning and data on costing are part of the budget formulation and multiyear planning.	<b>2</b>	0	The minimum ‘2’ rating is not achieved
3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment.	<b>2</b>	0	The minimum ‘2’ rating is not achieved

<b>Indicator/ Sub-indicator</b>	<b>Benchmark rating as per the Bank methodology</b>	<b>Rating as per the assessment of the Current PPS in WB&amp;</b>	<b>Comments</b>
3(c) – Procurement actions not initiated without budget appropriations.	2	1	The minimum ‘2’ rating is not achieved
3(d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	2	0	The minimum ‘2’ rating is not achieved
<b><i>Indicator 4- Normative and regulatory functions.</i></b>			
4 (a) – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework.	2	0	The minimum ‘2’ rating is not achieved
4 (b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators)	2	0	The minimum ‘2’ rating is not achieved
4 (c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b).	2	0	The minimum ‘2’ rating is not achieved
4 (d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	Pass or fail	fail	Separation and clarity are not present
<b><i>Indicator 5. Institutional development capacity.</i></b>			
5(a) – System for collecting and disseminating procurement information and accessibility.	2	0	The minimum ‘2’ rating is not achieved
5(b) – Systems and procedures for collecting and monitoring national procurement statistics.	2	0	The minimum ‘2’ rating is not achieved
5(c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity.	2	0	The minimum ‘2’ rating is not achieved

<b>Indicator/ Sub-indicator</b>	<b>Benchmark rating as per the Bank methodology</b>	<b>Rating as per the assessment of the Current PPS in WB&amp;</b>	<b>Comments</b>
5(d) – Quality control standards and staff performance evaluation for capacity development.	2	0	The minimum ‘2’ rating is not achieved
<b><i>Indicator 6. Efficiency of procurement operations and practices.</i></b>			
6 (a) – Adequacy of procurement competence among government officials.	2	0	The minimum ‘2’ rating is not achieved
6(b) –Procurement training and information programs	2	0	The minimum ‘2’ rating is not achieved
6(c) – Norms for the safekeeping of records and documents related to transactions and contract management.	2	0	The minimum ‘2’ rating is not achieved
6(d) – Provisions for delegation of authority.	2	0	The minimum ‘2’ rating is not achieved
<b><i>Indicator 7. Functionality of the public procurement market.</i></b>			
7(a) – Effective mechanisms for partnerships between the public and private sector	2	1	The minimum ‘2’ rating is not achieved
7( b) – Private sector institutions are well organized and able to facilitate access to the market.	2	2	The minimum ‘2’ rating is not achieved
7 ( c) – Systemic constraints inhibiting the private sector’s capacity to access the procurement market.	2	1	The minimum ‘2’ rating is not achieved
7(d) – There are clear and transparent rules for determining whether to engage international or national markets, based on a sound development and business logic.	2	1	The minimum ‘2’ rating is not achieved

<b>Indicator/ Sub-indicator</b>	<b>Benchmark rating as per the Bank methodology</b>	<b>Rating as per the assessment of the Current PPS in WB&amp;</b>	<b>Comments</b>
<b><i>Indicator 8. Existence of contract administration and dispute resolution provisions.</i></b>			
8 (a) – Procedures are clearly defined for undertaking contract administration responsibilities	2	1	The minimum ‘2’ rating is not achieved
8(b) – Contracts include adequate dispute resolution procedures.	3	1	The mandatory ‘3’ rating is not achieved
8(c) – Procedures exist to enforce the outcome of the dispute resolution process.	3	0	The mandatory ‘3’ rating is not achieved
<b><i>Indicator 9. Effectiveness of control and audit systems</i></b>			
9 (a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement..	2	1	The minimum ‘2’ rating is not achieved
9 (b) – Enforcement and follow-up on findings and recommendations of the control.	2	0	The minimum ‘2’ rating is not achieved
9 (c) – The internal control system provides timely information on compliance to enable management action.	2	0	The minimum ‘2’ rating is not achieved
9 (d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	2	0	The minimum ‘2’ rating is not achieved
9 (e) – Auditors are sufficiently informed about procurement requirements.	2	1	The minimum ‘2’ rating is not achieved
<b><i>Indicator 10. Efficiency of appeals mechanism.</i></b>			
10(a) – Decisions are deliberated on the basis of available information and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	3	0	The mandatory ‘3’ rating is not achieved



