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Technical Paper: Corruption Risk Assessment in Public Procurement

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LIST OF ABBREVIATIONS

CoE	Council of Europe
CPV	Common procurement vocabulary
DIGIWHIST	Digital Whistleblower
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EU	European Union
GEL	Georgian Lari
ISO	International Standard Organisation
IT	Information Technology
JSON	JavaScript Object Notation
NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
PEFA	Public Expenditure and Financial Accountability
TPPR	Transparent Public Procurement Rating
UAH	Ukrainian Hryvnia
UCLG	United Cities and Local Government

1 EXECUTIVE SUMMARY

This paper identifies corruption risks in public procurement systems of Armenia, Georgia, Moldova and Ukraine, and recommends measures to mitigate them based on the results of corruption risk assessments conducted in 2017. The assessment was carried out through the CoE/EU Partnership for Good Governance Regional Project “Fight against Corruption and Fostering Good Governance/Fight Against Money-Laundering” (PGG-REG).

The assessment consisted of desk work and interviews with key governmental and non-governmental institutions competent in the area of public procurement in each country. Main thematic areas examined during the assessment concerned project identification through publication of request for bids, publication of request for bids through contract signing, contract implementation, and prevention and detection measures.

At regional level, four recommendations are applicable to all four countries:

Recommendation 1: Analyse bid patterns on public tenders for signs of collusion,

Recommendation 2: Insert a clause into all public contracts permitting government to conduct unannounced audits of suppliers’ books and records,

Recommendation 3: Require firms winning a public tender of any significant size to have an ethics and anticorruption compliance program, and

Recommendation 4: Establish a high-level entity to coordinate procurement policy across the whole of government.

In addition, country-specific recommendations range from sanctioning the owners and executives of companies that violate procurement laws through easing access to online data on procurements to requiring state-owned entities and local governments to observe the provisions of the national public procurement law. These are discussed in more detail under relevant chapters.

2 INTRODUCTION

The governments of Georgia, Moldova, and Ukraine have entered into association agreements and Armenia into the Comprehensive and Enhanced Partnership Agreement with the European Union (EU). The agreements will strengthen the bonds between the EU and the four nations by expanding access to the Union's €12.9 trillion, 500-million-person consumer market and by helping them align their laws and norms with those of EU member states. The four commit in return to undertake a series of market opening measures that include reforms to their procurement laws to ensure public tenders are open to all on fair and impartial terms. This latter commitment, as Table 1 shows, expressly requires each government to combat corruption in its public procurement system.

Table 1. Procurement Anticorruption Provisions in Georgian, Moldovan, Ukrainian EU Association Agreements and Armenian EU Framework Agreement

Country Agreement date	Text
Armenia Nov. 24, 2017	Article 16(1): "The Parties shall cooperate in combating and preventing criminal ... public-procurement fraud" Article 269: "The Parties affirm their mutual rights and obligations under the Revised Agreement on Government Procurement of 2012." Article V.4 of that agreement: "A procuring entity shall conduct covered procurement in a transparent and impartial manner that... avoids conflicts of interest and prevents corrupt practices."
Georgia July 1, 2016	Article 144(5): "All contracts shall be awarded through transparent and impartial award procedures that prevent corruptive practices."
Moldova July 1, 2016	Article 16(1): The Parties shall cooperate on preventing and combating all forms of criminal and illegal activities ... such as ... public procurement fraud...."
Ukraine Sept. 1, 2017	Article 151(5): "All contracts shall be awarded through transparent and impartial award procedures that prevent corruptive practices."

The purpose of this report is to assist the four countries in meeting this obligation by identifying corruption risks in their systems and recommending measures to mitigate them.

