

2014

# Monitoring of Public Procurement System in 2011-2013

## Working Papers

The target directions of these working paper series were:

- A) The institute of the complaints in the procurement system
- B) Single-Source Procurement
- C) E-Procurement
- D) Transparency and consistency of the information posted on the official procurement website

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## LIST OF ABBRIVATIONS

AB	Authorized Body
AMD <sup>1</sup>	Armenian Dram
CBA	Central Bank of Armenia
Complaint Board	Procurement Complaint Review Board
CRC	Complaint Review Commission
ECJ	European Court of Justice
GoA	Government of Armenia
GPA	Agreement on Government Procurement.
MoF	Ministry of Finance
MoTC	Ministry of Transport and Communication
PPL	Public Procurement Law
PSC	Procurement Support Center
PIU	Project Implementation Unit
SCPEC	State Commission for the Protection of Economic Competition
SNPO	State non-profit organization
SPA	State Procurement Agency
TIAC	Transparency International Anti-Corruption Center NGO
RA	Republic of Armenia

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<sup>1</sup> As of June 27, 2014 \$1 USD is 407 AMD.

**MONITORING OF PROCUREMENT  
COMPLAINT REVIEW BOARD'S ACTIVITIES**

## INTRODUCTION

The current Public Procurement Law (PPL), came into force on 1 January 2011, and was developed to meet the basic requirements of the 1994 WTO plurilateral Agreement on Government Procurement. It includes several legal instruments of the 2004 EU Public Procurement Directives. By comparing the current PPL with the previous one the following positive developments were noticed;

- a) Since 2011 the complaint review process was outsourced from the Republic of Armenia (RA) Ministry of Finance (MoF) and the conflict of interest existing during complaint review process was eliminated,<sup>2</sup>
- b) Before 2011 the selection of members of the complaint board was not based on clear criteria; since 2011 the tests and the questionnaire was developed for selection purposes;

Based on these developments theoretically the independence and professionalism of Complaint Board was enhanced.

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<sup>2</sup> According to the previous PPL MoF was either a) Authorized Body (AB) responsible for the development and implementation of the public finance management policy or b) body responsible for complaint review.

## BEST PRACTICES

Analysis of the available best practices indicates that there are developed principles, which should be used in the basis of complaint systems.

- **Non-discrimination:** Access to remedies should be open to all economic operators without discrimination, especially on grounds of nationality.
- **Effectiveness:** Remedies must have sufficient power to ensure observance of public procurement rules and review must be as rapid as possible. This means that contracting authorities should try to facilitate the proper conduct of all legal procedures and should always comply with decisions concerning remedies. Legal procedures and the conduct of review bodies must ensure for speedy consideration and resolution.
- **Transparency:** Contracting authorities must ensure that through the tender documents themselves as well as in the notifications of contracting decisions, maximum information is provided to economic operators on:
  - Rights to remedies under the law, in particular remedies having to do with the conduct of the award procedure,
  - Relevant procedural rules, in particular deadlines,
  - All information on how contracting decisions were reached, to the extent that this information is relevant to economic operators.

Analysis of best practices confirm, that it is important to ensure that three types of remedies are available: interim measures, set aside and damages.

- **Interim measures:** Interim measures are provisional measures taken in relation to the contract notice and any contracting decision, including the contract award decision. The aim of interim measures is to prevent the creation of unalterable situations and to avoid the continuation of the contract award procedure without an economic operator that would otherwise have been able to participate and possibly be awarded the contract. These aims may only be achieved if the local legal system provides an effective, simple and speedy possibility of obtaining interim relief and if the competent review body is not reluctant to grant interim relief as a matter of principle.

The following interim measures can typically be ordered:

1. Suspension of the implementation of any decision taken by the contracting authority,
2. Suspension of the whole contract award procedure,

3. Provisional correction of a breach (this depends on local law and is rather unusual)
- **Set aside:** The application for the set-aside remedy cancels or renders ineffective a contracting decision taken unlawfully or otherwise corrects an unlawful situation. The aim of set-aside is to correct proven irregularities. This aim is only achieved if the local legal system provides an effective possibility of cancelling an unlawful specification or contracting decision and if the competent review body reviews the reasonableness of contracting decisions.

The following measures can typically be ordered:

1. Removal of discriminatory technical, economic or financial specifications in the contract notice, tender documents or any other document relating to the contract award procedure;
  2. Annulment of an unlawful contracting decision,
  3. Positive correction of any unlawful document or contracting decision, for example an order of the contracting authority to amend or delete an unlawful clause in the tender documents or to reinstate an economic operator that had been unlawfully excluded.
- **Damages:** Damages are compensation paid to economic operators harmed by an infringement of the public procurement rules. The procedure and venue for bringing claims for damages depends on local legislation, which sets the filing rules, deadlines, requirements of proof, and extent of compensation (for example, the conditions under which tendering costs can be recovered). This remedy aims to compensate harmed economic operators.

The measures that are ordered if a claim for damages is successful are the compensation of all harms suffered by the economic operator, which usually includes actual costs incurred and, exceptionally, lost profits. The compensation must be full—however, it is often very difficult to establish the extent of the damage suffered in a competitive process. This remedy does not interfere with the contract award procedure, its progress or conclusion.

Transparency International Anti-Corruption Center NGO (TIAC) conducted public procurement monitoring for the period of 2011 to the first quarter of 2013. One of the directions was monitoring of Procurement Complaint Review Board (Complaint Board) activities. This paper presents the results of this monitoring. Monitoring aimed to contribute to the establishment of efficient and independent complaint system.

## METHODOLOGY

Efficient, independent and balanced complaint system should be based on the following principles:

- The complaints addressed to Complaint Board should be accessible for the public;
- The selection of the Complaint Board members should be transparent and all potential beneficiaries should be involved in it;
- Complaint Board members should not have any potential conflict of interest;
- The members of Complaint Board should equally participate and be involved in Complaint Review Commission (CRC) formulation process;
- The decisions of Complaint Board should be transparent, not subject to external interference and constitute along with procurement legislation.

Based on above mentioned principles during the monitoring period the following directions were analysed;

1. Implementation of the regulations on registration of submitted complaints by Procurement Support Center (PSC) and their publication;
2. Implementation of the legal requirements for the selection of the Complaint Board members and formulation of CRC;
3. Participation of Complaint Board members in reviewing and decision making regarding the complaints;
4. Process of disclosure of conflict of interest by CRC members;
5. Accessibility of final decisions, their consistency with legal framework and trends;
6. Analysis of the Complaint Board decisions with PSC orientation ones.

The data from procurement official website ([www.procurement.am](http://www.procurement.am)) was analysed for monitoring purposes. To assess the attitude towards complaint system the questionnaire was developed by TIAC and distributed among those respondents who submitted complaints. The results basically verify the findings reflected in this paper. The data was analysed both qualitatively and quantitatively.



## MONITORING RESULTS

### **A/ The implementation of the regulations on registration of submitted complaints and their publication**

The purpose of this monitoring component is to assess the easiness of complaint submission procedure and their publication. During the monitoring of this complaint procedure the implementation of PPL's Article 16 clause 8 was discussed. According to this provision PSC acts as a Secretary for Complaint Board and performs its functions after complaint submission; in particular by assessing conformity of the complaint with the procurement legislation.

Monitoring results verify that there is an internal procedure, based on which the conformity of the complaint with the procurement legislation is checked. Monitoring do not reveal any significant loopholes during this procedure.

Analysis of available data on complaints, available under the section “Complaint” at the official procurement website ([www.procurement.am](http://www.procurement.am)) confirm that the procedure of registration and publication of received complaints do not contain any risks. Meanwhile we suggest some steps that could be an asset to the general improvement of complaint review system in Armenia, which are presented in the “Problems and Suggestions” section.

### **B/ The implementation of the legal requirements for the selection of the Complaint Board members and formulation of Complaint Review Commission,**

According to PPL (Article 46) MoF should publish the list of members of the Complaint Board. Monitoring indicates, that despite the fact that the list is available on official procurement website, the results of qualification exams of the members and data of their appointment are absent. In addition, the frequency of the updates of the Complaint Board list is not regulated.

According to the same Article, clause 3, Complaint Board shall include one representative of:

- 1) The public administration bodies envisaged in the RA Constitution and laws;
- 2) The RA urban communities;
- 3) The Central Bank of Armenia (CBA);
- 4) Non-Governmental Organizations (Unions) registered in the RA, which have submitted a written request to the AB.

TIAC monitoring results indicate that since its adoption this provision has been implemented partially, as no representative from the CBA has been included in Complaint

Board composition. Meanwhile, according to PPL Article 46 clause 4 “the individuals are appointed as members of the Complaint Board for a period of five years. The mandate of the Complaint Board member can be renewed for a period of up to five years in the same way as for the appointment to the Board”.

It should be mentioned that currently it is impossible to track the conformity of this provision publically, as no information is available about the period when each of the individuals become a member of the Complaint Board.

According to PPL Article 47: “a commission of the Board composed of three people is formed to review an individual procurement complaint received”. The analysis of the procurement official website verify that this legal requirement is implied formally. Meanwhile, after the participation of TIAC expert in complaint hearings some concerns about this procedure were noticed. In order to increase the level of trust towards this procedure some suggestions will be discussed.

#### **C/ The participation of Complaint Board members in reviewing and decision making regarding the complaints**

According to PPL, Article 47 for each individual case, the members of the Commission are randomly selected by rotation. The monitoring of the participation of the members of the Commission signals that some of the members of the Complaint Board have never been selected to serve as a member of the Commission. This phenomena creates serious concerns about the objectiveness of “randomly selected by rotation” approach.

From 2011 to first quarter of 2013 in total 42 members were qualified (the results of their participation is presented in Appendix 1). If there will be an algorithm based on random distribution then all 42 members of Complaint Board after 21 hearings regarding complaints should at least once act as a member of the commission.

Monitoring results indicate that from 2011 to first quarter of 2013 in total 83 complaints were examined and there are 6 members of the Complaint Board that have never acted as a member of the Complaint commission. Overall, this creates a serious concerns about proper implementation of the “randomly selected by rotation” legal provision.

#### **D/ The process of disclosure of conflict of interest by CRCmembers,**

According to best practices the members of CRC should disclose their interests, which afterwards should be subject for supervision. Despite the fact that there is a similar provision in PPL (PPL Article 47, clause 3), the practice does not support the implementation of this provision.

In particular, from 2011 to first quarter of 2013 all 83 complaints were analysed and there was neither information about possible conflict of interest (and about his/her replacement), nor absence of such a situation. Thus TIAC monitoring indicates that the provisions declared in procurement legislation are not properly enforced in practice. In addition, it is not clear who is responsible for checking the interest declaration by Complaint commission's member in order to ensure the full conformity of this process with legal norms.

Based on the above mentioned circumstances, one can mention that the process of disclosure of conflict of interests by the Complaint Board members and its oversight needs significant consideration.

**E/ The accessibility of Complaint Board’s final decisions, their consistency with legal framework and complaint dynamics**

During 2011 twenty-six complaints were reviewed, of which almost sixty percent were accepted. It should be mentioned that in 2012 the number of complaints increased by roughly fifty percent. The data for the first quarter of 2013 indicate that the number of complaints will be higher compared to 2012.

The dynamics of decisions by Complaint Board from 2011 to 2013 first quarter is presented in Table 1.

**Table 1. The dynamics of the decisions by Complaint Board**

	Without examination		Accepted		Rejected		Total	
2011	6	22%	15	58%	5	20%	26	100%
2012	10	27%	17	46%	11	27%	38	100%
2013 I Quarter	9	26%	15	44%	10	29%	34	100%
Observation period average	25%		48%		26%			

As one can see from Table 1, on average about 50 percent of complaints were accepted, which could mean that clients are encountering capacity related problems or there are subjective factors and clients try to dismiss “unwanted selected bidders”.

It should be mentioned that even in case of complaint acceptance the bidder inquires some losses (transaction and associated costs) which with the current set-up are not being reimbursed. Another point for consideration is the fact that almost 25 percent of complaints remain without examination.

Based on the above mentioned arguments it can be summarized that despite the fact that complaint system is operational and effective, and there is a growing trust towards the system,

for bidders the complaint review system is still inefficient. Thus, bidders are still treated on a discriminatory way and legal provisions are not implemented properly. Thereto there is a continuous growth in the accepted complaint numbers.

TIAC observations indicate that there are two firms (Mets Hayq Production Cooperative and G-Style CJSC) which are more frequently submitting the claims (five times). It should be noted, that in the majority of cases their complaints were accepted. Three clients (Ministry of Health, Ministry of Defence and Abovyan Pedagogical University) are among the top institutions to which the most of the complaints were addressed.

During 2011-2013 TIAC conducted monitoring of the decisions of Complaint Board. According to PPL Article 48, clause 6 Complaint Board can adopt seven types of decisions. Nevertheless in practice Complaint Board either sets aside individual decisions, including the contract award decision within the standstill period, or declares an awarded contract ineffective. This practice is not efficient for bidders as they get back only 30000 AMD prepayment.

According to PPL Article 48, clause 7 if the Board decides in favour of the applicant, the procuring entity is liable for recompensing to the applicant the damage caused and justified in accordance with the established procedure. The same type of provision contains the Article 45 clause 4 “Any person having an interest in concluding a particular transaction and who has been harmed by an infringement of the procuring entity, the evaluation commission or the Complaint Board has the right to sue for damages at the court”.

Although the share of accepted complaints in the total is quite high, in practice none of the accepted bidders possess opportunities mentioned in the PPL (Article 48, clause 5 and Article 45 clause 4). In case of proper implementation of the above mentioned provisions the system will be improved (bottom-up pressure). In addition, the involvement of Chamber of Advocates in this process can facilitate strategic litigation.

According to Article 48, clause 8 the oral hearing of complaint is open to the public and an announcement on the complaint is published in the Bulletin within three calendar days after its receipt. Monitoring reveals that the information on hearings (data) is publically available ex-post, which does not encourage public participation.

According to PPL Article 48, clause 5 “a written decision on the complaint, including justification for the decision, shall be taken and published no later than twenty calendar days after the receipt of the complaint”.

TIAC monitoring indicates that this procedure is basically consistent with legal requirements and no major risks are detected.<sup>3</sup>

#### **F/ Analysis of the Complaint Board decisions with PSC position**

Best practices indicate that Complaint Board can be efficient if all the key players are involved in the process. PPL can be notably strengthened in this regard. According to PPL during the review of complaints PSC acts as a Secretary and presents its position.

TIAC monitoring reveals that Complaint Board decisions have always repeated PSC position. This fact challenges the logic of Complaint Board's existence.

It is obvious that capacity of PSC is higher as they know both theoretical and practical aspects of procurement, while Complaint Board's knowledge is limited only within the theory (checked through tests). In result, PSC is more professional than Complaint Board members. In addition, as of 2013 July 1 only two representatives out of forty-two represent civil society, and still the provision of the PPL to have a selected member from the CBA is not achieved.

Despite the fact that Complaint Board decisions are consistent with the legal requirements, they duplicate PSC's position, and thus it is too early to speak about "real" independence of Complaint Board.

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<sup>3</sup> After discussion of findings with Minister of Finance and PSC staff in 2013, those complaints which are not examined within defined terms, should be mentioned in the invitation with asterisk.

## REVEALED PROBLEMS

### **Accessibility to submit complaints and transparency of data publication**

1. Currently it is impossible to submit complaints to PSC through electronic means,
2. Despite the fact that the hearings of Complaint Board are open to the public, practically the information on complaints (data, place) is available only for those who are involved in the process (bidder, procuring entity, PSC and State Commission for the Protection of Economic Competition (SCPEC)),
3. Any person has the right to file a complaint against the actions (inaction) and decisions of the procuring entity, the evaluation commission and the Complaint Board. Relations pertaining to procurement, including complaints, are not administrative relations and are regulated by the RA civil legislation. Accordingly any person has the right:
  - To lodge a complaint against the decisions of the procuring entity and the evaluation commission to the Complaint Board before the conclusion of the contract;
  - To appeal the decisions of the Complaint Board, the procuring entity and the evaluation commission in court.

Any person having an interest in concluding a particular transaction and who has been harmed by an infringement of the procuring entity, the evaluation commission or the Complaint Board has the right to sue for damages at the court.

The PPL has some provisions based on which bidders with accepted complaints can submit claims to the court and be reimbursed for their financial losses, however in practice regardless the high rate of complaints' acceptance no claims have been submitted to the court against the procuring entity. Submission of claims to the court will create some balance in current procurement environment.

### **The selection of Complaint Board members**

4. The list of members of the Complaint Board, which is available at procurement official website, does not contain any information on date of becoming effective member; thereto it is not clear when the liability of each member will be ended.
5. In contradiction with PPL requirements there is no representative from the CBA in the list of members of the Complaint Board.
6. The sessions of the Complaint Board are not recorded which somehow affects on the decisions' transparency.

7. The process of formulation of CRC is risky, as the rotation and random selection mechanisms stipulated in the PPL are not implemented properly.
8. On July 10, 2013 TIAC representative participated in the complaint review session; although only two members were present in the final complaint decision there were three signatures. These facts create serious concerns about either formulation, or participation of the CRC' members in particular and the oversight over the complaint review procedure in general.

#### **Conflict of interest disclosure by Complaint Board members**

9. In the procurement official website there is no statistical information which will inform on how many cases were when the member of the complaint commission disclose conflict of interest and was replaced. Moreover, it is not clear which body will be responsible for supervision over the conflict of interest declaration process. This let us to conclude that there is no effective system of interest disclosure together with lack of oversight mechanisms.

#### **The transparency of decisions by Complaint Board and their trends**

10. The number of complaints is constantly growing, together with quite high share of accepted complaints. This could be an indication that clients do not have adequate capacities or their behaviour is motivated with other subjective factors. Even if the share of accepted complaints is high bidders inquire an additional losses which are remained not reimbursed.
11. The share of complaints without examination is growing.

#### **The professionalism and independence of Complaint Board**

12. The Complaint Board with current composition does not represent all beneficiaries; in addition the members of Complaint Board are not motivated, as being in majority of cases civil servants, they do not get any remuneration for participation.