<b>Indicator/ Sub-indicator</b>	<b>Benchmark rating as per the Bank methodology</b>	<b>Rating as per the assessment of the Current PPS in WB&amp;</b>	<b>Comments</b>
10(b) – Capacity of the complaint review system and enforcement of decisions.	3	0	The mandatory ‘3’ rating is not achieved
10(c) – Fairness of the complaints system.	3	0	The mandatory ‘3’ rating is not achieved
10(d) – Public access to decisions.	2	0	The minimum ‘2’ rating is not achieved
10 (e) – Independence of the administrative review body.	Pass or Fail	0	There is no administrative review body
<b><i>Indicator 11. Accessibility to information.</i></b>			
11(a) information is published and distributed through available media with support from information technology when feasible	2	0	The minimum ‘2’ rating is not achieved
<b><i>Indicator 12. Ethics and anticorruption policy and measures.</i></b>			
12(a) - The legal and regulatory framework for procurement , including tender and contract documents, include provisions on corruption, fraud, conflict of interest, and unethical behavior, and set out ( either directly or by reference to other laws) the actions that can be taken with regard to such behavior.	3	0	The mandatory ‘3’ rating is not achieved
12(b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices.	3	0	The mandatory ‘3’ rating is not achieved
12(c) – Enforcement of rulings and penalties.	2	0	The minimum ‘2’ rating is not achieved

<b>Indicator/ Sub-indicator</b>	<b>Benchmark rating as per the Bank methodology</b>	<b>Rating as per the assessment of the Current PPS in WB&amp;</b>	<b>Comments</b>
12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement.	3	0	The mandatory ‘3’ rating is not achieved
12(e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors.	2	2	The minimum ‘2’ rating is not achieved
12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	3	2	The mandatory ‘3’ rating is not achieved
12(g) – Existence of Codes of Conduct/Codes of Ethics for participant that are involved in the aspects of public financial management systems that also provide for disclosure for those in decision making positions.	2	0	The minimum ‘2’ rating is not achieved



## **Annex 6**

### **Interviews questions**

1. Is there any extension/modification of the scope of application and coverage of the existing procurement legal framework?
2. What are the current practices with regard to the Central Tender Directorate (Works Tenders Law No. 6 of 1999)? Examples requested for review.
3. What are the current practices with regard to the General Supplies Department, for the supply of Goods? Examples requested for review.
4. Is there any improvement to the Supplies Catalogue bidding documents?
5. Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, and names of successful bidders)?
6. Is there an MIS for PA general procurement monitoring and administration?
7. What is PA's current practice for procurement planning with regard to large projects?
8. Do procurement units regularly conduct market surveys to update their knowledge of prevailing prices for goods and works? If Yes, how often
9. How is pre- or post-qualification for contractors/ suppliers is currently conducted under the existing procurement laws and regulations?
10. What are the requirements for bid performance, and other securities to be provided by suppliers/contractors?
11. Can bid, performance and advance payment securities be obtained easily by contractors and suppliers? What formats are permitted by PA?
12. What is the average time required for typical procurement transactions (goods, works and services), approval/clearance processes and payments under awarded contracts?.
13. Are completion schedules generally met for goods, works and consultant services contracts? If not, what is the major cause for slippage?