3 APPROACH

Corruption in public procurement can arise in three ways. One is when procurement staff try to steer a public contract to a favoured firm in return for a bribe or because the staff member or a relative or friend has a financial interest in the firm. A second is when those overseeing the execution of the contract permit the supplier to deliver poor-quality goods, skimp on the work, overbill, or otherwise earn unjustified profits in performing the contract. The third form public procurement corruption takes is when those planning to bid on the tender agree among themselves beforehand which one will win and at what price, an offense variously termed bid rigging, price fixing, collusive bidding, or cartelisation. All three forms of corruption are costly, undermine public trust in government, and defeat the fundamental objective of EU procurement law: ensuring governments purchase goods, services, or public works at the most economically advantageous tender.

In assessing these risks in the countries reviewed, the report follows the approach taken in *Identifying and Reducing Corruption Risks in Public Procurement in the EU*¹, a 2013 study done for the European Commission (EC). It examined whether member states had implemented practices that either helped to prevent corruption or contributed to its detection. The list included:

- i) how transparent each system was and whether aggregate data on its performance was easily accessible;
- ii) whether corporate contractors had to disclose the identity of the natural persons who owned or controlled them (“beneficial owners”);
- iii) if independent audits were regularly performed; and
- iv) whether each member state had a “specialised, well-trained” cadre of procurement experts on staff.

A member state lacking one or more practices was urged to adopt it; where a practice had been adopted but was being poorly implemented, changes were suggested to improve its effectiveness.

Similarly, in assessing risks in the countries reviewed, this report analyses whether there are laws or regulations in each that address a set of corruption prevention practices, and if there are, how well they are implemented. As with the EC report, country-specific recommendations follow directly from the comparison. A short narrative on each country also highlights innovative policies of interest to other states or particularly challenging issues the government faces.

¹ PwC and Ecorys (2013), [Identifying and Reducing Corruption Risks in Public Procurement in the EU](http://www.europa.eu), available at www.europa.eu, accessed December 2017

The prevention practices are distilled from the EC report, EU procurement directives, Organisation for Economic Cooperation and Development (OECD) recommendations, World Bank studies, and emerging practices of the member states of the Council of Europe and the EU. The practices are organized around five themes summarized in Table 2 and explained below.:

1. **How transparent the procurement system is.** The European Commission report and the OECD's recent Recommendation of the Council on Public Procurement² both stress the importance of transparency for reducing corruption risks in public tenders. The report therefore examines whether analyses of the need for large projects are made public; if citizens have access to tender documents, and if they can attend bid opening meetings.

As both the EC report and the OECD's recommendations stress, the most important contribution transparency can make to combatting procurement corruption is opening a window on system performance. When procurement data is provided on a timely basis in machine readable form that is easily downloadable at little or no cost, the legislature, government regulators, and civil society can look for signs, "red flags," suggesting corruption. Are too many procurements are being let under "emergency" or "special" procedures? Are certain firms winning a suspiciously large share of contracts? How do bid prices compare with those one would expect to see in a competitive market? Is the actual, natural person or persons ("beneficial owners") of the winning bidder public? Data availability in each country is benchmarked against the standards developed by Digital Whistleblower: Fiscal Transparency, Risk Assessment and Impact of Good Governance Policies Assessed or DIGIWHIST, an EU-funded project. It is supplemented by standards recommended by the Sunlight Foundation, an international NGO which promotes real-time, online transparency for all government information.

2. **The use of collusion prevention measures.** Over the past decade, investigations by European competition law authorities and research by the OECD have revealed that bid rigging in public tenders is more common than previously believed and that its impact is substantial. The report examines whether procurement agencies have in place bid screens, analytical techniques for methods for determining signs of bid rigging in a tender for methods for determining signs of bid rigging in a tender.
3. **The existence of corruption prevention measures.** Following the European Commission study, the report examines whether beneficial ownership information must be disclosed and how effective disclosure requirements are. Reflecting both the

² OECD (2015), [Recommendation of the Council on Public Procurement](https://www.oecd.org/public-procurement/recommendation-of-the-council-on-public-procurement/), available at www.oecd.org, accessed in December 2017

EC study and the OECD recommendations, it also asks if the government has established a dedicated, skilled staff of procurement professionals.