## RECOMMENDATIONS

1. Discuss the opportunity to submit complaints electronically.
2. Make the information on hearings of complaints more transparent for the public.
3. Through facilitation of the cooperation with advocates (strategic litigation) submit cases to the court (in case of accepted complaints) for possible compensation of costs.
4. Update and modify the publicly available information on Complaint Board members in the official procurement website.
5. Make the composition of Complaint Board consistent with legal requirements, in particular the provision regarding CBA representative.
6. Increase the public interest and transparency towards Complaint Board's sessions, for example through recording the hearings and posting them in the procurement official website. It will be helpful to have record of minutes available in website as well.
7. Introduce "real" rotation mechanisms (stipulated in the PPL), where human factor will be minimum. In those cases when the member of Complaint Board rejected his/her participation as a commission member more than ones, his/her membership should be terminated.
8. Increase the accountability of Complaint Board members, in particular by strengthening supervision over the conflict of interest disclosure process.
9. In case of accepted complaints implement mechanisms to fine the procuring entity if there is a subjective treatment or lack of capacity.
10. Implement measures for expansion of Complaint Board composition; in particular include representatives from Ombudsman office, SCPEC, Chamber of Advocates, Public Council, Construction Unions, Union of Manufacturers and Business Association
11. Increase the motivation of Complaint Board members, in particular direct some money (from fines against procuring entities who treated subjectively) for their motivation purposes. Alongside with that clarify the responsibility of Complaint Board members



## Appendix 1. The participation matrix of Complaint Board members

Name Surname	Institution	Share in total (%)	2011 (of which chair)	Share in total (%)	2012 (of which chair)	2013 I quarter (of which chair)
Mnatsakanyan Arman	Ministry of Finance	7.7	2 (2)	27	10 (10)	4 (4)
Gasparyan Gayane	Armenian Police	11.5	3 (3)	21.6	8 (8)	5 (5)
Enoqyan Gor	Ministry of Emergency Situations	15.4	4 (4)	21.6	8 (8)	6 (6)
Frangyan Azganush	Spitak community	11.5	3 (3)	29.7	11 (11)	6 (6)
Mnatsakanyan Arayik	State Committee of Water Economy	7.7	2	8.1	3	1
Khachatryan Lernik	Ararat region	3.8	1	8.1	3	1
Seraideryan Hovhannes	Public Services Regulatory Commission of RA	3.8	1	8.1	3	1
Mkhitaryan Anna	Ministry of Education and Science	3.8	1	8.1	3	
Gasparyan Hamlet	President Staff	-		8.1	3	
Mkrtchyan Hovik	Committee of Radio and TV			8.1	3	
Manucharyan Marat	National Security Service	7.7	2	5.4	2	1
Mkrtchyan Aram	Government Staff	3.8	1	5.4	2	1
Shakhyan Eduard	Ministry of Energy and Natural Resources	3.8	1	5.4	2	1
Hakobyan Edgar	State Nuclear Safety Regulatory Committee bu GoA	3.8	1	5.4	2	2
Tamaryan Davit	Lori region	3.8	1	5.4	2	
Ordyan Rudik	Masis community	3.8	1	5.4	2	1
Avagyan Avag	Vanadzor community	3.8	1	5.4	2	1
Chilingaryan Vardges	Charentsavan municipality	3.8	1	5.4	2	
Kharberdyan Karapet	Echmiadzin municipality	3.8	1	5.4	2	1
Avetisyan Hrachya	National Security Service	-		5.4	2	1

Vardanyan Sedrak	Tax service of RA			5.4	2	1
Matevosyan Eduard	Public TV and Radio			5.4	2	1
Mkrtchyan Varazdat	Armavir marzpetaran			5.4	2	2
Khloyan Ruben	Vardenis municipality			5.4	2	
Poghosyan Lidia	Byureghavan municipality			5.4	2	1
Budaghyan Armen	Noyemberyan municipality			5.4	2	
Nazaryan mane	Ayrum community			5.4	2	
Ohanyan Rudik	Ministry of Defence	7.7	2	2.7	1	2
Chobanyan Roman	Ministry of Nature Protection	7.7	2	2.7	1	2
Aghajanyan Susanna	Abovyan municipality	3.8	1	2.7	1	1
Hovhannisyan Artur	Alaverdi municipality	-		2.7	1	
Nikolosyan Narine	Kajaran municipality			2.7	1	1
Harutyunyan Ashot	Yeghegnadzor municipality			2.7	1	
Grigoryan Eduard	Legal Culture Development Institute NGO			2.7	1	1
Babayan Vahe	Mehrabyan learning center NGO			2.7	1	1
Antonyan Benjamin	Nor Hajn municipality	3.8	1			
Mardyan Ashot	Syunik marzpetaran					
Hayrapetyan Razmik	Vayots dzor marzpetaran					
Avetisyan Lusine	Kapan community					
Hovhannisyan Harutyun	Goris municipality					
Karapetyan Lianna	Agarak community					
Hovsepyan Aram	Vayk municipality					

# **THE CHARACTERISTICS OF ELECTRONIC PROCUREMENT IN ARMENIA**

## INTRODUCTION

Best practices indicate that the use of e-procurement systems and processes can result in a number of advantages including:<sup>4</sup>

- Reduced administrative costs;
- Streamlined and faster procurement procedures;
- Increased transparency;
- Better monitoring opportunities of procurement;
- Fostering competition by reducing barriers presented by paper based procurement processes
- Supporting the development of centralised procurement administration resulting in the potential reduction of costly procurement back-office functions and taking advantage of economies of scale in procurement administration;
- Wider administrative modernisation and simplification, encouraging the integration of various administrative processes as well as the diffusion of information technology solutions within and by government and society more generally.

Despite the fact that there are various classifications regarding e-procurement system installation advantages in empirical literature.<sup>5</sup> In our opinion the e-procurement installation leads to two types of advantages, which are political and economical (see Table 1).<sup>6</sup>

**Table 1. The classification of e-procurement advantages**

Attributes Function	Efficiency (Economical)	Transparency (Political)
Tendering	Reduction of bidding time and cost (including transaction costs)	More online access for tender information
	Simplification of tender process	Online publishing standard of tender process
	Economy of scale for tendering participation (improvement of the number of participation, portal)	Various tendering channels connecting between government contractor and supplier
Proposal making/evaluating	Saving elapsed time in bids evaluation phase	More online access for tendering forms and documents
	Reduction of paper working	Online publishing standard of proposal evaluation
	Simplification of proposal	Various information protection

<sup>4</sup> <http://www.oecd.org/site/sigma/publicationsdocuments/48629995.pdf>

<sup>5</sup> Gardenal, 2010; Vaidya etc, 2004; UNPCDC, 2010

<sup>6</sup> <http://www.ippa.org/IPPC5/Proceedings/Part2/PAPER2-15.pdf>

	evaluation process	applications for sign-up of proposal
Contracting	Reduction of contracting time and cost	More online access for successful bidder information
	Simplification of contracting process	Various information protection applications for digital sign of contract agreement
Delivery	Reduction of transactions cost through e-catalogue and online shopping mall	More online access for delivery information
	Improvement of customer's satisfaction	
Follow-up service	Reduction of the number of claims for total procurement process	More online access for contract performance evaluation results
	Reduction of human errors for total procurement process	Reduction of corruption for procurement activities

The European Commission in its Green Paper on Expanding the Use of e-procurement in the EU provides examples of the benefits of the introduction of e-procurement in different countries. The submission of contracts, announcements via electronic means and the accessibility of contract and tender documentations significantly reduce the transaction costs, specifically the statutory timescales. Next problem that is being eliminated, by e-procurement implementation, is the limitation on maximum number of words using in contract notices.<sup>7</sup>

According to E-Procurement best practices the following platforms should be existent.<sup>8</sup>

In order to increase efficiency of state governance the implementation of e-governance system gets a greater attention in the number of countries. It is obvious that efficient state governance system can assist to country's competitiveness.

It should be mentioned that Armenia occupies very low positions in various indexes which target on the development level of state governance.<sup>9</sup>

<sup>7</sup> Contract notices despatched by non-electronic means are subject to a maximum of 650 words. Contract notices using the on-line electronic system are not subject to this limitation.

<sup>8</sup> [http://ec.europa.eu/dgs/internal\\_market/studies/docs/e-procurement-golden-book-of-good-practice\\_en.pdf](http://ec.europa.eu/dgs/internal_market/studies/docs/e-procurement-golden-book-of-good-practice_en.pdf)

<sup>9</sup> [http://www3.weforum.org/docs/GITR/2012/GITR\\_Chapter1.1\\_2012.pdf](http://www3.weforum.org/docs/GITR/2012/GITR_Chapter1.1_2012.pdf)

**Table 2. E-government development index for selected countries<sup>10</sup>**

Country	Index Value	Online Service component	Telecommunication infrastructure component	Human Capital Component	Rank
South Korea	0.9283	1.0	0.8356	0.9494	1
Estonia	0.7987	0.8235	0.6642	0.9085	20
Russia	0.7345	0.6601	0.6583	0.8850	27
Malta	0.7131	0.6144	0.7192	0.8057	35
Belarus	0.6090	0.4118	0.5033	0.9120	61
Ukraine	0.5653	0.4248	0.3535	0.9176	68
Georgia	0.5563	0.6013	0.2328	0.8348	72
China	0.5359	0.5294	0.3039	0.7745	78
Turkey	0.5281	0.4641	0.3478	0.7726	80
Uzbekistan	0.5099	0.4967	0.2075	0.8255	91
Armenia	0.4997	0.3268	0.3217	0.8505	94
Azerbaijan	0.4984	0.3660	0.3033	0.8259	96
Kyrgyzstan	0.4879	0.4248	0.1903	0.8485	99
Iran	0.4876	0.4902	0.2638	0.7089	100
Somalia	0.0640	0.1830	0.0090	0.0000	190

E-Procurement adaptation and development is quicker in case of existence of e-society. Table 2 shows that online services are still far from satisfactory level in Armenia. Before implementation of e-procurement system, it is important to remember that e-procurement is only tool, as it only makes automatic the existing business procedures and can't fix problems. In certain cases it can make things worse by adding a) technological risk b) interoperability risk with existing information systems c) security and supervision related risks.

The analysis of E-procurement in Armenia is important as:

a) Government of Armenia (GoA) in 2006 adopted e-Strategy,<sup>11</sup> according to this strategy E-procurement should be operational in 2009;

b) GoA and other donors injected a lot of financial resources to the installment of the system;

c) e-procurement can be used as an efficient anti-corruption tool.

The results of monitoring indicate that in contradiction with GoA statements e-procurement still is not evidence. It will be interesting to see the chronology of e-procurement implementation.

As a first step, in 2006 GoA adopted "Strategy for Introducing the System of Electronic Procurement",<sup>11</sup> where there was a timetable according to which since 2009 all procurement should be done through e-procurement system. Despite the fact, that e-procurement is still anathema, this decree and deadlines fixed there are still effective.

<sup>10</sup> <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan048065.pdf>

<sup>11</sup> <http://www.arlis.am/DocumentView.aspx?DocID=14388>

Till 2011 November e-procurement introduction issue was forgotten, but in 2011 MoF informed about e-procurement introduction, which according to him was expected to launch in 2012.<sup>12</sup>

TIAC monitoring results indicate that Minister was too optimistic, and although huge funds were injected, e-procurement is still on its preliminary stage of development. The only achievement of GoA is the e-procurement web portal [www.armeeps.am](http://www.armeeps.am) where a few tenders were conducted.

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<sup>12</sup> <http://www.mfe.am/main.php?lang=1&mode=mamul&newid=88>

## MONITORING METHODOLOGY

Monitoring criteria were defined; based on them the implemented actions were presented in detail.

1. **Registration process of bidders (residents and non-residents) in the e-procurement portal.** The monitoring of this component aims to evaluate the accessibility of registration by bidders in [www.armepps.am](http://www.armepps.am) website. Under this monitoring component the following actions were implemented; a) analysis of the information requested in order to be registered in [www.armepps.am](http://www.armepps.am) portal b) statistical data on bidders registration c) during the interview with bidders their observations/opinions about easiness of registration was analysed.
2. **Existence of procurement plans conducted by e-procurement.** The monitoring of this criteria aims to assess the planning capacity of procuring entities regarding e-tenders. Under this monitoring component the following actions were implemented; a) the information regarding procurement plans available in [www.armepps.am](http://www.armepps.am) and [www.gnumner.am](http://www.gnumner.am) websites were analyzed; b) comparative analysis of planned e-tenders with actual ones was conducted (based on contract notice analysis, presented in a detail subsequently).
3. **The existence of the information regarding awarded e-tenders.** This monitoring component aims to assess the transparency and consistency of information on e-tenders. Under this monitoring component the information on contract notices available in the section of CfTs in [www.armepps.am](http://www.armepps.am) website was analysed /Picture 1/.
4. **The consistency of tenders /complaints/ with procurement procedures defined by procurement legislation.** The monitoring of this criteria aims to evaluate the degree of implementation of procurement procedures defined by the procurement legislation. Under this monitoring component the tender documentation and contract notices available at [www.armepps.am](http://www.armepps.am) were analyzed.
5. **The dissemination of tender announcements to registered bidders.** The monitoring of this component aims to evaluate the possibility for discriminatory treatment through e-procurement system. Under this monitoring component the following actions were implemented; a) the complaints regarding e-tenders available at [www.gnumner.am](http://www.gnumner.am) website were analyzed; b) the interviews were conducted with those companies who submit complaints, aiming to reveal potential discriminatory treatment cases.
6. **The existence of technical problems in e-procurement system.** The monitoring of this criteria aims to assess the system functionality. Under this monitoring component the



following actions were implemented; a) interviews with e-procurement portal registered bidders b) best practices of e-procurement and other related publications were analysed.<sup>13</sup>

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<sup>13</sup> <http://gnumner.am/download/44524.html>

## MONITORING RESULTS

According to PPL Article 16, first section clause 4, the PSC implements the e-procurement system service and coordination functions. The analysis of the legislation (legal provisions) regarding e-procurement reveals several issues; in particular PPL chapter 4 (Articles 38-41) is devoted to Electronic auctions, while all secondary legislation aims to the e-procurement regulation, so there is mismatch.

According to Article 39 the procurement of consulting services cannot be subject to the electronic auctions, while according to best practices electronic auctions should not be used for certain service contracts and certain works contracts dealing with intellectual performances, such as the design of works.

### **A) The registration of bidders in e-procurement portal;**

The monitoring results do not reveal any problems regarding registration. Nevertheless, it should be mentioned that system is not yet popular, as one can state analysing the numbers of registered economic operators and suppliers. For example as of April 1, 2013 about 500 contracting authorities and economic operators were registered. Moreover, among registered economic operators the share of non-residents is negligible. Overall, the participation of non-residents is still anathema that needs to be solved. The system allows having information only about registered contracting authorities, while data on economic operators is missing (see Picture 2).

### **B) The existence of e-procurement plans**

In March 2012 in the e-procurement website ([www.armeps.am](http://www.armeps.am)) the list of procurement plans for e-procurement was established (only for open tenders).<sup>14</sup> It should be mentioned that the list was incomplete and do contain only 61 tenders, and as monitoring indicates only 10 percent of planned was conducted through e-procurement portal. One can state that e-procurement capacities are still low, as in majority of cases government bodies (for example Ministry of Defence) during 2012 conducted open tenders through e-portal, which were not included in the list.

### **C) E-procurement trends and system's information coverage/statistics**

During the first year of operation (2011) only three e-tenders were announced. Two out of three e-tenders were cancelled as no bids were submitted. During 2012, 55 open tenders were announced through e-procurement portal, of which 19 were cancelled. It should be mentioned that the number of procuring entities was extended (from 3 to 18). The most

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<sup>14</sup> <http://www.armeps.am/epps/cft/downloadInfoItem.do?documentId=21255>

frequently e-tenders were announced by Ministry of Defence (17 open ones through e-portal in 2012, almost 30 percent of total). Tax service of RA announced five open tenders through e-procurement web-portal, Aragatsotn Regional Office (furthermore marzpetaran terminology is used) marzpetaran and Health Project Implementation Unit (PIU) (attached to Ministry of Health) announced four open tenders. It should be mentioned that majority of cancelled e-tenders were conducted by these bodies. For example, from 17 procurement procedures conducted by Ministry of Defence through e-procurement web-portal 7 (40 percent) were cancelled. Three out of four e-tenders announced by Aragatsotn marzpetaran were cancelled. Two out of five e-tenders announced by Tax service of RA were cancelled. Two open tenders were conducted by State Committee of Real Estate Cadastre and RA police and all of them were annulled. National Security Service also announced e-tender which was annulled.

From the viewpoint of tender organization more effective e-tenders were “Republic of Armenia Government Staff” Public Administration Institution, Ministry of Territorial Administration, PIU attached to State Committee of Water Economy, PIU Arpa-Sevan rehabilitation, and PIU attached to Ministry of Urban Development, as all their announced e-tenders were organized.

During the first two years of operation in total 58 tenders were announced via e-procurement web-portal. Out of 58 announced tenders only 35 were successful (40% of announced e-tenders were cancelled). This indicates that e-procurement system has deep problems with functionality. One of the reasons of cancellation of procedures is the lack of participation, based on that one can conclude that economic operators yet are not ready to participate in e-tenders. Monitoring results verify that similar problems do have procuring entities.<sup>15</sup>

During the first quarter of 2013, 99 open tenders were announced via e-procurement web-portal and almost 50 percent (45 open tenders) of them were announced by Ministry of Defence. PIU attached to Ministry of Urban Development during the first quarter announced 13 procedures. Tax service of RA announced 10 procedures. During the same period Transport PIU announced five, Security Service four, Health PIU attached to Ministry of Health three, Aragatsotn Marspetaran three, State Committee of Real Estate Cadastre three, Sport and Youth affairs PIU three, PIU attached to Ministry of Nature Protection and Prosecutor Office of RA two procedures. In addition, seven state bodies announced only one e-tender.