14. How do customs procedures work and how they increase the procurement lead time? Are customs procedures generally transparent and efficient?
15. Are pre-shipment/post-shipment inspection applied by PA and if so, do they unduly increase the procurement lead time?
16. How are supplier and contractor claims handled?
17. Are there arbitration rules applicable to procurement contracts? Are these rules referred to in the contracts used
18. Do bidders have adequate access to administrative or judicial review/appeal?
19. Are there measures/initiatives to curb/control corruption in procurement?
20. Statistics: (i) Approximate annual values of public procurement for goods, works, and consultant services, respectively? (ii) Approximate percentages of goods, works, and consultant services financed by external donors? ; (iii) Percentage of public procurement follows competitive bidding procedures?

**Annex 7**  
**Summary of WB&G Current Portfolio 5**

Project	Amount [\$ m]	Objective	Disbursed
<b>Solid Waste and Environmental Management Project</b>	9.5 from TFGWB	The project is working to implement an environmentally sound solid waste management system for the Jenin District through construction of a controlled landfill, rehabilitation and closure of uncontrolled dumps, improvement in solid waste management services through provision of equipment and training and capacity within the Joint Services Council and the Environmental Quality Agency.	92%
<b>Gaza II Emergency Water Project</b>	20 from TFGWB (additional financing: 5m approved on April 22, 2008)	The project is working to improve the provision of adequate water and wastewater services in Gaza as well as functionally establish the Coastal Municipalities Water Utility (CMWU) as an autonomous well-run modern utility and strengthen PWA's capacity to assume sector regulatory functions. An Additional Financing of US\$ 5.0 million to supplement the project overrun expenses is scheduled for Boar presentation in April 2008.	67%
<b>Emergency Water Project</b>	12.5 from TFGWB	The project aims to help alleviate the chronic shortages of safe water supplies in the West Bank and reduce system losses, water costs and health risks.	100%
<b>Integrated Community Development Project</b>	15 from TFGWB	This project is working to improve quality and availability of basic and economic social services in poor and marginalized communities in West Bank and Gaza through the provision of small-scale labor intensive community projects.	82%
<b>North Gaza Emergency Sewage Treatment Project</b>	7.8 from TFGWB (additional financing: 12m approved on April 22, 2008) 15.2 from donors	This critical infrastructure project is working to mitigate the immediate gathering health and environmental safety threats to the communities surrounding the effluent lake at Beit Lahia Wastewater Treatment Plant and provide a satisfactory long term solution to the treatment of wastewater for the Northern Governorate in Gaza	87%
<b>Land Administration Project</b>	3 from TFGWB 1.9 from donors	novation grant is designed to assess/learn the extent of iness of the PA to reforming land administration by introducing tional changes to achieve efficient procedures for the issuance tration of property transactions and transparent processes for osal of public land.	57%
<b>Social Safety Net Reform Project</b>	10 from TFGWB (additional financing: 10m approved on April 22, 2008)	The project is designed to mitigate the impact of the continued socio-economic crisis on a subset of the poorest and most vulnerable households. In tandem, the project will strengthen the Ministry of Social Affairs (MOSA) capacity to manage cash assistance programs, which should trigger a gradual merger of the various on-going cash assistance programs into a PA administered cash assistance program, using a state of the art poverty targeting system to select program beneficiaries in a transparent manner.	33%