Table 2. Summary of Practices Used to Assess Corruption Risks

1) Transparency	<ul style="list-style-type: none"> ▪ Needs analysis/assessment public ▪ Public access to tender documents and bid opening meeting ▪ Aggregate data on system performance accessible on-line
2) Collusion prevention	<ul style="list-style-type: none"> ▪ Screens used to detect collusive bidding
3) Corruption prevention	<ul style="list-style-type: none"> ▪ Disclosure of beneficial owner(s) of bidders ▪ Procurement cadre ▪ Bid review mechanism ▪ Safeguards against abusive sole sourcing ▪ Conflict of interest safeguards ▪ Exemptions to procurement law ▪ Anticorruption compliance program
4) Contract execution	<ul style="list-style-type: none"> ▪ Contracts and contract amendments published ▪ Audits/other oversight of contract management ▪ Supplier payments monitored ▪ Audit clauses in contracts
5) Deterrence	<ul style="list-style-type: none"> ▪ Effective debarment list

A January 2017 review of EU Directives requiring member states to permit bidders to challenge tender procedures³, conducted by the Commission staff, affirms the importance of a bid review process in ensuring a procurement system's integrity; it creates one more oversight mechanism. The four countries' review mechanisms are therefore examined. Because its most recent procurement directive, EU 2014/24⁴, requires member states to address conflict of interest issues, the report also examines whether the reviewed states have adopted measures to guard against conflicts of interest. Whether local governments, state-owned entities, and other public funded organisations are exempt from the law, and the existence of provisions that prevent the unjustified award of a contract without a competitive tender (abusive sole sourcing) are assayed. Both EU and Council of Europe member states are beginning to require corporations to establish anticorruption compliance programs; accordingly, the report asks what steps the reviewed states are taking as well.

³ European Commission (2017), [*Report from the Commission to the European Parliament and the Council on the Effectiveness of Directive 89/665/EEC and Directive 92/13/EEC, as modified by Directive 2007/66/EC, concerning Review Procedures in the Area of Public Procurement*](#), available at www.eur-lex.europa.eu, accessed December 2017

⁴ European Parliament and European Council (2014), [*Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC*](#), available at www.eur-lex.europa.eu, accessed December 2017

4. **The use of measures to mitigate corruption in contract performance.** Both the EC report and the OECD recommendations emphasise the importance of audits by an independent party for detecting deliberate cases of overpayment, underperformance, and other corrupt practices once the tender is awarded and the contract being performed. Publication of any changes to the terms of the tender is a second. Accordingly, the report examines whether third-party audits, or other oversight practices, are used in the reviewed countries and whether contract amendments are public. When auditing contract performance, rapid, unfettered access to the books and records of the contractor and its subcontractors can be critical. The report asks if the standard bidding documents or other tender documents include an audit clause like that in World Bank-financed projects granting auditors access to the contractor's books and records without the need for further legal authorization. Finally, the report examines whether there are delays in paying contractors. In its assessment of procurement systems, discussed below, the World Bank notes⁵ that delays provide contract officers an opportunity to extort money in return for quickly processing contractor's payment requests.
5. **The effectiveness of debarment systems.** Denying firms that corrupt the procurement process the opportunity to bid on future tenders deters corruption and therefore is, as the EC report observed, an important preventive measure. The EU's most recent procurement directive requires member states to have provisions in their laws preventing ("debarring") firms found to have corrupted a procurement from participating in that procurement or future ones for a specified length of time. The effectiveness of the reviewed countries debarment system is examined.

The comparisons of the laws and regulations of each reviewed country and their implementation against the standards set out in the five themes rests on previous assessments supplemented by in-country missions. During those missions, procurement agency staff, other government officials involved in procurement, and members of civil society were interviewed and documents and data collected. The previous assessments are discussed in Section 3; the data they report were checked against information gathered during the missions.