During the first quarter of 2013, out of 99 open tenders as of April 1, 13 tenders were cancelled. About 50 percent (7 tenders) were cancelled by Ministry of Defence.

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<sup>15</sup> According to PSC report (electronic procurement related section).

E-procurement official web-portal does not allow getting any aggregated statistics on e-procurement. Moreover, the system does not allow getting any information on cancelled tenders, number of participants and rejected participants.

Within monitoring we tried to analyse contracts proceed by e-procurement system to evaluate the concentration of winners (see Picture 1). It should be mentioned that there is no significant concentration on procurements conducted via e-portal.

Nevertheless some tenders indicate serious concerns; for example the contract with “Armenian Center for Development Programs” NGO signed in April 3, 2013 had five lots (leisure related ones) and only this organization submitted the bids to this lots and won all five lots (46.8 mln AMD in total). Afterwards, the contract was signed with the same organization for research services (4.7 mln AMD).

There were cases when contracts did not contain signed date; in addition in some cases instead of contracts there were draft contracts.<sup>16</sup> Moreover there is a significant lag between contract signing period and the period of placement contracts in e-procurement web-portal. This problem needs to be regulated through legal provisions.

#### **D) The implementation of procurement procedures defined by PPL**

Monitoring results verify that the current e-procurement system does not give an opportunity to implement all procurement procedures defined by PPL. One of the examples is the negotiated procedure without prior publication of a contract notices. In addition, during the standstill period economic operator can submit complaint to procuring entity through [www.armeps](http://www.armeps) page, via selecting “Feedback” button. As a result, procuring entity gets a complaint which is out of its functions (complaint should be directed to PSC, which will terminate the procedure).

#### **E) The dissimulation of tender announcements to the registered bidders**

Monitoring results verify that although procuring entities must inform all participants about announced procurement procedure, in practice they are not always properly performing legal provision.<sup>17</sup> It is obvious that this approach creates room for corruption risks to occur.

#### **F) Technical specifications of e-procurement system**

Monitoring shows that e-procurement system is still not functioning properly. For example, the deadline of bid submission closes earlier, 30 minutes before the end of procedure, while it should not be any time difference. The deadline for clarification in the system is defined six days, which does not match with the legal requirements (five days). Moreover, sometimes there are technical issues that do not allow finishing the procedure. In result, it

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<sup>16</sup> For example, ՀՀԱՍ-ԷԳ-12/01, ՔՆՔԾԻԳ-ԱՇՁԲ-12/1, ՀՀ ԱՆ ԿՍ-ԲԸԾՁԲ-2012/1, ՀՀ ԱՍ-ԾՁԲ-12/2-5

<sup>17</sup> About this there are some complaints, for example’ <http://gnumner.am/download/46907.html>

creates some mistrust over the system.<sup>18</sup> Our analyses indicate that there are deep problems in e-procurement system, and system per se operates fragmentally.

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<sup>18</sup> For example` <http://gnumner.am/download/38844.html>

## PROBLEMS

Problems revealed by TIAC monitoring are presented below:

1. The share of non-residents in registered bidders is significantly low. In addition, the system does not allow only getting information of procuring entities, while the information of registered economic operators is not available.
2. The procurement plans for e-tenders is not available at web-portal.
3. During the period of 2011-2012 in announced procedures through e-procurement the share of cancelled ones is quite big (almost 40 percent). This indicates that e-procurement system is not fully functional.
4. Either technical operators or procuring entities are not yet ready to conduct procurements under e-procurement web-portal.
5. E-procurement official website does not allow getting any aggregated statistics on e-tenders. Moreover, the system does not allow getting information on cancelled tenders and participation.
6. There were cases when contracts do not contain signed date; in addition in some cases instead of contracts there are draft contracts.
7. There is a significant lag between contract signing period and the period of placement contracts in e-procurement web-portal, the publication timeframes are not regulated through legal framework.
8. The current e-procurement system does not give an opportunity to implement all procurement procedures defined by PPL.
9. Despite the fact that procuring entities must inform all participants about announced procurement procedure, in practice they are not always properly performing legal provisions.
10. E-procurement system is still not functioning properly. Sometimes there are technical issues that do not allow finishing the procedure.

Aside from the problems that were revealed by TIAC monitoring there are number of substantial technical problems that were mentioned in the PSC's report.<sup>19</sup>

1. The time zone of ARMEPS do not match with time zone in Armenia (Armenia is one hour ahead),
2. The standstill period of procedure is not clearly justified. It can be over chaotically. In addition, the “End of Standstill period” button does not work, which does not allow

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<sup>19</sup> Technical problems can be viewed only for registered users and to system administrator.

the user to terminate the standstill period him/herself, following the day requirements mentioned in the law.

3. The evaluation report is in English and not all users can understand it. In addition, report does not contain grounds for rejections, which is a legal requirement.
4. The system exploitation by economic operators signals about a lot of problems depending on user browsers (Google Chrome, Internet Explorer and etc).
5. The simplified procedure defined in the law does not match with the one envisaged in the PPL. The system does not publish this procedure for all economic operators, registered in ARMEPS. Procuring entity should choose only from economic operators that were registered at that moment. In addition, procuring entity should invite at least 4 bidders, which he/she selects by him/herself. The period starting from announcement till the bids' opening, is set up chaotically, while according to PPL the period is exactly 10 days.
6. The user, who is not registered in ARMEPS system can't see the published notices. Only those economic operators who can log in into the system are allowed to see them.
7. Armenian dram is not included in the “estimated cost of contract” field.
8. Framework agreements are not included in the list of “Procedures” field.
9. Economic operators should be informed about whole evaluation process and each move done by evaluator should automatically become available to economic operators, which is still not the case.
10. In those cases when evaluation commission member notices a wrong document he/she should connect with the economic operator, requesting a new one. In practice, the economic operator does not have such a opportunity.
11. The system administrator has following problems;
  - Information about cancelled procedures are not available;
  - After opening the procedure no information is available;
  - The documents submitted by suppliers are not available;
  - The evaluation report is not available;
  - The contract price is not available;
  - The concluding remarks are not available.

Considering above mentioned problems and their diversified nature TIAC is strongly recommending to eliminate these problems.

Picture 1. The mechanisms of information acquisition on contracts and tender announcements through e-procurement system

The screenshot displays the ARMEPS website interface. At the top, the header includes the ARMEPS logo and the text "Ministry of Finance of RA, Procurement Support Center". A search bar is visible with the text "Search: CFTs".

On the left side, there is a "Log in" section with fields for "Username:" and "Password:", and a "Log in" button. Below it is a link to "Register as a Supplier". An "Information" section contains links for "News", "Public procurement legislation", "Electronic public procurement", "Statistics", "Relevant links", and "FAQ".

The main content area is titled "Advanced search" and shows "Searching Call For Tender Workspaces". Below this, there is a table of search results:

#	CFT Title:	CA:
1	<a href="#">Հակաառիչ հեղուկի ձեռքբերում</a>	ՀՀ կառավարության աշխատակազմ պետական կառավարչական հիմնարկ
2	<a href="#">Օլիֆի ձեռքբերում(տեստային)</a>	Գնամների կենտրոն
3	<a href="#">Անվտանգության համակարգերի ձեռքբերում</a>	ՀՀ կառավարության աշխատակազմ պետական կառավարչական հիմնարկ
4	<a href="#">«Արագձուռնի մարզի Իրինո Արտենի համակարգի բարելավում» աշխատանքների գնումը (թեստային տարբերակ)</a>	ՀՀ ՏԿԼ ՋՏԴԿ Ջրային տնտեսության ծրագրերի իրականացման գրասենյակ պետական հիմնարկ
5	<a href="#">«Քնակելի և ոչ քնակելի շենքերի հիմնական նորոգման աշխատանքների» ձեռքբերում</a>	ՀՀ կառավարության աշխատակազմ պետական կառավարչական հիմնարկ
6	<a href="#">«30 կվտ հզորության էլեկտրակայանի» ձեռքբերում</a>	ՀՀ պաշտպանության նախարարություն
7	<a href="#">p. Երևանի թիվ 179 հիմնական դպրոցի տանիքի, դռների ու պատուհանների, մարզադահլիճի և հանդիսությունների դահլիճի վերանորոգման աշխատանքներ</a>	ՀՀ բաղաբաշխության նախարարության բաղաբաշխական ծրագրերի իրականացման գրասենյակ ԴՀ
8	<a href="#">ՀՀ առողջապահության նախարարության կարիքների համար առողջապահության բնագավառի մասնագիտական, խորհրդատվական և կազմակերպամեթոդական աջակցության ծառայությունների ձեռք բերում</a>	ՀՀ ԱԼ Առողջապահական ԾԻԳ ԴՀ
9	<a href="#">«Շարժական դաշտային բաղնիքի կահավորման աշխատանքների» ձեռքբերում</a>	ՀՀ պաշտպանության նախարարություն
10	<a href="#">Անտիմեկնակ ձեռքբերում(տեստային)</a>	Գնամների կենտրոն

The bottom of the screenshot shows a Windows taskbar with various application icons and a system tray displaying the time as 13:56 and the date as 10/06/2014.



Picture 2. Registered contracting authorities

The screenshot shows a web browser window with the URL [www.armeps.am/epps/quickSearchAction.do](http://www.armeps.am/epps/quickSearchAction.do). The page is titled "Advanced search" and displays search results for "Searching Organisations".

**Log in**

Username:

Password:

Register as a Supplier

**Information**

- News
- Public procurement legislation
- Electronic public procurement
- Statistics
- Relevant links
- FAQ

**Calendar**

June 2014

M	T	W	T	F	S	S
						1
2	3	4	5	6	7	8

**Advanced search**

Searching Organisations

Search results

#	Organisation Name:	Organisation Type:
1	ՀՀ ԱՆ ճառագայթային բժշկության և այրվածքների գիտական կենտրոն ՓԲԸ	Contracting Authority
2	Որոտանի հիդրոէլեկտրակայանների համալիր ՓԲԸ	Contracting Authority
3	Լծենի գյուղապետարան	Contracting Authority
4	ՀՀ Արարատի մարզ, Մարմարաշենի գյուղապետարան	Contracting Authority
5	Քաջարանի գյուղապետարան	Contracting Authority
6	ՀՀ Արարատի մարզ, Ռարրենիկի գյուղապետարան	Contracting Authority
7	Կրթության ազգային ինստիտուտ	Contracting Authority
8	Սալվարդի գյուղապետարան	Contracting Authority
9	ՀՀ Լոռու մարզ, Ջրաշենի գյուղապետարան	Contracting Authority
10	ՀՀ տարածքային կառավարման նախարարություն	Contracting Authority

554 results in total. Displaying: 1-10 Page 1 of 56

01:30 11/06/2014

## Appendix 1. E-procurement best practices catalog<sup>20</sup>

Practice title	Judgement criteria					
	Enhance accessibility for SMEs	Ensure legal certainty & confidence	Facilitate cross-border tendering	Promote transparency & accountability	Improve usability and efficiency	Support change management
Practice 1: Platforms automatically transmit all their notices to a single point of access for publication						
Practice 2: Economic operators and contracting authorities benefit from affordable training plans						
Practice 3: Platforms have communication plans in place to promote the use of e-Procurement						
Practice 4: Economic operators can access and retrieve contract notices and tender specifications as anonymous users						
Practice 5: Economic operators can register on the platform without having to provide countryspecific information						
Practice 6: Economic operators complete their registration on a platform by clicking an activation link sent by email						
Practice 7: Platforms support English in addition to the official language(s) of the member state(s) where they operate						
Practice 8: Economic operators can use a username and a password to log in to a platform						
Practice 9: Economic operators can search contract notices using a set of search criteria						
Practice 10: Economic operators can evaluate whether tender specifications are relevant for						

<sup>20</sup> [http://ec.europa.eu/dgs/internal\\_market/studies/docs/e-procurement-golden-book-of-good-practice\\_en.pdf](http://ec.europa.eu/dgs/internal_market/studies/docs/e-procurement-golden-book-of-good-practice_en.pdf)

them based on information available in contract notices						
Practice 11: Economic operators are notified of any changes to tender specifications						
Practice 12: Platforms support automatic transmission of all types of notices to TED						
Practice 13: Economic operators and contracting authorities can search CPV categories based on their code or their description						
Practice 14: Contracting authorities can re-use information contained in their profile or in previous notices to create contract notices, tender specifications and award notices						
Practice 15: Economic operators can choose to manually or electronically sign a submission report containing the hash value of each submitted document						
Practice 16: Economic operators receive a proof of delivery upon successful submission of their tender						
Practice 17: Economic operators can resubmit their tenders up until the submission deadline						
Practice 18: Platforms keep tenders encrypted until the opening session						
Practice 19: Contracting authorities can evaluate part of their tenders automatically based on predefined criteria						
Practice 20: Platforms use European e-Signature validation services to validate e-Signatures during e-Submission						
Practice 21: Platforms clearly indicate all costs related to use of the platform						
Practice 22: Economic operators can create						

tenders using a core set of structured data and unstructured documents						
Practice 23: Economic operators have the freedom to choose the platform of their preference without being locked in by the choice of the contracting authority						
Practice 24: Platforms use standard specifications to structure their data and to promote interoperability						

**THE CHARACTERISTICS OF SINGLE SOURCE  
PROCUREMENT IN ARMENIA**

## INTRODUCTION

The basic presumption in public procurement is that contracts of a specified type and value should be procured using an advertised, competitive procedure that is open, fair and transparent, ensuring equality of opportunity and treatment for all candidates and bidders.

Best practices assume that in case of efficient public procurement non-competitive procedures should be strictly regulated; in particular European Court of Justice (ECJ) confirmed that the award of a contract without competition should only occur in exceptional circumstances.<sup>21</sup> The case law of the ECJ makes it clear that the single source procurement (in PPL the term “negotiated procedure without prior publication of a contract notice”) implementation conditions should be strictly limited and the procuring entity should demonstrate compliance with the conditions justifying this approach.

In procurement practice single source implementation limits are strictly defined and according to best practices contain the following conditions;

- **Technical or artistic reasons or protection of exclusive rights:** In cases where technical or artistic reasons or reasons connected with the protection of exclusive rights are presented, the contract can only be awarded to a particular supplier. In our legislation this provision is reflected in copyright or related rights (see Article 20).
- **Extreme urgency:** Due to events that were unforeseeable by the procuring entity, where time limits available for the open or restricted procedure cannot be complied with, and where it is judged to be strictly necessary.
- **Products manufactured for R&D purposes only:** When the products involved are manufactured purely for the purpose of research, experimentation, study or development.
- **Additional deliveries from an original supplier:** For additional deliveries from an original supplier that are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations or a change of supplier would oblige the procuring entity to acquire material having different technical characteristics, which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. This provision can be implemented only for the period of three years starting from initial contract signing period.

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<sup>21</sup> [http://www.oecd.org/site/sigma/publicationsdocuments/PB10\\_PUPProcedures\\_2011.pdf](http://www.oecd.org/site/sigma/publicationsdocuments/PB10_PUPProcedures_2011.pdf)

- **Supplies quoted and purchased on a commodity market;** basically this covers the cases when state makes procurement directly from commodity markets (gasoline, wheat, etc)
- **Purchase of supplies on particularly advantageous terms:** Where supplies can be purchased on particularly advantageous terms from (1) a supplier that is winding up its business; or (2) the receivers or liquidators of a bankruptcy for arrangements with creditors or similar procedures.
- **Repetition of works or services:** For new works or services consisting of the repetition of similar works or services entrusted to the same economic operator under the original contract.

# **THE CHARACTERISTICS OF SINGLE SOURCE PROCUREMENT IN ARMENIA**

Single source procurement is regulated by PPL Article 20, clause 5. The law sets the following basis for single source procurement implementation;

1. Due to copyright or related rights, existence of special or exclusive right for the goods, works or services can be obtained from a single source;
2. There arise an urgent need for procurement and, due to emergency, another procurement procedure cannot be used due to time constraints, provided that such need was impossible to foresee;
3. Additional quantities of products are being purchased, which are intended to replace or extend the equipments/installations initially supplied by a supplier, where a change of the original supplier would oblige the procuring entity to acquire products having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. This condition should be applied only during three year period following the signing of original contract;
4. The procuring entity, after carrying out procurement of works or services from an entity, decides that an additional procurement of works or services not included in the original contract, which due to unforeseen circumstances have become necessary for the performance of the original contract, should be done from the same entity, provided that:
  - a. The additional works or services contract cannot be technically or economically separated from the original contract without significant inconvenience to the procuring entity; and
  - b. Its price would not exceed twenty percent of the price of the original procurement contract. Under the provisions of this paragraph, an additional procurement from the same entity can be done only once.
5. For the goods that can be purchased on particularly advantageous conditions for the procuring entity from either an entity which definitively winds up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure;
6. The price of procurement subject does not exceed the procurement base unit.



As it can be seen, the basis for single source procurement envisaged in PPL is in line with best practices. The basis for single source procurement in Armenia schematically presented in Appendix 1.

## METHODOLOGY

The monitoring of the single source procurement and conclusions were made based on the information taken from the [www.e-gov.am](http://www.e-gov.am) website's "Single source procurements" section. Below are the monitoring criteria, based on which analyses were conducted.

**1. The consistency of single source procurement data and frequency of data update:**

Through these criteria it was tried to evaluate whether the information on [www.e-gov.am](http://www.e-gov.am) website related to single source procurement updates is on time and consistent. During the monitoring the [www.e-gov.am](http://www.e-gov.am) website's "Single source procurements" section was periodically analysed in order to evaluate the frequency of updates of public information (e.g. after contract signing when the contract is posted on the website and how consistent it is).

**2. The justifications for single source procurement:** Within this monitoring criteria the contracts information and their justification (envisaged at PPL Article 20, clause 5) available at [www.e-gov.am](http://www.e-gov.am) website's "Single source procurements" section was analysed for the period of 2011-2012. Based on the monitoring comparative analysis were conducted and the trends were revealed.

**3. The timelines between contract signing and contract implementation:** This monitoring criteria aims to assess the justifications of single source procurement from viewpoint of its urgency. Based on monitoring of [www.e-gov.am](http://www.e-gov.am) website's "Single source procurements" section all the contracts available there for the period of 2011-2012 were downloaded, then the periods of contract signing and delivery were analyzed.