<b>Project</b>	<b>Amount [\$ m]</b>	<b>Objective</b>	<b>Disbursed</b>
<b>Tertiary Education Project</b>	10 from TFGWB	The project is working to (i) improve the regulatory environment for tertiary education management, governance and quality assurance, (ii) increase internal and external efficiency of the tertiary education system as a first step towards achieving sustainability and (iii) create incentives and provide the basis for improvements in efficiency, quality and relevance of tertiary education institutions in order to meet the socioeconomic needs of the Palestinian people.	34%
<b>Avian Influenza Prevention Project</b>	10 from TFGWB, 3 from the Bank's Global AI Facility	This project, set up as an emergency operation to respond to an outbreak of Avian Influenza in Gaza in the summer of 2006, is assisting the PA in minimizing the threat posed to humans by infection in domestic poultry and preparing for controlling and responding to avian influenza pandemic and other infectious diseases emergencies around humans.	25%
<b>Palestinian NGO Project III</b>	10 from TFGWB	The project provides social services to those who are poor, vulnerable or affected by the deteriorating socioeconomic conditions by establishing an effective mechanism to improve the quality and sustainability of Non-governmental Organizations (NGOs) social service delivery.	33%
<b>Emergency Municipal Service Rehabilitation Project</b>	10 from TFGWB	The objectives of EMSRP II are to (a) provide funding for infrastructure rehabilitation and maintenance to help mitigate further deterioration in the delivery of essential municipal services, and (b) create temporary job opportunities at the local level through the launching of labor-intensive employment generation schemes. In addition, through the Municipal Development Lending Fund (MDLF), the Project is piloting innovative initiatives to improve municipal service cost recovery (through the introduction of pre-paid electric metering systems) and leverage partnerships with local NGOs to deliver services more effectively.	35%
<b>Emergency Services Support Project III</b>	10 from TFGWB	The objectives of the ESSP III are to mitigate the current fiscal crisis by supporting services in Education & Higher Education, Health and Social Affairs by financing a portion of the Ministries non salary recurrent costs. The ESSP also serves as an instrument to leverage donor funding through the Bank Administered Multi-Donor Trust Fund.	20%
<b>Village and Neighborhood Development Project</b>	10 from TFGWB	The project will support local community institutions to provide services in rural and underserved urban areas. The project will provide block grants to communities for small scale infrastructure, livelihoods schemes and social programs. The Islamic Development Bank is expected to contribute \$5 million towards this project.	1%

**Annex 8**  
**List of Persons Met**

<b>Name of Persons Met</b>	<b>Agency</b>
Mr. Mazen Jadallah	Director, International Relations Department, Ministry of Finance (MoF)
Mr. Ali Abed	International Relation Department-MoF
Mr. Mahmoud Astal	PIU- MoF
Mr. Yousef Atweh	Procurement Officer, PIU, MoF
Mr. Amin Bashir	MoF -General Supplies Department
Mr. Naser AlKhatib	MoF- General Supplies Department
Mr. Yousef Yehya	MoF -General Supplies Department
Mr. Fayek AlDeek	General Director- MOPWH
Mr. Bassam Jaber	Head of central tender department- MOPWH
Dr. Hisham Shkoukani	PMO/Director General-PECDAR
Mr. Raed Anabtawi	Procurement officer- PECDAR
Mr. Samer Al Kharouf	Engineer- PECDAR
Mr. Fawwaz Mujahed	Construction Department- MoEHE
Ms. Hana Abu Hijleh	Procurement Unit, MoEHE
Mr. Rizeq Othman	Procurement Unit, MoH
Mr. Khalid Mahtour	Procurement Unit, MoH
Mr. Hani Kayed	Ministry of Local Government
Mr. Ahmed Zughier	President , Chambers of Commerce
Mr. Jamal Jawabreh	Director General, Federation of Palestinian Chambers of Commerce, Industry and Agriculture
Ms. Sonila Hysi	Contracting/ Agreement Officer- USAID
Ms. Stephanie Budzina	Program Officer- USAID
Mr. Johnathan Carpenter	Economic Section Chief, US Consulate – State of Government
Ms. Fabienne Bessonne	Counselor- EU
Mr. Samih Tubeileh	Vice President- Palestinian Contractors Union
Mr. Jiries H. Attalla	Board member- Palestinian Contractors Union
Mr. Marwan Jumaa	Engineers Association
Mr. Awad Abu oulaya	Executive Director- Union of Pharmaceuticals Industry
Mr. Emilio Bagarella	Procurement Consultant- European Commission
Mr. Matt Buttler	DFID
Mr. Adel Qazzar	Director of Arbitration Center, Gaza – via audio
Mr. Ahmed Sawdi	Engineers Syndicate, via audio
Mr. Faris Hadad-Zervos	Deputy to Country Director, World Bank
Mr. Mizutani	Japanese International Cooperation Agency
Mr. Hisahm Qaraeen	Advocate