The four countries have much in common, both in the progress realised in reforming their procurement systems and the remaining challenges. Section 5 begins with a reminder first of the extraordinary changes required to transform procurement systems based on centrally-planned economies to ones compatible with more market-oriented economies and second

⁵ World Bank (2017), [Benchmarking Public Procurement 2017: Assessing Public Procurement Systems in 180 Economies](https://www.worldbank.org/publicprocurement2017), available at www.worldbank.org, accessed December 2017

how much has been achieved to date. Civil society organisations in each have played an important and constructive role and their contribution is acknowledged. All four countries are putting more and more procurement data online to permit legislatures, other government agencies, and the public to assess procurement system performance.

Section 5 continues with an analysis of where each country stands on online disclosure. That is followed by a discussion of the shared challenges the countries face in reducing corruption risks in their procurement systems. Section 6, "Recommendations," is in two parts. The first contains recommendations applicable to all four, the second recommendations specific to each country.

4 PREVIOUS ASSESSMENTS

This report is the latest to use a common set of indicators to assay the reviewed countries procurement systems. In 2011 the European Bank for Reconstruction and Development (EBRD) published *Public Procurement Assessment: Review of the Laws and Practice in the EBRD Region*, which, as part of a project to evaluate the systems in all 20 countries where it operates, examined the four countries' systems. More recently, the four's procurement systems were assessed as part of studies of their public financial management systems by a multi-donor group including the EU and the French and British governments. In 2017 the World Bank released *Benchmarking Public Procurement: 2017*, a comparison of the procurement laws and practices of 180 nations which includes not only the four countries reviewed in this report, but those of all EU member states as well. Finally, the Transparent Public Procurement Rating, a coalition of non-governmental organisations (NGO) led by Georgia's Institute for Development of Freedom of Information, is developing a method for assessing the procurement systems of emerging market economies that as of December 2016 has published reviews of the procurement laws of each.

These four earlier assessments are valuable for three reasons. One, they offer additional information about the reviewed countries procurement systems and areas that may merit attention. Second, they are a source of information for this review although in every case best efforts have been made to confirm the accuracy of the information reported. Finally, as explained below, a comparison of the results of the earlier assessments with the recent ones and with this report provide an important measure of the progress the four countries have made in reforming their procurement systems.

4.1 EBRD Review

The EBRD used answers to 130 questions about each country's procurement law and its enforcement to construct indicators of the law's quality and the effectiveness of its enforcement. The questions mix objective ones, such as whether a disappointed bidder can seek judicial review of a tender award, with those requiring the evaluator to exercise judgment – whether, for example, the remedies for errors in the tender process are “effective in practice.” Scores on each indicator range from 0 – 100; 90 or above means “very high compliance” with what the EBRD considered best international practice; 76 – 90 “high compliance;” 60 – 75 “medium compliance;” and 50 – 59 “low compliance.”

Four of the EBRD indicators are directly related to corruption risks: the i) existence and ii) use of remedies for errors in the tender process and the iii) presence and iv) effectiveness of integrity safeguards. Provisions that permit bidders to challenge tender specifications or contract awards are an important means for holding front-line procurement officers accountable by requiring them to justify their decisions. The integrity safeguard indicators speak directly to corruption by evaluating the extent to which principles of accountability, integrity, and transparency are enshrined in the procurement law and observed in practice.

Table 3 displays where the countries reviewed scored either “low” or “medium” on the four indicators, red indicating low and orange medium. As it shows, in its 2010 evaluation the EBRD deemed Moldovan compliance with best international practice “low” on two indicators: its law allowing bid protests and the application of integrity safeguards; it also rated Ukraine’s compliance “low” on the presence of integrity safeguards in its procurement law. And as the table shows, on a variety of indicators the bank judged the reviewed countries’ compliance with best international practice “medium.”