**4. The value of procurement contracts:** This monitoring criteria aims to reveal corruption risks possible in single source procurement. From our viewpoint those contracts which values end with five zeros are risky ones (this approach is also called red flags methodology tool). Within the analysis of of this criteria contracts available at [www.e-gov.am](http://www.e-gov.am) website's "Single source procurements" section were downloaded for the period of 2011-2012, then the contracts prices were classified and analyzed.

**5. Organizations with whom single source was conducted periodically during the period of 2011-2012:** Under this monitoring criteria contracts available at [www.e-gov.am](http://www.e-gov.am) website's "Single source procurements" section were downloaded for the period of 2011-2012, then the winner organizations were sorted, in addition web searching was conducted in order to a) reveal possible whistleblowing information on periodic winners b) the shareholder and registration information of periodically

selected companies (with single source procedure) was analysed (based on [www.e-register.am](http://www.e-register.am) website information).

### **The consistency of single source procurement data and frequency of data update**

During 2011 and 2012 the publication of single source procurement data was chaotic, sometimes with over one year delay (the single source procurement data available on [www.e-gov.am](http://www.e-gov.am) website was not updated from 2011 August to 2012 October). Since the second quarter of 2013 the publication process has improved significantly and now the difference between contract signing and posting it in e-gov.am portal do not exceed 10 days.<sup>22</sup>

At the same time TIAC monitoring reveals that [www.e-gov.am](http://www.e-gov.am) website's «Single source procurements» section needs considerable improvement, as there are repeatative single source contracts; in addition website contains a lot of huge information which does not have any direct relationship with single sourcing<sup>23</sup>, and is not in line with decree provisions adopted by the GoA (No 1104-N).

### **The justifications for single source procurement and trend analysis**

#### **2011**

In 2011 according to the information available at [www.e-gov.am](http://www.e-gov.am) website 26 structural unites choosed single source procurement method. In total 360 single source procedures were conducted with value of roughly 13.4 bln AMD (see Appendix 2).

In 2013 in procurement official website's "Report" section 2011 annual report was posted. The analysis of this report indicate that the share of single source procurement is quite big.

In 2011 the majority of contracts signed by state bodies belonged to single source procurement (about 111 bln. AMD), which was about 67 percent of total. Single source procurement had a major share in procurement procedures, in particular state bodies in 2011 organized 14617 procedures out of which 7874 (about 54 percent) belonged to single sourcing.

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<sup>22</sup> This provision is defined by GoA decree No 1104-N, point 10.

<http://www.arlis.am/DocumentView.aspx?DocID=80427> Information should contain the institution name, procurement subject, justifications for single sourcing, the basis for procurement, supplier, contract price, advanced payments, the contract signing data and the expected date of delivery and the original contract scan. The information on this section should be updated once per 10 day.

<sup>23</sup> Samples of repetitive contracts

1) <http://www.gov.am/files/procurement/832.pdf> and <http://www.gov.am/files/procurement/762.pdf>

2) <http://www.gov.am/files/procurement/753.pdf> and <http://www.gov.am/files/procurement/744.pdf>

The information which do not relates to single sourcing- [https://www.e-gov.am/procur\\_files/303737-El.energia13.doc](https://www.e-gov.am/procur_files/303737-El.energia13.doc) and [https://www.e-gov.am/procur\\_files/302276-El.energia13.doc](https://www.e-gov.am/procur_files/302276-El.energia13.doc)

Trend analysis reveal that in 2011 state bodies predominantly used single sourcing, which raises deep concerns. The procuring entities (12 structural units) with annually ten and more single source contracts are presented in Table 1.

**Table 1. The structure and content of single source procurement in 2011**

Procuring entity	The number of single source contracts in 2011	Sum to be paid on single source contracts, mln AMD	Share in Total	
			Number	Value
Lori region	54	1249	15.0	9.3
Kotayk region	45	1298	12.5	9.7
Shirak region	40	1302	11.1	9.7
Gegharkunik region	33	1070	9.2	8.0
Ararat region	33	1021	9.2	7.6
Aragatsotn region	26	666	7.2	5.0
Syunik region	17	694	4.7	5.2
Vayots Dzor region	17	252	4.7	1.9
Tavush region	15	628	4.2	4.7
Armavir region	14	1246	3.9	9.3
Ministry of Education and Science	11	584	3.1	4.4
Ministry of Agriculture	11	423	3.1	3.2
Total	316	10433	87.8	77.8

As one can see from Table 1, regions used predominantly single source procurement. This can be conditioned either with high corruption risks, or low capacities (as a result of which the preference is given to more simple procedure-single sourcing). It should be mentioned that 12 structural units presented in Table 1 constitute 88 percent of total single sourcing. This means that there was a high concentration in this method of procurement in 2011.

Out of 360 single source procurement 13 procedures (3 percent) or in volume 590 mln AMD (4 percent of total) were conducted on copyright justification, in addition in 9 cases (69 percent) the difference between contract signing and delivery period was more than 40 days.

According to PPL (Article 17, clause 2) open procedure is the preferable and basic procurement method. The deadline for submission of bids should be no less than 40 calendar days from the date of disclosing the list of prequalified bidders<sup>24</sup>. Therefore the 40 days rule has an important place in our analysis. The logic is following; if the difference between contract signing and delivery period is more than 40 days, and single sourcing is justified as urgency, then these procedures seem risky.

<sup>24</sup> PPL Article 19, clause 2.

The latest data available in the website for 2011 is August; it is seriously doubtful that the data is not updated as usually the most of single sourcing comes in September-December period.

### **2012**

In 2012 according to the information available at [www.e-gov.am](http://www.e-gov.am) website, 39 structural units choose single source procurement method. In total 733 single source procedures were conducted with value of roughly 21.4 bln AMD (see Appendix 3).

In 2013 in procurement official website's "Report»" section 2012 annual report was posted. The analysis of this report indicate that the share of single source is quite big.

In 2012 the majority of contracts signed by state bodies belonged to single source procurement (about 104 bln. AMD), which was about 61 percent of total. Single source procurement had a major share in procurement procedures, in particular state bodies in 2012 organized 5245 procedures out of which 3798 (about 72 percent) belonged to single sourcing.

Trend analysis reveal that in 2012 state bodies predominantly used single sourcing, which raises deep concerns. The procuring entities (16 structural units) with annually 10 and more single source contracts are presented in Table 2.

**Table 2. The structure and content of single source procurement in 2012**

Procuring entity	The number of single source contracts in 2012	Sum to be paid on single source contracts, mln AMD	Share in Total	
			Number	Value
Lori region	134	2165	18.3	10.1
Kotayk region	56	1521	7.6	7.1
Gegharkunik region	90	2314	12.3	10.8
Ararat region	59	1560	8.0	7.3
Aragatsotn region	25	316	3.4	1.5
Syunik region	16	240	2.2	1.1
Vayots Dzor region	25	246	3.4	1.1
Tavush region	33	330	4.5	1.5
Armavir region	51	1625	7.0	7.6
PIU attached to Ministry of Urban Development	12	297	1.6	1.4
Ministry of Labor and Social Issues	16	345	2.2	1.6
Ministry of Education and Science	38	990	5.2	4.6
Central Election Committee	29	337	4.0	1.6
Transport PIU	41	3275	5.6	15.3

Ministry of Culture	12	117	1.6	0.5
Tax Service	20	2723	2.7	12.7
Subtotal	657	18401		
Total	733	21405	89.6	86.0

As one can see from Table 2 regions continued using predominantly single source procurement. The concentration was high as in 2011. The share of 12 structural units mentioned in Table 2 constituted 90 percent in numbers and 86 percent in volume.

Out of 733 single source procurement 49 procedures (7 percent) or in volume 1.6 bln AMD (8 percent of total) were conducted on copyright justification, in addition in 36 cases (73 percent) the difference between contract signing and delivery period was more than 40 days. Out of 733 single source procurement 74 procedures (2 bln AMD) were justified as urgency based on various decrees adopted by GoA.

**Trend analysis.** The analysis of Appendix 2 and 3 indicate that there is a jump on single sourcing numbers both in volume (60 percent increase) and quantity (about 100 percent jump). Based on preliminary assessment, 2013 data will outperform 2012 ones. This signals about the trend that single sourcing is becoming predominant method for procuring entities. In addition, the negative trend of single source contracts being signed in the last quarter continues. (See Problem 5 for details)

#### **Analysis of the timelines between contract signing and contract implementation**

In 2011, 36 signed single source contracts out of 360 (10 percent) did not have fixed deadline for contract execution (till fulfilment of liabilities of the contract term is used). It should be mentioned that in one of the contracts either signing or execution date was missing.

In 2011, 295 single source contracts out of 360 (90 percent) the difference between date of contract signing end expected date of performing exceeded 40 days; in 2012, 387 single source contracts out of 733 (roughly 50 percent).

Certainly the outpace of 40 days can be conditioned by objective conditions, such as the longer time is required for import, clearance and installation procedures, but analysis verify that the likelihood of these cases is negligible. Another indicator can be the difference in approval and contract signing time for single source procedure. Unfortunately, the opportunities for analysis in this direction are limited as the payment related information is not disclosed to public.

## **Monitoring over the selected organizations and single source procurement value**

Based on red flags methodology logic, the tenders with corruption risks were identified. In particular, in 2011, 50 single source procedures were conducted, where contract prices ended with five zeros (14 percent of total), in 2012 an increase was registered and the procedures were 141 (19 percent). The total amount accumulated by such risky procedures constituted 1.5 bln AMD (11 percent), while in 2012 it was 3.5 bln AMD (16 percent). In summary, single source procedure analysis for the period of 2011-2012 reveal that share of risky procedures are growing.

Table 3 (for 2011) and Table 4 (for 2012) present information on companies with whom more than 4 times single source contracts were signed annually. For those companies it was tried;

1. To analyse whistle blowing publications in the internet;
2. To present the companies' shareholder and registration information based on information available at [www.e-register.am](http://www.e-register.am) website.

It should be mentioned that the companies represented in Table 3 together constitute 10 percent of observed total single source in price and 11% in number. The companies represented in Table 4 together constitute 38 percent both in price and volume.

Table 3 reveals interesting facts; in particular "Tsogh Astgh" LTD was single sourced both for rodent control and construction, which raises serious concerns. In addition "Khapartshin" LTD was single sourced although its licence was terminated.

The same findings are related to Table 4; in particular while being blacklisted "Bagarani Bariq" CJSC was single sourced. There are a number of cases with affiliate companies submitting bids to the same procurement procedure, and even cases when construction contract was signed with companies, whose licence at the moment was terminated.

In Armenia the use of single-source procurement is higher almost 5 times than generally accepted international norms (norm: 10 percent in number, 5 percent in value). In addition, the trend is negative as the share of single-source procurement continues to increase.

## FINDINGS

1. The statistical data on single source procurement is inconsistent.
2. Analysis of single source procurement section at [www.e-gov.am](http://www.e-gov.am) portal reveals that both value and number of single source contracts are growing, moreover the use of single-source procurement is higher almost 5 times than generally accepted international norms. The analysis signal that this negative trend is going to continue.
3. The data presented in “Single source procurement” section at [www.e-gov.am](http://www.e-gov.am) portal contains a lot of deficiencies. In particular data analyses raise serious concerns whether single source procurement procedures with urgency justification were “really” urgent. This fact seriously hurts the efficiency of public spending.
4. The practice of overwhelming use of single source procurement continues to be explained by lack of competition. Despite the fact that based on World Bank’s suggestion the uncertainty between “urgent need” as arising out of “emergency and contingency”, was regulated, there are a lot of cases when the decree of Minister of Finance regarding time boundary is not implemented properly.<sup>25</sup>
5. The trends presented in Appendix 2 and Appendix 3 validate about existence of seasonal effects, in particular during first quarters of 2011 and 2012, the number of single source procedures was significantly lower than in other quarters. Late allocation (frequently in the last quarter of the year) of budgetary funds (especially new allocations) often leads to the use of the single source method of procurement as little time is left before the end of the fiscal year to carry out competitive procurement. Procuring entities use this method to avoid losing the funds if not used before the end of the fiscal year.
6. It is obvious that some procuring entities have preferences towards some bidders and periodically make single source procurement with them.

Aside from results obtained directly through monitoring criteria, during the interviews and single source data analysis the following considerable facts were revealed;

- Procurements from affiliated persons,
- Procurements from those companies who either were included in blacklist or had licensing problems;
- Approximation of technical specifications to the certain producer;
- Conducting procurement with prices higher than market ones.

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<sup>25</sup> See the timeboundary defined in subpoint 2 (clause b) Minister of Finance Decree, 147-N <http://www.arlis.am/DocumentView.aspx?DocID=63929>



## SUGGESTIONS

1. Increase the quality of public information posted in the “Single source procurement” section at [www.e-gov.am](http://www.e-gov.am) portal, in particular enforce GoA requirements regarding content of single source information.
2. Analyse more thoroughly the justifications for single sourcing and initiate actions towards those cases when selection of single source as a procurement method is not a necessity. Pay more attention towards publications in media regarding improper procurement.
3. Publish the list of affiliated persons to the procurement officers in communities.
4. Update and regularly publish the list of sole “license” holders.
5. Provide better grounds which will prove that urgency of procurement is not conditioned with the fact of procuring entities’ improper behaviour.

**Table 2. The structure and content of single source procurements in 2011**

	The company selected with single source method	The number of signed single source contracts	Total contract price based on single source procurement procedures (mln.AMD)	Procuring entity	Representitiveness in the internet <sup>26</sup>	Data on Shareholders/Owners and the date of registration <sup>27</sup>
1	“Ashkar” LLC	4	212.2	Kotayk marzpetaran	None	Epremyan Taron, Dec. 27, 2005
2	“Goharik” LLC	4	275.2	Shirak marzpetaran	None	Muradyan Mayis and Manukyan Anahit August 19, 1994
3	“Gredshin” LLC	4	43.6	Aragatsotn marzpetaran	None	Karapetyan Eduard April 2, 2009
4	“Interkapal” LLC	4	217.4	Kotayk marzpetaran	<a href="http://www.ipages.am/company-3129">http://www.ipages.am/company-3129</a>	Grigoryan Frunzik Dec. 9, 1999
5	“Khapartshin” LLC	6	54.7	Aragatsotn marzpetaran	<a href="http://www.arlis.am/DocumentView.aspx?DocID=7554228">http://www.arlis.am/DocumentView.aspx?DocID=7554228</a>	Khachatryan Adam November 1, 2011
6	“Kapan Norogshin” LLC	4	281.2	Syunik marzpetaran	<a href="http://marketplace.smednc.am/am/companies/show/2235">http://marketplace.smednc.am/am/companies/show/2235</a>	Parsyan Razmik October 2, 2008
7	“Haykasar” LLC	4	10.4	Shirak marzpetaran	None	Harutyunyan Harutyun January 20, 2010
8	“Rustig” LLC	4	147.8	Kotayk marzpetaran	None	Mkrtchyan Razmik November 15, 2004
9	“Tsogh Astgh” LLC <sup>29</sup>	4	41.8	Ministry of Agriculture/ Aragatsotn marzpetaran	None	Margaryan Arayik February 28, 2001
	Total	38	1284.3			

<sup>26</sup> Within this component the following directions analysed in the internet a) the existence of information about selected company (website or other source) b) whistleblowing information

<sup>27</sup> The registered information available at [www.e-register.am](http://www.e-register.am). We tend to think that earlier registered companies, ceteris paribus, are less risky.

<sup>28</sup> The license was terminated.

<sup>29</sup> Has two licenses (construction and veterinary).

**Table 3. The structure and content of single source procurements in 2012**

	The company selected with single source method	The number of signed single source contracts	Total contract price based on single source procurement procedures (mln.AMD)	Procuring entity	Website/Whistleblowing information about selected company in the internet <sup>26</sup>	Data on Shareholders/Owners and the date of registration <sup>27</sup>
1	“Ashkar” LLC	5	210	Kotayk marzpetaran	None	Epremyan Taron, Dec. 27, 2005
2	“Bagarani Bariq” <sup>30</sup> CJSC	5	22.3	4 different procuring entities	<a href="http://webcache.googleusercontent.com/search?q=cache:bRvJCDLnlmsJ:gnumner.am/canlk-sahm.doc+&amp;cd=5&amp;hl=hy&amp;ct=clnk&amp;gl=am">http://webcache.googleusercontent.com/search?q=cache:bRvJCDLnlmsJ:gnumner.am/canlk-sahm.doc+&amp;cd=5&amp;hl=hy&amp;ct=clnk&amp;gl=am</a> <a href="http://www.armtimes.com/8767">http://www.armtimes.com/8767</a>	Shareholders, May 31, 2004
3	“Artsakhchan Institute” CJSC	18	73	PIU under MoTC/ Kotayk marzpetaran	<a href="http://www.ipages.am/company-4270">http://www.ipages.am/company-4270</a> <a href="http://www.artsakhroad.am/">http://www.artsakhroad.am/</a> <a href="http://bshin.am/">http://bshin.am/</a>	No information is available
4	“Baghramyanshin” OJSC	6	247	Armavir marzpetaran	<a href="http://www.spyur.am/am/companies/center-of-geodesy-and-cartography/746">http://www.spyur.am/am/companies/center-of-geodesy-and-cartography/746</a>	Manvelyan Vardan, Grigoryan Aram, Vardanyan Gagik June 6, 1995
5	“Center Of Geodesy and Cartography” SNCO	5	309	State Committee of Real Estate Cadastre	<a href="http://www.spyur.am/am/companies/center-of-geodesy-and-cartography/746">http://www.spyur.am/am/companies/center-of-geodesy-and-cartography/746</a>	State Committee of Real Estate Cadastre <sup>31</sup> November 14, 2003
6	“Gredshin” LLC	6	49	Aragatsotn marzpetaran	None	Karapetyan Eduard April 2, 2009
7	“YES EV NA” LLC	7	164	Aragatsotn marzpetaran	There are publications stating that this company is affiliated with marzpet, <sup>32</sup> which approved during our observation	Sahakyan Nairi November 9, 2006
8	“Zangak 97” LLC	6	282	Ministry of Education and Science	<a href="http://www.armproduct.am/zangak-97-printing/">http://www.armproduct.am/zangak-97-printing/</a>	Mnatsakanyan Masho, Mkrtychyan Sokrat October 1, 1997
9	“Edvard Abgaryan” LLC	5	210	Gegharqunik marzpetaran	None	Abgaryan Eduard, February 20, 2004

<sup>30</sup> Despite the fact that this company was blacklisted in 2012, five single source procedures were signed with it.

<sup>31</sup> According to e-register.am website this company shut down its activity.

<sup>32</sup> <http://hetq.am/arm/news/27120/aragatsotni-marzpety-petakan-kariqneri-hamar-paymanagrere-knqum-exbor-yunkerutyan-het.html>

10	“Ijevan Roads” CJSC	5	1267	Tavush marzpetaran/ PIU under MoTC	<a href="http://168.am/2013/05/21/227639.html">http://168.am/2013/05/21/227639.html</a> <a href="http://www.mtc.am/main.php?lang=1&amp;page_id=580">http://www.mtc.am/main.php?lang=1&amp;page_id=580</a>	Information on shareholders is not available
11	“Levon Erkrord” LLC	7	140	PIU under MoTC/ Tavush marzpetaran	<a href="http://smednc.am/index.php/trade/design/frontend/smednc/design/frontend/smednc/loaders.swf?laid=2&amp;com=module&amp;module=static&amp;id=472">http://smednc.am/index.php/trade/design/frontend/smednc/design/frontend/smednc/loaders.swf?laid=2&amp;com=module&amp;module=static&amp;id=472</a>	Antonyan Flora, Antonyan Levon, Flora Antonyan June 22, 1998
12	“Lori Roads” CJSC	5	201	Lori marzpetaran	<a href="http://www.construction.am/arm/page.php?id=1041">http://www.construction.am/arm/page.php?id=1041</a>	Information on shareholders February 3, 1995
13	“Haldi Consult” LLC	8	26.3	4 different procuring entities	None	Hovsepyan Davit, Hovsepyan Igit May 4, 2009
14	"Armenian Roads Directorate" SNCO	6	15	PIU under MoTC	<a href="http://www.mtc.am/main.php?lang=1&amp;page_id=520">http://www.mtc.am/main.php?lang=1&amp;page_id=520</a>	MoTC February 18, 2005
15	“Hermes” LLC	5	10	Ararat marzpetaran	None	A lot of companies with the same name and legal status are available
16	“Centre for Restoration of the Monuments” CJSC	6	61.8	Ministry of Culture	<a href="http://mincult.am/ministry_staff.html">http://mincult.am/ministry_staff.html</a>	Ministry of Culture March 30, 2010
17	“Gharaqilisa” LLC	5	22.9	Lori marzpetaran	<a href="http://www.arlis.am/DocumentView.aspx?DocID=76153">http://www.arlis.am/DocumentView.aspx?DocID=76153</a> <sup>28</sup>	Grigoryan Emilia June 21, 2010
18	“Tchannakhagits Institute” LLC	10	69.7	4 different procuring entities	<a href="http://www.kamurjshin.am/am/showpartner/30/">http://www.kamurjshin.am/am/showpartner/30/</a>	Araqelov Anatoly and 16 other shareholders December 19, 1995
19	“M. Sisakyan” LLC	6	136	Lori marzpetaran	None	Sisakyan Hayk Makaryan gagik July 19, 1994
20	“Milaqs Group” CJSC	7	443	Armavir marzpetaran	<a href="http://www.construction.am/arm/page.php?id=239">http://www.construction.am/arm/page.php?id=239</a>	Ter-Poghosyan Arayik May 2, 1995
21	“Nork Information-Analytical Center” CJSC	9	290	Ministry of Labor and Social Issues	<a href="http://www.norq.am/home/">http://www.norq.am/home/</a>	Ministry of Labor and Social Issues November 29, 2000
22	“Shant-Seyran” LLC	8	559	Gegharqunik	There are publications stating that this	Ghukasyan Arsen

				marzpetaran	company is affiliated with marzpet, <sup>33</sup> which approved during our observation	Poghosyan Gagik January 23, 1996
23	“Sarkoghi” LLC	5	71.2	Vayots Dzor/ Syunik marzpetaran	<a href="http://marketplace.smednc.am/am/companies/show/3459">http://marketplace.smednc.am/am/companies/show/3459</a>	Sargsyan Razmik Sargsyan Sargis Sargsyan Karen February 5, 2001
24	“Varmash” LLC	6	63.7	Lori marzpetaran	<a href="http://www.ipages.am/company-1291">http://www.ipages.am/company-1291</a> <a href="http://www.tert.am/am/news/2011/06/13/case2/">http://www.tert.am/am/news/2011/06/13/case2/</a>	Marutyan Styopa Varyan Arshak Varyan makich Varyan Arshak October 30, 1995
25	“Tigran Mets Print” CJSC	15	250.8	Central Election Committee	<a href="http://www.tigran-mets.am/">http://www.tigran-mets.am/</a>	148 shareholders September 29, 1997
26	“Transnakhagits Institute” CJSC	7	34.3	Kotayk marzpetaran	<a href="http://www.ipages.am/company-1604">http://www.ipages.am/company-1604</a>	Information on shareholders is not available
27	“Argishti 1” LLC	4	165	Lori marzpetaran	There are publications stating that this company is affiliated with Vanadzor Mayor, <sup>34</sup> which approved during our observation	Darbinyan Seyran, Vardanyan Arayik Petrosyan Vigen December 23, 1996
28	“Armenia-Travel+M” LLC	4	7.6	Ministry of Foreign Affairs	<a href="http://www.armeniatravel.am/">http://www.armeniatravel.am/</a>	Kpryan Marine November 29, 1996
29	“Gazoterm” LLC	4	21.3	Ararat marzpetaran	<a href="http://www.ipages.am/company-1693">http://www.ipages.am/company-1693</a>	Tadevosyan Robert September 8, 1999
30	“Gladzor-1” Coop	4	13	Vayots Dzor marzpetaran	<a href="http://www.arlis.am/DocumentView.aspx?docid=46239">http://www.arlis.am/DocumentView.aspx?docid=46239</a> <sup>28</sup>	Gasparyan Vardan October 20, 1995
31	“Edit Print” LLC	4	79.8	Ministry of Education and Science	<a href="http://www.editprint.am/">http://www.editprint.am/</a>	Qyuriqchyan Rodrig September 8, 1995
32	“Electronakhagits” CJSC	4	15	Armavir marzpetaran	<a href="http://www.construction.am/arm/page.php?id=173">http://www.construction.am/arm/page.php?id=173</a>	Shareholders June 17, 2005
33	“Tiv 28 SHMSH” OJSC	4	14.7	Ararat marzpetaran	<a href="http://www.spyur.am/am/companies/tiv-28-shmsh/30248">http://www.spyur.am/am/companies/tiv-28-shmsh/30248</a>	Shareholders February 16, 1998
34	“Ecoproject” LLC	4	20.7	3 procuring entities	<a href="http://www.construction.am/arm/page.php?id=173">http://www.construction.am/arm/page.php?id=173</a>	Gulanyan Georgi,

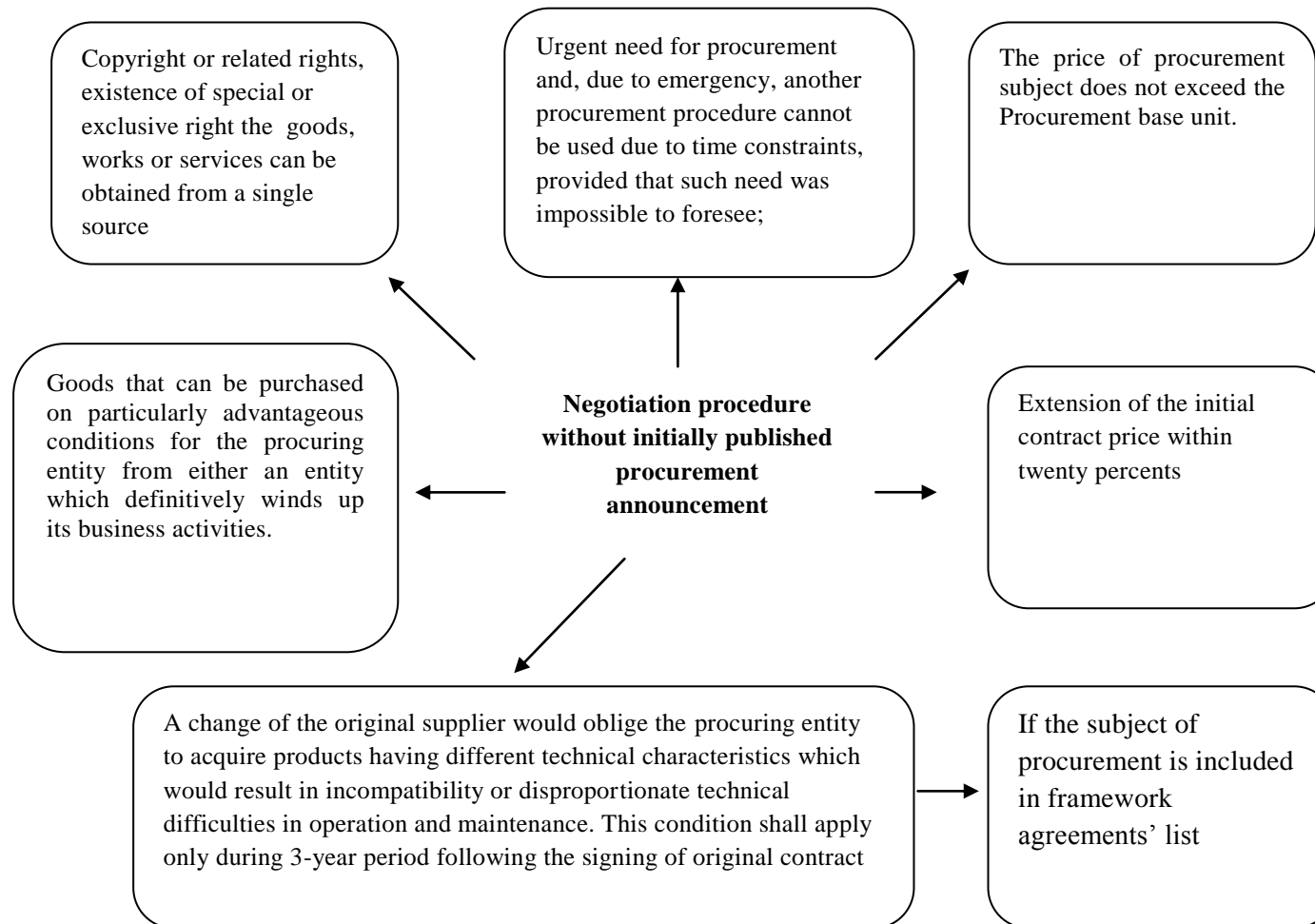
<sup>33</sup> <http://www.chi.am/index.cfm?objectID=80F51EE08DC011E09A42005056A30FF7&year=2009&month=10&legacyURL=091031/09103108>

<sup>34</sup> <http://hetq.am/arm/news/17705/vanadzori-qaxaqapety-sepakan-shenq-uni-ev-argishti--1-ic-shahabazhin.html/>

					<a href="#">d=1263</a>	Qocharyan Eduard August 13, 2002
35	“Ishkhanhatak” LLC	4	161.4	Gegharqunik marzpetaran	<a href="http://spyur.am/am/companies/ishkhanhatak/88117">http://spyur.am/am/companies/ishkhanhatak/88117</a>	Harutyunyan Henrik September 30, 1999
36	“Loreci Qaregorts” LLC	4	43.4	Lori marzpetaran	<a href="http://ns1.arlis.am/DocumentView.aspx?DocID=70595&amp;DocID_AM=70595&amp;DocID_RU=0&amp;DocID_EN=0">http://ns1.arlis.am/DocumentView.aspx?DocID=70595&amp;DocID_AM=70595&amp;DocID_RU=0&amp;DocID_EN=0</a> <sup>28</sup>	Qocharyan Eduard April 7, 2008
37	“Khachmishshin” LLC	4	32.8	Tavush marzpetaran	<a href="http://marketplace.smednc.am/en/companies/show/204">http://marketplace.smednc.am/en/companies/show/204</a>	Hamzyan Misha October 28, 2005
38	“H. Poghosyan” LLC	4	81.3	Lori marzpetaran	<a href="http://lori.gov.am/news/item/2012/09/27/news/">http://lori.gov.am/news/item/2012/09/27/news/</a>	Poghosyan Hovik October 11, 2006
39	“HAEK Shinararutyun” CJSC	4	242.8	Armavir marzpetaran	<a href="http://www.haekishin.am/">http://www.haekishin.am/</a>	Hydroenergashin CJSC November 25, 1999
40	“Hayq-41” OJSC	4	166.9	Gegharqunik marzpetaran	None	Shareholders, July 10, 1995
41	"Armenian State Non-Departmental Expert Commission For Construction Designs" CJSC	4	11.7	PIU under Ministry of Urban Development	<a href="http://www.spyur.am/am/companies/armenian-state-non-departmental-expert-commission-for-construction-designs/3076">http://www.spyur.am/am/companies/armenian-state-non-departmental-expert-commission-for-construction-designs/3076</a>	Shareholders June 15, 2007
42	“Husali Kamar” LLC	4	23.1	Tax Service	None	Araqelyan Valerik February 9, 2009
43	“Chambarak CHSHSH” OJSC	4	72.7	Gegharqunik marzpetaran	<a href="http://www.arlis.am/DocumentView.aspx?DocID=70936&amp;DocID_AM=70936&amp;DocID_RU=0&amp;DocID_EN=0">http://www.arlis.am/DocumentView.aspx?DocID=70936&amp;DocID_AM=70936&amp;DocID_RU=0&amp;DocID_EN=0</a> <sup>28</sup>	Shareholders May 12, 1998
44	“Shinarar-10” LLC	4	142.3	Gegharqunik marzpetaran	<a href="http://www.ipages.am/company-3009">http://www.ipages.am/company-3009</a>	Hovhannisyan Vladimir, Hovhannisyan Mkrtych April 10, 1997
45	“Osmar” LLC	4	90.9	Syunik marzpetaran	<a href="http://www.construction.am/arm/page.php?id=1039">http://www.construction.am/arm/page.php?id=1039</a>	Voskanyan Nelson Martirosyan Anahit, Martirosyan Artur October 10, 2012
46	“Sahakyanshin” CJSC	4	1368	Tax Service	<a href="http://www.sahakyanshin.am/jobs/index/_hy">http://www.sahakyanshin.am/jobs/index/_hy</a>	Sahakyan Suren, Sahakyan Hovhannes

						Martoyan Zaruhi March 26, 1999
47	“Vanarkh” LLC	4	29.6	Lori marzpetaran	<a href="http://www.construction.am/page.php?id=930">http://www.construction.am/page.php?id=930</a>	Ghukasyan Arshavir, March 4, 2003
48	“Techproject” LLC	4	7.4	Lori marzpetaran	<a href="http://www.construction.am/arm/page.php?id=1069">http://www.construction.am/arm/page.php?id=1069</a>	Shareholders, April 25, 1996
49	“Titanyan Eghbairner” LLC	4	97.2	Lori marzpetaran	None	Titanyan Sanasar and shareholders September 22, 1995
50	“Toyota Yerevan” LLC	4	63.2	4 procuring entities	<a href="http://toyota.am/index.php?lang=1&amp;id=5">http://toyota.am/index.php?lang=1&amp;id=5</a>	Qocharyan Sedrak, Mayrapetyan Samvel Gevorgyan Andranik Gzraryan Vahe September 5, 2009
51	“QVE-nakhagits” LLC	4	18.5	Lori/ Tavush marzpetaran	<a href="http://www.construction.am/arm/page.php?id=1264">http://www.construction.am/arm/page.php?id=1264</a>	Qocharyan vahe Qocharyan Eduard January 13, 2004
	<b>Total</b>	<b>283</b>	<b>8220.3</b>			
	<b>Total</b>	<b>38%</b>	<b>38%</b>			

## Appendix 1.





**Appendix 2. Monthly distribution of single source contracts in 2011**

January		February		March		April		May		June		July		August		Total	
Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	Bln, AMD
1	0.1	2	0.2	42	1.0	58	2.7	178	6.2	38	1.0	31	1.7	10	0.4	360	13.4
0.3	0.8	0.6	1.5	11.7	7.9	16.1	20.1	49.4	46.3	10.6	7.5	8.6	12.4	2.8	3.5	100%	100%

**Appendix 3. Monthly distribution of single source contracts in 2012**

Jan.		Feb		March		April		May		June		July		Aug		Sept.		Oct.		Nov.		Dec.		Total	
Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	P	Q	Bln, AMD
43	1.7	15	0.4	16	0.1	48	1.6	42	2.5	69	1.3	169	5.0	39	3.2	35	1.4	39	0.3	134	2.1	84	1.4	733	21.4
5.9	8.2	2	2.2	2.2	0.6	6.5	7.5	5.7	11.9	9.4	6.4	23.1	23.6	5.3	15	4.8	6.5	5.3	1.6	18.3	9.9	11.5	6.6	100%	100%

**MONITORING OF SOME MAIN COMPONENTS  
OF PUBLIC PROCUREMENT SYSTEM**

## INTRODUCTION

The PPL effective in 2010 was seriously examined by SIGMA, which was mainly focused in public administration issues.<sup>35</sup> Based on SIGMA's suggestions the PPL became ineffective and a new PPL was adopted, which has been effective since 2011. The current PPL is in line with best practices and thereto since 2011 September 15 Armenia made an accession to WTO GPA.

The PPL adoption allowed Armenia to smoothly transform from quasi central procurement system<sup>36</sup> to decentralized one. TIAC monitoring results and various media publications are signalling that the transformation cannot be considered as an effective one.