Table 3. EBRD 2011 Ratings

key: low compliance red, medium in orange

	Armenia	Georgia	Moldova	Ukraine
Remedies law				
Remedies in practice				
Integrity safeguards				
Integrity in practice				

4.2 PEFA Reviews

The Public Expenditure and Financial Accountability (PEFA) program, supported by the EU, the French and British governments and other multi-and bilateral development agencies, reviews development partners’ public financial management systems using 31 mainly objective questions, each with multiple subparts. Reviews conducted through 2015 contained a question on procurement with four subparts. These subparts examined:

1. the transparency, comprehensiveness, and competitiveness of the legal framework;
2. the use of competitive procurement methods;
3. public access to complete, reliable, and timely procurement information; and
4. the existence of an independent administrative procurement complaint system.

All four provide important indications of corruption risk. The more transparent and competitive the procurement system, the less likely corrupt practices will permeate it; and if any do, transparency and competitiveness make it more likely they will be discovered. Providing the public access to complete, reliable, and timely information on procurements also increases the chances any corrupt activities will be discovered, and, as explained above, a robust bid protest system ensures those competing for public contracts competitors have a way to bring any suspicions of corruption to the authorities’ attention.

Each subpart on the procurement questions is scored on a letter scale running from “A,” best, to “D,” worst. An overall grade is also given. Armenia, Georgia, and Moldova were reviewed using these criteria. The grades they received along with the date of the

assessment appear on Table 4. It shows Georgia received “As” on all four subparts while Armenia and Moldova did not score as highly.

Table 4. PEFA Scores: Public Procurement Indicator pre-2016 Method

Sub-indicator	Armenia '14	Georgia '13	Moldova '15
1. transparency, comprehensiveness, and competition in the legal and regulatory framework	A	A	B
2. use of competitive procurement methods	D	A	A
3. public access to complete, reliable, and timely procurement information	B	A	A
4. independent administrative procurement complaint system	A	A	D
Overall	B	A	B

Ukraine was assessed in 2016 using a revised methodology to make the evaluations more objective. Grades on subpart (1) now depend upon the percentage of procurements on which complete records are maintained and grades on subpart (2) on the percentage of contracts by value let competitively. Ukraine scored an “A” on these two subparts as well on subparts (3) and (4). PEFA reviews of the other three using the revised procurement question methodology are planned for the coming years.

4.3 The World Bank’s Benchmarking Public Procurement 2017

The World Bank’s *Benchmarking Public Procurement 2017* analyses the procurement systems of 180 nations. The 180 include the four reviewed here and all EU member states. Scores are based on responses to a questionnaire the Bank sent procurement agency staff, lawyers, and other knowledgeable about their country’s procurement laws and practices. Answers reflect rules in effect as of mid-2016.

Of the nearly 100 questions, six address corruption risks and 30 probe details about the presence and operation of the country’s bid review mechanism. The six corruption-risk related questions ask:

1. Whether all material related to a tender is available on-line?
2. Whether there is minimum time fixed by law for submitting bids?
3. Can foreign firms bid on public tenders?
4. Are bids opened immediately after the deadline for submitting tenders?
5. Can the terms of delivery be renegotiated after the contract is awarded but before it is signed?

6. Can the contract prices be renegotiated after award but before contract signing?

The first three questions are indicators of the competitiveness of procurement markets. Markets where more information about tenders is readily available, where bidders are assured they have a minimum time to respond, and that allow foreign firms to bid will encourage more companies to compete for a tender than those where one or more of these conditions do not hold. For the more bidders, the more likely the market will be competitive and thus the less likely bids will be rigged. In all four countries reviewed, all three conditions hold.

Questions four, five, and six concern bribery prevention. A delay in opening bids after the tender closes creates an opportunity for dishonest procurement staff to solicit a bribe in return for favouring a bidder. Allowing the renegotiation of the price or delivery terms after the tender is awarded but before the contract is signed also poses a risk of bribery; the terms could be changed in return for a side-payment by the winning bidder. All four require bid opening immediately after the tender date closes. Only Armenia permits any post-award/pre-signing renegotiation; variations in the time of delivery is allowed.