Previous model (quasi centralized one) was based on three key players-procuring entity, bidder and State Procurement Agency (SPA).<sup>37</sup> The model has a clash of interests between procuring entities and SPA. As a result of this clash sometimes the transaction costs became higher, overall affecting also on price offer. Indirectly, the clash can be observed if trends of blacklisted companies are analysed. Compared to the previous model in the current one basically there is no blacklisted company (for the period of 2011-2012 it was almost no blacklisted company, while before there were on average 10 companies per year).

The participation of SPA provided more compliance from the point of procurement procedures' documentation. In addition, centralized model provided possibilities for internal efficiency growth. Internal efficiency was conditioned by the fact that the staff of SPA was specialized and had a proper workload by providing services regarding procurement. Decentralized model requires additional specialists, whose workload comparing with SPA's staff will be lower. So decentralized model comparing to centralized one has a lower efficiency of public spending due to human resource factor. The only advantage of decentralized model implemented in Armenia is the possibility to have lower price offers.

If the previous PPL is compared with the current one, the following changes can be observed;

1. The scope of PPL was expanded, particularly now it covers also public undertakings/utility companies;
2. Expansion of the items considered as procurement; in particular;

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<sup>35</sup> <http://www.oecd.org/site/sigma/>

<sup>36</sup> Due to the fact that some elements of public procurement were decetralized, for example procurements by SNPO.

<sup>37</sup> In result of PPL adoption State Procurement Agency reorganized to Procurement Support Center.

- Rent,
  - Purchase of goods, works and services by barter
  - Public-private partnership transactions, including asset management and concession transactions.
3. Scopes of transactions that are not covered by PPL become clearer. In particular;
    - Purchase of arbitration services (including mediation),
    - Labor contracts,
    - Purchase of services rendered by specific people foreseen in the decision of officials carrying out criminal, administrative or court proceedings in cases stipulated by law,
    - Purchase of share of the statutory capital of legal entities,
    - Purchase of securities and transactions related to trust management of securities.
  4. The electronic auction term was introduced and the basis for its implementation were defined;
  5. The AB's functions and scope of responsibilities were modified
  6. The role and importance of PSC was significantly modified affecting also on its functions
  7. Procurement procedures and the justifications for their implementation were modified
  8. Theoretically, the complaint institute becomes more independent. If in the previous PPL there was a conflict of interest regarding complaint review process (MoF was either a) AB responsible for the development and implementation of the public finance management policy or b) body responsible for complaint review). The current PPL tries to create "really" independent complaint board. In addition, by the previous PPL the members of Complaint Board were appointed without any evaluation, as there was no tool in procurement legislation for knowledge assessment. Recently tests and the questionnaire developed for Complaint Board members' selection purposes. Most of Complaint Board members did not pass attestation, thus the number of members has fallen dramatically (for example, initially there were five members from civil society, but none of them passed the tests). Test database contains 457 tests with multiple choices. The test duration is also regulated (50 tests automatically generated by computer and 75 minutes).

Complaint system's situation is presented in working paper entitled "Complaint system monitoring".

In this paper, the supplementary results of TIAC monitoring over the main components of public procurement are presented. It should be mentioned, that these results are not subject to quantitative assessment. The above mentioned components are;

1. After adoption of PPL, supporting secondary legislation to regulate procurement environment
2. Functions of PSC
3. Official procurement website
4. Procurement planning and technical specifications.

# ANALYSIS OF PPL'S SUPPORTING SECONDARY LEGISLATION FOR 2011-2012

## **Introduction of procurement legislation adopted in 2011-2012**

In this section we tried to present the status and consistency of government obligations regarding procurement legislation. For this purpose the brief legal review was presented.

### **2011**

In 2011 conditioned with the PPL adoption some legal acts become effective. In particular;

- A. GoA Decree #168-N on «Organization of procurement procedures» adopted in February 10, 2011
- B. Minister of Finance order # 222-N on “List of procurement to be conducted under the framework contracts” adopted in 13 April, 2011
- C. GoA Decree # 1057-N on “Amendments in organization of procurement procedures” adopted in 28 June, 2011
- D. GoA Decree # 1145-N on “Establishment of pledge sample form requested by state bodies” adopted in August 11, 2011
- E. GoA decree N 1481-N, on “Procedures for potential bidders for prequalification” adopted in October 20, 2011
- F. GoA decree N 1916-N “Procedures for conducting electronic procurement”, adopted in December 29, 2011.<sup>38</sup>

#### **A. GoA Decree #168-N**

By this decree the functions of SPA are modified. The function modifications are reflected in renaming the “SPA” into “PSC”. In particular, PSC should be responsible for information advertisements on tender announcements (open procedure, restricted procedure, competitive dialogue and negotiations) four times through metric TV channels and ten times through radio and annually four times through metric TV channels and ten times the broadcasting of “Public Procurement” Program. TIAC observations prove that this requirement is met in practice.

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<sup>38</sup> After this decree become an ineffective

In addition, this act tries to regulate procurements implemented outside the RA; in particular according to this decree procurements implemented outside the country can be conducted by

- a) The procedures approved by the head of state government body if the estimated price of procurement does not exceed 50 mln AMD. Till January 1, 2012 the heads of state government bodies had to define the list of procurements on which the coordination functions should be outsourced to PIUs. TIAC observation indicates that for procurements implemented outside the RA and not exceeding 50 mln AMD, the list of procurements on which the coordination functions should be outsourced to PIUs is not available.
- b) GoA defined form, if the estimated price is higher than 50 mln AMD. TIAC observation indicates that for procurements implemented outside the RA and exceeding 50 mln AMD, there is still no procedure formulated by GoA.

This decree controls signed contracts and complaint board members' related issues. TIAC observation indicates that this part is implemented properly. In addition, for the goods and works needed for e-procurement system installation and operation (not exceeding 3.96 mln AMD in total) the procurements have to be funded from PSC's budget.

This decree also regulates that till July 31, 2011 procedures for framework agreements had to be implemented. TIAC observation proves that this part, except electromhic procurement operation related ones, are inacted properly.<sup>39</sup>

By GoA decree # 1748-N on “Supporting procedures for 2011 budget execution” the list of procurement, the methods of procurement and their abbreviation were identified.

Authorized body (MoF) should publish annual reports and the list of qualified procurement specialists. TIAC observation indicates that this part is not implemented fully and the reports are being published with significant delay.

### **Minister of finance**

- a) For advocacy of rights of those involved in the procurement process (including information dissimination regarding complaint system) through metric channel and radio, the advertisements regarding procurement system hotline service availability

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<sup>39</sup> E-procurement related findings are presented in a detail here <http://transparency.am/publication.php?id=51>

should be broadcasted. TIAC observation indicates that this part is implemented properly.

- b) Till 2011 October 30 Minister should present to GoA the regulations regarding the process of conducting electronic procurements. Observation indicates that this part is implemented with significant delay and only for electronic procurement by open procedure method.

It should be mentioned that some of decrees/decisions were annulled.

If the estimated price of procurement does not exceed procurement base unit then the procurement can be implemented through negotiation procedure in particular through negotiation procedure without initially published procurement announcement, despite the fact of this procurement is included in the list of framework agreements or no.

If estimated price of procurement does not exceed the twenty times of procurement base unit than procurements are conducted through;

- a. Simplified procedure, if the subject of procurement is not included in signed and framework agreements
- b. Framework agreements if the subject of procurement is included in framework agreements

It should be mentioned that although TIAC suggestion regarding procurements from commodity markets is included in the PPL, **but the secondary legislation regarding procedure (set to be by GoA) is still not defined.**

Some procurements can be conducted according to PPL Article 20, clause 5, point 1 with special or exclusive rights justification.<sup>40</sup>

For the purpose of contract signing process organization, after the procurement bid is approved, responsible department during 3 working days passes them to procurement coordinator. Procurement coordinator during 3 working days evaluates the bids' consistency with PPL requirements. If any mistake is registered, then bid passed to the responsible department, which corrects it and submits the final invitation to the procurement coordinator. If the responsible department does not agree with corrections, it sends it back to procurement coordinator, who should submit complaint in a written form to the head of unit during two days<sup>41</sup>.

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<sup>40</sup> The list includes 34 procurement directions.

<sup>41</sup> There is no statistical information on this, moreover there is no format for it.



According to PPL the contract price can be variable. If there is no clause regarding variable price in the invitation, then the contract price is fixed not taking into account term of contract execution.

- A. If the contract price is fixed then
  - price justifications or similar information/documents can't be requested from bidder;
  - the profit of the bidder can't have any limits by invitation;
  - during proper implementation of contract the parties' gains or losses are the gains and losses of parties
- B. Contract price can be variable and this provision should be set either in the invitation or in contract, if
  - the subject of procurement referred in the contract is expected to be supplied within more than one year period after signing the contract with contract price variations assumption
  - other circumstances defined and approved by GoA
- C. If the contract price is variable, the invitation should
  - contain all conditions (external factors), change of which will affect on price change,
  - set the rules on how change of external factors could affect contract price change
- D. External factors and the procedures of contract price variation affected by them should initially be agreed with Minister of Finance.
- E. The bid security for contract execution is ten percent of contract price. It is worth to mention that contract assumes that the person/company who presented bid security during contract duration period should report about its liquidation or insolvency to procuring entity.
- F. There are fines and penalties in the case of improper contract performance by the selected bidder. The fine should be not less than 0.5 percent of contract price and penalties should be not less than 0.05 percent. Fines and penalties are calculated based on calendar days and based on the part of contract which is not implemented properly.
- G. During the design of project documentation the designer

- a. should present the minimum requirements and guarantee periods for construction and its assemblies;
- b. should present requirements for licensing and working resources

During the implementation of construction project in case of existence of design derogations those persons/companies that expertise it should pay fine to the procuring entity, for either each registered derogation or the possible loss from it. Meanwhile;

- a. The derogation means the difference between initial design and twenty percent additional works and the penalty will be equal to the additional works value.
- b. Loss mean design derogations, which result in the actual work's changes (distroyment, rehabilitation and etc) and penalty equals to the value of loss and the sum exceeding twenty percent of initial design sum difference

If signed contract for state needs exceeds procurement base unit, then contract variations in that contract should be send to MoF during three working days. MoF should publish the information on contract variation at [www.gnumner.am](http://www.gnumner.am) website during five working days. By the way, it is prohibited to make those type of contract variations that could affect on the artificial change of procurement subject volumes or price.

The following changes are considered as artificial/fictious ones;

- I. with contract price beeing fixed to reduce the quantity of product, works or services
- II. increase in initial contracted quantity of product, works or services, which exceeds twenty percent of contract price
- III. change of initial contracted technical specifications of product, works or services with other product, works or services, that in total money value exceeds fifteen percent of contract price. Within fifteen percent changes can be done if there is expert oppinion which proves that change will impact on contract performance effectively. The change is considered effective if in a result non financial results of the contract are met with less financial resources beeing used.
- IV. except cases when subject of contract is experimental or scientific work and it contains state secrets; for products, works or services the terms of delivery defined by the contract is prohibited
  - a. to prolonge with the same of more than same period more than once

b. to prolonge more than ones till the same period

TIAC observation verifies that this direction is basically is met.

According to PPL provisions GoA should define the endogenous factors that are not under the control of contract parties, but in result of that variations of contracts are possible. TIAC observation states that these factors are still not defined.

If the price of signed contract on state needs exceeds three hundred fifteen times of procurement base unit then for these type of procurement procedures GoA approval of results is required. TIAC observation indicates that this provision is not implemented consistently.

If there is no additional or specific requirements than if there is inconsistency during bid evaluation process by Evaluation commission, procurement coordinator should inform to the tender participants about inconsistency and suggest them to correct it during three working days. During mentioned fixed term if the registered inconsistency

- was corrected than the participant bid is considered as sufficient one;
- if not corrected than by the decision of evaluation commission the bid of that particular participant is rejected. If all submitted bids do not meet invitation requirements, then the procurement procedure is cancelled by that justification.

The secretary of evaluation commission registers the bids in the registrar according to their submission, marking the registration number, date and time in the registrar.

Upon the request of tender participant the credential should be provided. After the bid submission period is over the submitted bids are not subject for the registration in the registrar, after three working days of submission of such bids they return back by the secretary.

H. During the next two working days following bids' opening day, the secretary of evaluation commission passes the documentation on bids and evaluation bulletins in two copies to the members of evaluation committee. Each member of evaluation committee should

- I. evaluate the bids
- II. transfer the results of evaluation to the evaluation bulletin
- III. confirm the evaluation bulletin with his/her signature and

- IV. if there is no term defined by the evaluation committee, then during the next five working days after getting bid documentation should submit the cleared/filled evaluation bulletin to the secretary.
- I. During three working days the procurement coordinator summarises the evaluation bulletins submitted by the evaluation committee members and based on this information formulates the bid evaluation report which afterward needs to be signed by evaluation committee members.

In addition, the PSC charter is also modified by this decree. It is important to notice that the head of PSC is appointed by Prime Minister's decision, but there are no requirements or selection criteria for this appointment.

### **B. Minister of Finance # 222-N decree**

By this decree the twenty two groups of goods (with their subgroups), eight groups of works (with their subgroups) and twenty four groups of services (with their subgroups) are approved.

### **C. GoA decree # 1057-N**

By this decree there is a try to regulate some procurement related issues. In particular, this decree defines that in any construction work on the design stage of subject of procurement, the participation of the representative from the body who is going to use that object is compulsory. In case of roads, procurement of any type of construction works requires the representative of local self government bodies that are using this part of the road.

Next provision that is covered by this decree is the following; till the confirmation of the invitation, except construction projects, the evaluation commission members should analyse the respective markets in Armenia and formulate written assurance on market prices regarding subject of procurement within the invitation; in addition the details of explanatory document on comparison of estimated and market prices and other supporting documents justifying the analysis should be attached.

It should be mentioned that these documents can be published only after the selection of winner or if the tender was annulled based on legislation defined procedures/cases. It is also important to mention the following provision; if based on documentation/analysis the difference between market and initial price is fifteen or more percent (either in a positive or

negative direction) then commission contacts with the procuring entity to make changes in procurement plans following the rules stipuled in the legislation.

After respective changes in procurement plans the projected price is considered as an estimated price. The price offers by bidders are compared with the modified price, not with the initial one and if still price offers are higher than modified price then the tender is annulled. If the tender is annulled based on this justification then evaluation commission needs to submit all the necessary documentation to the participants.

TIAC observation signals that there is no statistical information or other transparent tool to prove this requirement.

**D. GoA decree # 1145-N on “The approval of the sample of bid security that needs to be requested by state bodies”, adopted in August 11, 2011**

By this decree the sample of bid security requested by state bodies is defined. Meanwhile, there are also recommendations to the local self government bodies and CBA to use it.

**E. GoA decree # 1481-N on “The regulations for prequalification of potential bidders”**

According to PPL Article 16 first section point 3, subpoint b the list of pre-qualified potential bidders should be published by PSC in the bulletin. For this purpose the procedures for prequalification of potential bidders is approved by this decree.

In addition, according to this decree the information for those contracts which are signed in competitive basis<sup>42</sup> should be transferred to PSC after one month following the contract execution.

TIAC observation signals that there is no statistical information or other transparent tool to prove this requirement.

The information on bidder should contain the following information;

- The brief introduction of procurement subject,
- The name of procuring entity and its location information,
- The code of contract, date of signing and the value of the contract,
- The name of bidder, registration address, contacts and tax identification number,

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<sup>42</sup> The contract is considered signed on competitive basis if the procurements are not made using the procedures defined by PPL Article 20 fifth clause.

- The used procurement procedure
- The group (area) of economic activity, if the activity is subject to licensing, then the reference to the license within which the contract was signed

It should be mentioned that if the bidders participated in the procurement process as a consortium then information about each bidder should be submitted to PSC individually.

According to the above mentioned decree, if during previous three years PSC at least five times receives an information about the similar activity by the same bidder, than during ten working days it informs the bidder that he/she is included in the prequalification list and can get a participation confirmation certificate for the given economic activity group<sup>43</sup>.

TIAC observation signals that there is no statistical information or other transparent tool to prove this requirement.

After information is transmitted by the PSC, bidders in order to get a certificate and to be included in the list of prequalified bidders should present the full package of documents, but not later than during 180 days of getting such a suggestion.<sup>44</sup>

The decree defines that full package of documents should contain;

1. The request to get a certificate and to be included in the list,
2. Declaration on following:
  - a) the bidder, except physical persons and individual entrepreneurs, ended its business with profit during the previous year following the request submission year;
  - b) the bidder has not been ruled insolvent by court decision;
  - c) the bidder do not have outstanding arrears against the RA tax and mandatory social insurance payments;
  - d) the bidder do not have a representative of the executive body, who during the preceding three year period has been convicted for offenses against economic activities or state service, except cases when such conviction has been lifted or nullified as stipulated by law;
  - e) the bidder previously has never been included in the list of blacklisted companies for procurement procedures

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<sup>43</sup> PPL makes is clear that the type of economic activites that can be considered as a similar one and their evaluation methodology/toolkit should be defined by RA MoF. TIAC observation proves that it is not defined yet, in addition there is no statistical information or other transparent tool to prove this requirement.

<sup>44</sup> If during 180 days the package of documents are not submitted by the bidder to the PSC, then bidder in order to be included in the list and to get certificate should met the requirements referred in this decree once again starting from 181st day.

3. The sample on a request and the according announcements/declaration samples should be published electronically in [www.gnumner.am](http://www.gnumner.am) website. TIAC observation signals that there is no statistical information or other transparent tool to prove this requirement in the [www.gnumner.am](http://www.gnumner.am) website.
4. In order to get certificate 10000 AMD should be paid to PSC. The copy of the receipt verification of this payment given by the bank should be attached in the package.

After getting documentation package, during three working days PSC provides bidder with certificate, sample form of which should be approved by the MoF. By electronic means, PSC transfers information on bidder and certificate to the MoF, which should include bidder in the list published in the website during three working days.

TIAC observation signals that this requirement is not met and there is no list or related information in the procurement official website.

The value mentioned in the certificate for each single case is defined separately, and is the twofold of the highest contract value. It should be mentioned that in case if the tender amount is not exceeding the sum by which certificate of economic activity is given, the bidder can only present certificate without any other document.

According to GoA decree there are also some provisions regarding evaluation of bids received through competitive negotiations tenders. The termination/cancellation of certificate is also regulated. It is worth to mention that if the bidder (except physical persons/entities and individual entrepreneurs) did not have a profit in the previous year before current one, then it could be justification for terminating of the certificate. Another point is that bidder should pay the annual fee for certificate till April 30 of the current year.

The positive norm is that in case if the termination/cancellation justification is over then during three working days PSC publishes in the website that the bidder is eligible to be included in the list.

#### **F. GoA decree # 1916**

This decree aims to regulate electronic procurements. It is worth to mention that afterward it was annulled.

#### **2012**

In 2012 several legal acts were adopted that were conditioned with the PPL adoption. In particular:

- A. The official explanatory note by MoF #1, adopted on April 2, 2012
- B. GoA decree # 1259-N on “Amendments in the # 168 decree”, adopted on September 20, 2012

**A. The official explanatory note by Minister of Finance #1**

This legal act explains that the CRC, which is formulated from Complaint Board members, should discuss the decision on blacklisting bidder. CRC on behalf of Complaint Board should adopt respective decision.

It should be mentioned that the explanatory note needs to be reviewed, in particular explanations refer to CRC which will consist of three Complaint Board members, while we think it should be mentioned “at least three members”.

**B. GoA decree # 1259-N**

In this legal act there are a lot of amendments. We tried to mention some basic ones. In particular decree defines that;

- a) Procuring entities for the purpose of conducting procurement for their needs should publish submitted tender announcements and invitations by themselves in procurement electronic bulletin following the procedures defined by PPL or by MoF regulations.
- b) Minister of Economy should present to GoA's consideration the regulation regarding evaluation and approval of Public Private Partnership projects till 2012 December 30. TIAC observation indicates that this requirement is not met.
- c) The procurement by GoA can be considered as urgent only in the cases when together with urgency decision at least three participants submitted the bids for that particular subject of procurement and only after the evaluation by procuring entity the winner is selected.
- d) Authorized body should publish the public procurement annual report till May 1 of following year.
- e) For procurement of booking services it is possible not to have a standstill period. Except the cases when the person who is going to sign the contract with procuring entity agrees to perform contract with shorter terms, then the supply of goods, work execution and service delivery terms should be at least 30 days, and the count of days should be started from the day of contract signing.



## ANALYSIS OF PSC'S FUNCTIONS

According to PPL Article 16, PSC is in charge of following functions; in particular it:

- Conducts professional education and continuous training for procurement specialists. TIAC observation results indicate that this function is implemented properly, but from one point the speed of training is relatively slow, due to shortage of funding and from other point one can question the quality and efficiency of training programs. Nevertheless, as of 2012 professional education and continuous training was delivered to almost 1000 procurement specialists (from almost 700 bodies). Although vast majority of bodies that have got invitation for participation participated in it, there were some bodies that did not send any representative.
- Provides free professional advice to clients and paid professional advice to bidders and other entities. TIAC observation proves that this function is implemented properly.
- Evaluates the eligibility and the qualification of bidders to participate in procurement process, concludes framework agreements, compiles and publishes in the bulletin:
  - a) the list of bidders, who signed framework agreements,
  - b) the list of pre-qualified potential bidders.

TIAC observation proves that the function regarding framework agreements is fully implemented by the PSC, but the function regarding prequalified bidders is not implemented properly.

- Implements the electronic procurement system service and coordination functions; TIAC observation indicates that even in case of absence of electronic procurement system per se PSC performs its duties; in particular the new department of electronic procurement was created, which directly is responsible;
  - a. to conduct education on electronic procurement for procurement specialists
  - b. to register bidders and disseminate information on registered bidders (in particular at [www.armeps.am](http://www.armeps.am) website there is a video tutorial regarding bidder registration in the electronic procurement system).

As of 2013 January 1, 641 subjects were registered in the electronic procurement system, of which 448 are procuring entities and 193 were economic operators.

- Compiles and publishes electronic newsletters on goods, works and services, analyzes procurement statistics and publishes opinions.

TIAC observation proves that the above mentioned function is not implemented properly as there are no published registrars available and the process of analyzes of procurement statistics have seriously obstacles due to lack of unique formats and regulating legislation, combined with unwillingness from the procuring entities' part.

- Conducts a random assessment of technical specifications of procurement subject and bidder qualification criteria approved by procuring entities; results of assessment are submitted to procuring entities and to the AB. Random assessment methodology was developed only in 2013. TIAC observation indicates that there are some ongoing works on this direction (for example during the interviews with PSC staff they informed that they present the results of assessment, but there are no follow-up actions).
- Ensures the existence of a procurement support service (hotline) in order to register procurement related problems and promptly respond to the questions; TIAC observation indicates that although PSC implements this function properly, but as of 2012, there is no statistical information.
- Acts as the secretariat of the Complaint Board:
  - a. Organizes the Board activities,
  - b. Evaluates the completeness of received complaints (appeals) and provides an opinion on all complaints to the Board,
  - c. Publishes the Board decisions,

TIAC observation indicates that PSC performs this function fully, moreover PSC's decision is almost always the same as is the Complaint Board's final decision. In practice, it means that in certain cases PSC's opinion affects on Complaint Board's decision. For more details, please see "Complaint Board Monitoring" working paper.

## ANALYSIS OF PROCUREMENT OFFICIAL WEBSITE

Information available at procurement official website [www.gnumner.am](http://www.gnumner.am) is an important tool from transparency, advocacy and awareness raising viewpoint. Thus, it is extremely important to analyse website and indicate measures/areas for increasing its efficiency and effectiveness.

For this purpose the analysis were conducted with the use of several indicators/information (the accessibility of information, visitors' statistics, tender announcements, clarifications and etc).<sup>45</sup>

### 1. Legislation section

For the purpose of evaluation of the data available at the procurement official website some comparisons were conducted, as a result of which some derogations were registered which are presented below:

The "Legislation" section of procurement official website aims to present procurement related legal framework. "Legislation" section has ten subsections 1) International agreements 2) Laws 3) Government decisions 4) Prime Minister decrees 5) Orders of Minister of Finance 6) Methodological guidelines 7) Draft laws 8) The procurement methods of public undertakings 9) Official clarifications 10) Sample documents used in procurement procedures

- 1) *International agreements*: In this subsection there is only one document «Agreement on state procurement». **During TIAC observation on posted information any inconsistency or suggestion is not produced.**
- 2) *Laws*: In this subsection the PPL and amendments in it are presented. **During TIAC observation on posted information any inconsistency or suggestion is not produced.**
- 3) *Government decisions*: In this section 13 decisions are posted. **During TIAC observation on posted information any inconsistency or suggestion is not produced.**
- 4) *Prime Minister decrees*: There is no information in this subsection. **TIAC recommends updating and posting respective decrees here.**

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<sup>45</sup> Data is presented as of 2013 September 3.

- 5) *Orders of Minister of Finance*: In this subsection 57 orders of Minister of Finance are available. **During TIAC observation on posted information any inconsistency or suggestion is not produced.**
- 6) *Methodological guidelines*: There are 3 methodological guidelines in this subsection, namely a) the guidelines how to fill and prepare tables for “analysis of procurement related data and to use electronic bulletin” b) guidelines on procurements of framework agreements through ARMEPS system c) guidelines on “Samples of procurement related information submitted to MoF”. This information will be reflected in annual report (according to PPL Article 8, clause 2). An additional 32 methodological guidelines are being archived. **During TIAC observation on posted information any inconsistency or suggestion is not produced.**
- 7) *Draft laws*: In this subsection several draft laws are presented, and most of them are already approved, and one can challenge the logic to post here drafts that have already become a law. **TIAC recommends updating and posting respective decrees here.**
- 8) *The procurement methods of public undertakings*: As a follow-up of PPL respective provisions procurement methods of some public undertakings is available in the procurement official website (See Table 1).

According to Law on “Public service regulation commission” the public service includes:

- The energy sector, including the electric energy, heat supply and gas supply systems;
- The water sector, including the potable water, irrigation water and technical water supply, drainage and wastewater treatment;
- The telecommunication (electronic communication) sector;
- Postal service;
- Railway transportation regarding methodology of fee calculation for use of infrastructure;
- Compulsory technical inspection of transport means (only regarding duties).

**Table 1. The public undertakings presented in the website and their regulations of procurement**

<b>Name of public undertaking</b>	<b>Website</b>	<b>The date of approval of procurement regulation</b>	<b>Public undertaking's website monitoring results</b>
Armentel CJSC	<a href="http://beeline.am">http://beeline.am</a>	April 4, 2012	There is no word regarding procurement
Haypost CJSC	<a href="http://www.haypost.am">http://www.haypost.am</a>	May 20, 2011	In the website there is only regulation of procurement (in Armenian). No statistics is available
International Power corporation CJSC	<a href="http://www.mek.am">http://www.mek.am</a>	December, 2008	Some statistical information is available (in Armenian and Russian)
Electric Network of Armenia CJSC	<a href="http://www.ena.am">http://www.ena.am</a>	January 1, 2009	Some information regarding winners, but procurement statistics needs considerable improvement
ArmRusGazard CJSC	<a href="http://www.armrusgasprom.am">http://www.armrusgasprom.am</a>	May 7, 2008	Some tender announcements are available, but they need considerable improvement
Hrazdan Power company OJSC	<a href="http://www.raztes.am">http://www.raztes.am</a>	2011	There is no word regarding procurement
Transgas Ltd	Belongs to ArmRusGazard	July 1, 2008	There is no word regarding procurement

It can be stated that procurement of public undertakings lacks transparency and accountability. Public undertakings mostly limit themselves by presenting procurement regulations in the website. In essence the indication of proper attention on public resources spending and control is the fact that not all public undertakings not always use official procurement website for tender announcements. The oversight mechanisms over the conflicts of interest existence and their declaration is missing. **TIAC observation indicates that not all public undertakings covered under the “Public service regulation commission” Law present procurement procedures or regulations, therefore this subsection is fragmented.**

- 9) *Official clarifications:* In this subsection there are 4 clarifications done by MoF. **During TIAC observation on posted information any inconsistency or suggestion is not produced.**

10) *Sample documents used in procurement procedures*: In this subsection 16 samples prepared by MoF are available. **The available information can be extended taking into account low capacities of both procuring entities and bidders.**

## 2. Tender announcement section

Tender announcement section in the official procurement website aims to provide information on tenders. Tender announcement section has 13 subsections 1) Tender announcements on restricted procedures 2) Open tender announcements 3) Tender announcements on competitive dialogue 4) Prequalification announcements for negotiation procedures 5) Tender announcements on simplified procedures 6) Prequalification announcements for framework agreements 7) tender announcements for procurements by framework agreements 8) Announcement on cancelled procedures 9) Announcements on contract signing intentions 10) Announcements on signed contracts 11) Variations in invitations 12) Announcements by PIUs 13) Tender announcements by public undertakings.

## 3. Announcements on cancelled procedures

Cancelled procedures signal either about lack of capacity in procuring entities or getting ride of “unwanted winner”.

The results of analysis of announcements of cancelled procedures are presented below;

- Restricted procedures-0;
- Open tender announcements-107, out of which 11 are archived;<sup>46</sup>
- Competitive dialogue procedures-3;<sup>47</sup>
- Negotiation procedures with announcement-6
- Negotiation procedure without announcement-0;
- Simplified procedures – 279, out of which 40 archived;
- Framework agreements-959, out of which 102 archived.

**Summarising analysis of this subsection one can state that it needs considerable improvement, as the information is haphazard and inconsistent. It will be in advantage if the website will allow to generate statistics according to years and**

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<sup>46</sup> The data on cancelled procedures for 2013 are available in «Archive» section, but data for 2011 and 2012 are not available.

<sup>47</sup> The cancelled procedures for 2009 are available in «Archive» section which is not in accordance with three year provision regarding archiving.

**procuring entities. The justifications for cancellation of procedures are also lacking transparency.**

#### **4. Announcements on contract signing intentions**

The other information connected with the tender announcements are also analysed. Below the results of announcements on contract signing intentions are presented:

- Restricted procedures-0;
- Open tender announcements-137, out of which 47 are archived;
- Competitive dialogue procedures-2;
- Negotiation procedures with announcement-8, out of which 2 are archived;
- Negotiation procedure without announcement-14, out of which 6 are archived;
- Simplified procedures – 288, out of which 93 archived;
- Framework agreements-17639, out of which 756 archived.

**Summarising analysis of this subsection one can state that in contradiction to cancelled procedures section, it is more organized. Nevertheless, it will be in advantage to have a data/information on conflict of interest declaration, which is the requirement of the law.**

#### **5. Announcements on signed contracts**

The results of analysis of announcements on signed contracts are presented below:

- Restricted procedures-0;
- Open tender announcements-262, out of which 47 are archived;
- Competitive dialogue procedures-4;
- Negotiation procedures with announcement-104, out of which 54 are archived;
- Negotiation procedure without announcement-1158, out of which 257 are archived;
- Simplified procedures – 756, out of which 157 archived;
- Framework agreements-3470, out of which 421 archived;
- Closed signed framework agreements which do contain state secret or bank secrecy - 9

**Summarising analysis of this subsection one can state that there is sufficient amount of information in the contracts, but it will be in advantage if the website will allow to generate statistics according to years and procuring entities.**

#### **6. Variations in the invitations**

Analysis of data/information regarding variations in the invitation available in the website prove that there are 202 variations in the invitations for the period of 2011-2012 (almost 5 percent of total).

**Summarising analysis of this subsection one can state that there is extremely high number of variations in the invitation, which can be conditioned with either corruption risks, or low capacity. It is obvious that it creates an additional transaction costs.**

#### **7. Announcements by PIU**

“Announcements by PIU” section consists of three subsections 1) Tender announcements 2) Announcements on signed contracts 3) Procurement plans.

- 1) *Tender announcements*: Monitoring results prove that Tender announcements are periodically updated and any risk regarding it is not identified.
- 2) *Announcements on signed contracts*: Although announcements on signed contracts’ part have some deficiencies, it is also periodically updated and any risk regarding it is not identified.
- 3) *Procurement plans*: Currently only Armenian social investment foundation procurement plan for 2013 is presented, which is periodically updated. This subsection should serve to its purpose, which means that it should provide information regarding PIU procurement plans, which based on monitoring results, is not properly implemented.

#### **8. Announcements regarding invitations’ clarifications**

PPL has a procedure to request clarifications regarding invitation. TIAC monitoring results indicate that invitation clarifications are periodically updated and as of 2013 September there are 13 clarifications (in addition 47 are archived). It is worth to mention that clarifications touch mainly telecommunication companies’ invitations (mainly Armentel CJSC).



## **9. Announcements regarding procurements by public undertakings**

Announcements regarding public undertakings contain only 12 announcements (130 are archived). There are 20 announcements of signed contracts (400 are archived and majority of them belongs to Electric Network of Armenia), and 14 announcements regarding contract signing (77 are archived). All this proves the observation that public undertakings do not consider public procurement requirements seriously.

## **10. Framework Agreements**

Framework agreements' share in price is almost 70 percent. Therefore, this procedure requires special focus.

Framework agreements consist of following four subsections:

- 1) *Announcements on signed framework agreements.*
- 2) *Signed framework agreements:* Here the contracts signed with bidders within framework agreements on subject of procurement (goods, service, works) are presented
- 3) *Variations in invitations:* Here 54 variations are presented
- 4) *E-mail for procurements under the framework agreement procedure:* This subsection was added during the second quarter of 2013 and aims to mitigate revealed risks available in framework contract announcements. It also helps to create a complete information cycle under supervision of MoF. For risks revealed in framework agreements please see the working paper titled "Framework agreement trends in 2011-2012".

## **11. Procurement plans**

"Procurement plans" section consists of four subsections:

- 1) State government bodies
- 2) Local self government bodies
- 3) Commercial and non-commercial organizations
- 4) Public undertakings

Analysis of the information regarding procurement plans available in "Procurement plans" section of [www.gnumner.am](http://www.gnumner.am) website reveals that for 2011-2012 period only limited number of bodies have presented their plans (almost 20 bodies). The situation was significantly improved in 2013, which can be seen by the information presented below:

- Procurement plans of 50 bodies were available in “State government bodies” section.
- Procurement plans of 370 bodies were available in “Local self government bodies” section.
- Procurement plans of almost 3000 bodies were available in “Commercial and non-commercial organizations” section.
- None of public undertakings present their procurement plans.

Some government bodies’ procurement plans and the planned procurement procedures information is available in MoF website [www.minfin.am](http://www.minfin.am) under the state budget appendixes.<sup>48</sup>

Nevertheless, project results indicate that system needs further improvement; in particular the frequency of posting procurement plans is not regulated and is implemented chaotically. The next issue that is worth addressing is the absence of analysis between planned and actual procurement procedures (price and number). At least, if such analyses are available for state governance bodies it will greatly increase the level of trust over the system’s proper functionality and planning.

## **12. The record of minutes of tender commissions**

The availability of records of minutes of tender commissions on time is extremely important from the viewpoint of transparency.

“The record of minutes of tender commissions” section has four subsections: a) State governance bodies; b) Local self government bodies; c) Commercial and non-commercial organizations and d) Public undertakings.

It is possible to post announcements of PPL defined procedures (restricted procedure, open procedure, competitive dialogue, negotiations with announcement and negotiations without announcements) in above mentioned four subsections.

### **a/ State government bodies**

As of September 1, 2013, the number and the structure of records in the official procurement website’s “Record of minutes of tender commissions” section’s “State governance bodies” subsection is the following:

- Restricted procedures-0;

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<sup>48</sup> <http://minfin.am/up/budget/havelvacner/PDFhavelvacner24.12.12.rar>, Appendix 12

- Open tender announcements-10. It is important to mention that all ten records were prepared only by Ministry of Nature Protection;
- Competitive dialogue procedures-0;
- Negotiation procedures with announcement-0;
- Negotiation procedure without announcement-0;

For the consistency of the observations information available in archive was also analysed; in particular “State governance bodies” subsection’s information regarding the mentioned procedures.

Observation results indicate that records were prepared not for all procedures

- Simplified procedure -4;

It is worth to mention that all four records were prepared only by Ministry of Nature Protection. Information regarding simplified procedure available in the website’s archive section indicate that only one record is available and again by Ministry of Nature Protection.

- Framework agreements-61;

Information regarding framework agreements available in the website’s archive section indicates that only 27 records are available, while each year about 8000 framework agreements are being conducted.

#### **b/ Local Self governance bodies**

As of September 1, 2013, the number and the structure of records in the official procurement website’s “Record of minutes of tender commissions” section’s “Local self government bodies” subsection is the following:

- Restricted procedures-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Local self government bodies” subsection’s information regarding the mentioned procedures.

Observation results indicate that records were not available for this procedure.

- Open tender announcements-1;

For the consistency of the observations, information available in archive was also analysed; in particular “Local self government bodies” subsection’s information regarding open tender procedure. Information regarding open tender announcements available in the website’s archive indicates that only one record is available.

- Competitive dialogue procedures-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Local self government bodies” subsection’s information regarding competitive dialogue procedure. Observation results indicate that records were not available for this procedure

- Negotiation procedures with announcement-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Local self government bodies” subsection’s information regarding negotiation procedures with announcement. Observation results indicate that records were not available for this procedure

- Negotiation procedure without announcement-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Local self government bodies” subsection’s information regarding negotiation procedures without announcement. Observation results indicate that records were not available for this procedure.

- Simplified procedure-17;

For the consistency of the observations, information available in archive was also analysed; in particular “Local self government bodies” subsection’s information regarding simplified procedure. Observation results indicate that only two records are available for this procedure

- Framework agreements-27;

For the consistency of the observations, information available in archive was also analysed; in particular “Local self government bodies” subsection’s information regarding framework agreement procedure. Observation results indicate that only one record is available for this procedure.

### **c/ Commercial and non-commercial organizations**

As of September 1, 2013, the number and the structure of records in the official procurement website’s “Record of minutes of tender commissions” section’s “Commercial and non-commercial organizations” subsection is the following:

- Restricted procedures-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Commercial and non-commercial organizations” subsection’s

information regarding restricted procedure. Observation results indicate that records were not available for this procedure.

- Open tenders-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Commercial and non-commercial organizations” subsection’s information regarding open tender procedure. Observation results indicate that only one record is available for this procedure

- Competitive dialogue procedures-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Commercial and non-commercial organizations” subsection’s information regarding competitive dialogue procedure. Observation results indicate that records were not available for this procedure.

- Negotiation procedures with announcement-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Commercial and non-commercial organizations” subsection’s information regarding negotiation procedures with announcement procedure.

Observation results indicate that records were not available for this procedure.

- Negotiation procedure without announcement-0;

For the consistency of the observations, information available in archive was also analysed; in particular “Commercial and non-commercial organizations” subsection’s information regarding negotiation procedures without announcement procedure.

Observation results indicate that records were not available for this procedure.

- Simplified procedure-10;

For the consistency of the observations, information available in archive was also analysed; in particular “Commercial and non-commercial organizations” subsection’s information regarding simplified procedure. Observation results indicate that only 4 records are available for this procedure

- Framework agreements-94;

For the consistency of the observations, information available in archive was also analysed; in particular “Commercial and non-commercial organizations” subsection’s information regarding framework agreement procedure. Observation results indicate that 24 records are available for this procedure

#### **d/ Public Undertakings**

As of September 1, 2013, there is no record of minutes either in website or in a archive in the official procurement website's "Record of minutes of tender commissions" section's "Public undertakings" subsection.

#### **13. Reports**

"Reports" section consists of 3 subsections: Reports for 2011, for 2012, for 2013. Nevertheless, analyses indicate that the reports are posted with significant delay. For example report for 2011 was posted in 2013.

#### **14. Complaint**

The results of analysis of this section is presented in the working paper on complaint system.

#### **15. Training**

"Training" section has 3 subsections: a) Training programs; b) Training materials and c) Other. It should be noted that information is missing in a) and c) and the fields are empty.

The following four documents are available in the "Training materials" subsection:

1. Training syllabus and tutorial for procurement specialists;
2. EU procurement briefs;
3. Procurement procedure user brochure;
4. Brochure on PPL user.

Analyses of the referred documents<sup>49</sup> reveal the following problems:

- A) The content of the material available at "Training syllabus and tutorial for procurement specialists" is not connected with the title.
- B) Both "PPL User Brochure" and "Procurement procedure user brochure" are based on the previous PPL.

#### **16. Contract variations**

Within the project, information regarding contract variations available at the official procurement website is analysed. It was conditioned with the fact that the frequency of

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<sup>49</sup> As of 2013 September

contract variations, ceteris paribus, can indicate about existence of collusion in procuring entity-bidder relations.

As of September 1, 2013, 485 contract variations are available in the official procurement website's "Contract Variations" section. It should be mentioned that among them are contracts related to 2011 and 2012.

For the consistency of the observations information available in archive was also analysed; in particular "Contract variations" section's data. Observation results indicate that 450 contract variations were archived. It is worth to mention that among them there are contract variations for 2013, which in our opinion is not logical, considering the fact that contracts for 2011 and 2012 are located in the active part and are not still archived.

**Summarising analysis of this section, it can be stated that it needs considerable improvement, as the information posted there is haphazard and incomplete. It will be in advantage from the viewpoint of transparency if the website will allow to generate statistics regarding year, quarter, bodies. This statistics can give more opportunities for revealing corruption risks.**

#### **17. Electronic Procurement**

The results of analysis of this section is presented in the working paper on electronic procurement system.

#### **18. Procurement specialists**

This section presents the list of procurement specialists that passed attestation in 2012 and 2013.

#### **19. The list of Complaint Board members**

The results of analysis of this section is presented in the working paper on complaint system.

## **ANALYSIS OF PROCUREMENT PLANNING AND TECHNICAL SPECIFICATIONS**

The issue of deficiencies regarding procurement planning is touched in “Procurement planning” section. Here we will mostly focus on analysis of technical specifications.

The fact that there are problems regarding technical specifications can be signalled through;

- A) The number of variations in the invitations;
- B) The significant differences in bidders’ price offers.

### **Risk Analysis**

Within this analysis four group of tenders were clasified for risk classification purposes:

- Risky tenders<sup>50</sup>,
- Middle to high risk tenders<sup>51</sup>,
- High risk tenders<sup>52</sup>,
- Tenders with critical level of risk<sup>53</sup>.

Analysis was conducted on a monthly basis, and the more detailed data is presented in “Framework Agreement trends” working paper. It should be noted, that the statistics on framework agreements is absent for the period of January-June of 2011; therefore the data on 2011 includes only third and fourth quarters of 2011 in an aggregated form.

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<sup>50</sup> Tenders, where price offer difference between maximum and minimum exceeds one and half times.

<sup>51</sup> Tenders, where price offer difference between maximum and minimum exceeds two times.

<sup>52</sup> Tenders, where price offer difference between maximum and minimum exceeds five times.

<sup>53</sup> Tenders, where price offer difference between maximum and minimum exceeds ten times.



**2011**

**The dynamics of risky tenders in Q3, 2011**

	Goods		Service		Works	
Total number of analysed framework agreements	854		264		81	
Total contract price of analysed framework agreements, mln AMD	2743		254		15	
The classification of risky agreements	Number of tenders on goods with risk elements		Number of tenders on services with risk elements		Number of tenders on works with risk elements	
	Number of tenders	Share in total (%)	Number of tenders	Share in total (%)	Number of tenders	Share in total (%)
Risky tenders	436	48.3	25	9	47	58
Middle to high risk tenders	284	33	17	6	42	55
High risk tenders	68	7.6	2	0.8	28	35
Tenders with critical level of risk	25	2.6	2	0.8	15	18
Total number of tenders when bidder with the lowest price offer was not selected as a winner	63		0		6	
The share of tenders when bidder with the lowest price offer was not selected as a winner (%)	7.3		0		7	
Possible saving sum, thousands AMD	6327		0		197	
The share of possible saving in total amount, (%)	0.2		0		0.9	
The overall risk assessment	Average		Low		Low	

**The dynamics of risky tenders in Q4, 2011**

	Goods		Service		Works	
Total number of analysed framework agreements	1396		370		168	
Total contract price of analysed framework agreements, mln AMD	2638		404		8651	
The classification of risky agreements	Number of tenders on goods with risk elements		Number of tenders on services with risk elements		Number of tenders on works with risk elements	
	Number of tenders	Share in total (%)	Number of tenders	Share in total (%)	Number of tenders	Share in total (%)
Risky tenders	437	30	75	20	109	65
Middle to high risk tenders	293	21	55	15	98	58
High risk tenders	94	6.7	9	2.4	41	24
Tenders with critical level of risk	48	3.4	1	0.3	20	12
Total number of tenders when bidder with the lowest price offer was not selected as a winner	58		5		23	
The share of tenders when bidder with the lowest price offer was not selected as a winner (%)	4		1,3		13.7	
Possible saving sum, thousands AMD	28227		5957		550	
The share of possible saving in total amount, (%)	10.7		14.7		0.0	
The overall risk assessment	High		High		Low	

**2012**

**The dynamics of risky tenders in Q1, 2012**

	Goods		Service		Works	
Total number of analysed framework agreements	1732		409		41	
Total contract price of analysed framework agreements, mln AMD	5461		25131		358	
The classification of risky agreements	Number of tenders on goods with risk elements		Number of tenders on services with risk elements		Number of tenders on works with risk elements	
	Number of tenders	Share in total (%)	Number of tenders	Number of tenders	Share in total (%)	Number of tenders
Risky tenders	556	32	69	17	27	
Middle to high risk tenders	342	20	49	12		
High risk tenders	72	4.2	13	3		
Tenders with critical level of risk	30	1.7	4	0.9		
Total number of tenders when bidder with the lowest price offer was not selected as a winner	83		6		2	
The share of tenders when bidder with the lowest price offer was not selected as a winner (%)	4.8		1.5		4.9	
Possible saving sum, thousands AMD	11506		10467		539	
The share of possible saving in total amount, (%)	2.1		0.4		1.5	
The overall risk assessment	Average		Low		Average	

**The dynamics of risky tenders in Q2, 2012**

	Goods		Service		Works	
Total number of analysed framework agreements	2481		462		137	
Total contract price of analysed framework agreements, mln AMD	2854		342		126	
The classification of risky agreements	Number of tenders on goods with risk elements		Number of tenders on services with risk elements		Number of tenders on works with risk elements	
	Number of tenders	Share in total (%)	Number of tenders	Number of tenders	Share in total (%)	Number of tenders
Risky tenders	950	38	56	12	112	82
Middle to high risk tenders	529	21	33	7	69	50
High risk tenders	110	4	4	0.9	2	1.5
Tenders with critical level of risk	45	1.8	3	0.6	0	0
Total number of tenders when bidder with the lowest price offer was not selected as a winner	231		5		35	
The share of tenders when bidder with the lowest price offer was not selected as a winner (%)	9.3		1.1		25.5	
Possible saving sum, thousands AMD	20495		590		214	
The share of possible saving in total amount, (%)	7		1.7		1.7	
The overall risk assessment	High		Average		Average	

### The dynamics of risky tenders in Q3, 2012

	Goods		Service		Works	
Total number of analysed framework agreements	1537		112		91	
Total contract price of analysed framework agreements, mln AMD	5581		655		1040	
The classification of risky agreements	Number of tenders on goods with risk elements		Number of tenders on services with risk elements		Number of tenders on works with risk elements	
	Number of tenders	Share in total (%)	Number of tenders	Number of tenders	Share in total (%)	Number of tenders
Risky tenders	468	30	21	19	74	81
Middle to high risk tenders	308	20	13	12	59	65
High risk tenders	69	4.5	2	1.8	37	41
Tenders with critical level of risk	18	1.2	0	0	30	33
Total number of tenders when bidder with the lowest price offer was not selected as a winner	63		4		9	
The share of tenders when bidder with the lowest price offer was not selected as a winner (%)	4		3.6		10	
Possible saving sum, thousands AMD	32655		1600		103	
The share of possible saving in total amount, (%)	5.9		2.4		0.1	
The overall risk assessment	High		Average		Low	

### The dynamics of risky tenders in Q4, 2012

	Goods		Service		Works	
Total number of analysed framework agreements	915		157		63	
Total contract price of analysed framework agreements, mln AMD	3445		224		503	
The classification of risky agreements	Number of tenders on goods with risk elements		Number of tenders on services with risk elements		Number of tenders on works with risk elements	
	Number of tenders	Share in total (%)	Number of tenders	Number of tenders	Share in total (%)	Number of tenders
Risky tenders	167	18	37	24	29	46
Middle to high risk tenders	83	9	23	15	21	33
High risk tenders	6	0.7	3	1.9	2	3.2
Tenders with critical level of risk	0	-	0	-	1	1.6
Total number of tenders when bidder with the lowest price offer was not selected as a winner	51		0		3	
The share of tenders when bidder with the lowest price offer was not selected as a winner (%)	5.6		0		4.8	
Possible saving sum, thousands AMD	11616				7.6	
The share of possible saving in total amount, (%)	3.4				0.0	
The overall risk assessment	High		Low		Low	

During the analysis of framework agreements for the period of June 2011 - December 2012, extremely significant difference in bidders' price offers was noticed. This fact can signal either about the existence of corruption risks, or deficiencies regarding technical specifications. Moreover, as the analysis indicates that during last quarter the share of risky tenders has grown significantly (both in number and amount). By number of tenders risky tenders are more in tenders on goods.

The comparison analysis of 2012 to 2011 indicates a slight improvement regarding riskiness. Nevertheless, all the above mentioned facts can serve as an argument to evaluate framework agreements, which constitute major share in Armenian public procurement system, as middle to high risky ones.

## PROBLEMS OF LEGISLATIVE NATURE

During the monitoring period the following problems/leakages of legislative nature were revealed:

1. The events that are subject to GoA approval referred in PPL Article 4, point 4, are not approved yet. In particular:
  - types of public private partnership contracts, their specification requirements, and the regulation on specification formulation and approval.
  - rules for implementation of procurement procedures referred in PPL.
2. Project results signal that there are a lot of cases when bidder initially submits the complaint, then takes it back. Obviously, such cases can be signals about corruption risks. As a partly elimination of such cases, it is possible to discuss the legal amendments according to which in these cases the bidder will be subject to blacklisting or penalizing.
3. The provisions<sup>54</sup> referred in PPL Article 6, point 4 are not enforced, and in practice there are no mechanisms to control the process.
4. There is a concern that if non price criteria are implied for the selection of winner, then it can cause to additional corruption risks in the current system.
5. There is a provision in the PPL according to which the annual procurement report should be prepared and published (Article 8, point 5), however, in practice it is not enforced properly.
6. According to PPL Article 14, point 7, a contract can be signed prior to the allocation of funds provided that the contract becomes effective, when the funds envisaged under the contract are allocated.<sup>55</sup> Provision creates a basis for ineffective use of financial resources.
7. The AB does not enforce its functions properly; in particular according to PPL Article 15, point 2, subbpoint 7, the AB should publish: a) the annual public procurement report and b) the list of qualified procurement specialists. It should be noted that the AB does not properly enforce these provisions.

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<sup>54</sup> Concurrent participation of entities founded by the same person(s) or entities with over fifty percent of shares owned by the same person(s) in the same procurement process is prohibited.

<sup>55</sup> This paragraph can be applied, if:

- 1) Procuring entity is unable to envisage (calculate) initially the funds requisite for procurement; or
- 2) Supply of goods, implementation of works or provision of services shall begin within such a deadline calculated from the date of allocating funds for the given procurement, which makes the use of any competitive procurement methods impossible.

8. Observation results prove that according to PPL Article 16, point1, subpoint 5, PSC should publish electronic newsletters on goods, works and services; analyse procurement statistics and publish opinions. In practice none of the above mentioned functions is enforced properly.
9. According to PPL Article 17, clause 6, procurement can be carried out from commodity, labor or service exchanges, but the procedures of conduct are not defined and clarified, therefore it is not operational.
10. According to PPL Article 21, point 4, section 2, the announcement about the changes made and the conditions for their provision should be published in the bulletin within 3 calendar days from making changes. It will be preferable if all the bidders of that tender will be automatically informed about changes through electronic means.
11. According to PPL Article 24, point 3, subpoint 8, the invitation should contain the information on criteria to be used for establishing the winning bidder. The observation results indicate that this provision is not enforced properly.
12. The observation results indicate that PPL Article 30, clause 6, regarding existence of conflict of interest and their declaration, not enforced properly and there is no proper mechanisms of control over it. We tend to think that this process will become even more difficult in electronic procurement system.
13. According to PPL Article 37, section 2, the contract price can be variable, if the contract price varies because of changing conditions (factors) stipulated under the contract. TIAC's observations indicate that this provision is only formal and is not enforced in practice, as none of the contracts were signed with variable prices.
14. According to PPL Article 48, section 7, if the Complaint Board decides in favour of the applicant, the procuring entity is liable for recompensing to the applicant the damage caused and justified in accordance with the established procedure. Nevertheless, although almost 50 percent of complaints were accepted for the period of 2011-2013, none of the bidders tried to be compensated.
15. According to PPL Article 48, section 8, the oral hearing of complaint is open to the public and an announcement on the complaint is published in the bulletin within 3 calendar days after its receipt. Observations prove that this provision is not properly enforced in practice.

16. The PPL Article 50, point 1, clause 2 is not enforced, as not all public undertakings publish information on their procurement procedures, advertisements of procurement processes, invitations, and announcements on signed contracts.
17. According to PPL Article 52, point 3, the procedure for disclosing information subject to disclosure should be specified by the Board of the CBA. TIAC's observation indicates that the procedure is not specified yet. The same problems regarding transparency exist in Deposit Guarantee Fund. Although this body develops its regulations on public tendering, but it is not in accordance with requirements, particularly the issues of complaint are not regulated. In addition, during the observation period the annual procurement reports are not available.