As explained above, complaint mechanisms provide another level of oversight of a procurement system. Bidders who believe a tender is not being properly conducted because of corruption or for other reasons can file a formal protest, forcing procurement staff to explain their actions. *Benchmarking* provides significant detail on each country's complaint procedures, the most important of which for assessing its contribution to reducing corruption risks are whether: i) a system is in effect, ii) the costs of accessing it are not prohibitive, iii) its decisions can be appealed, and iv) initial decisions and decisions on appeal are public. All four countries have a formal complaint system from which appeals to the courts or an administrative body lie. The cost of filing a complaint in all four is low. In Moldova and Georgia there is no cost while in Armenia the cost is under €100; in Ukraine, it is approximately €1,700.

4.4 Transparent Public Procurement Rating

The most recent assessment of the four countries' procurement systems appears on the Transparent Public Procurement Rating (TPPR) web site⁶. A collaborate effort by non-governmental organisations in each country supported by the Open Society Foundations' Eurasia Program, 64 indicators are used to assess the law governing the general conditions under which tenders are conducted and the procedures at the pretender, tender, and post-tender stages. Each indicator is scored on a scale of 0 – 1. For some, such as whether sole sourcing a contract must be publicly justified, question eight in the pretender section, the score is either one if it must be and zero if justification is not required. For others, a score

⁶ Transparent Public Procurement Rating available at www.tpp-rating.org, accessed December 2017

between zero and one is possible. With the conflict of interest indicator, question 12 in the tender section, a country scores one-third of a point if it has a conflict of interest law governing procurement, another third if procurement staff must declare conflicts in writing, and another third if the law requires those with conflicts to recuse themselves from the procurement.

Ten indicators are related to the themes evaluated in this report and are used in the country-by-country analyses below. The ten are listed by theme on Table 5. Where the indicator appears in the country evaluation shown in parentheses. “T 6”, for example, refers to indicator six under the Tender section while “GC 4” is the fourth indicator in the General Conditions section. The country evaluations are posted on the TPPR home page.

Scores are based solely on the provisions of the procurement law and the rules and orders issued to implement it. From reading the law alone, Ukraine scores one on the question of whether all public entities are governed by the procurement law save for exemptions clearly defined in law. Yet, as interviews with Ukrainian public officials in November revealed, in practice some entities have refused to abide by provisions of the procurement law contending they are exempt while procurement officers and auditors believe they are.

Table 5. TPPR Indicators by Theme

<i>Transparency</i>	AR	GE	MD	UA
▪ Public justification for using a non-competitive procedure required (PreT 8)	0	1	1	1
▪ Access to notices of intended procurement and tender documentation, full text or key information, available electronically at no charge (T 5)	.5	1	.75	1
▪ Access to notices to tender amendments, full text or key information, available electronically at no charge (T 6)	.5	1	.25	1
<i>Prevention</i>	AR	GE	MD	UA
▪ All entities funded by state budget, all local government entities, and their respective legal entities, state owned companies and non-commercial legal entities covered by procurement law; all exempted entities are clearly indicated (GC 3)	1	1	.8	1
▪ All sectors of the economy where competition is possible subject to procurement law; exemptions clearly listed (GC 4)	1	1	.5	1
▪ Decisions of bid review body, full text or key information, available electronically at no cost (GC 20)	.5	.5	.5	.5
▪ Conflict of interest defined and there are mechanisms to prevent it (T 12)	.33	1	1	.67
<i>Contract Execution</i>	AR	GE	MD	UA
▪ Procurement contracts, full text or key information, available electronically at no charge (PostT 3)	0	.5	0	.5
▪ Contract amendments, full text or key information, available electronically at no charge (PostT 4)	0	.5	0	1
▪ Procurement operations subject to internal and external audits by qualified specialists (PostT 13)	1	1	1	1

5 REGIONAL TRENDS

5.1 Procurement Reforms to Date

The most striking trend to emerge from a review of the previous assessments and the research and interviews for this report is the extraordinary progress all four countries have made in transforming their procurement systems. Less than 30 years ago the economies of all four were centrally planned. For procurement policy, this meant that when a government agency needed to purchase goods or services or have a building, road or other infrastructure constructed it either turned to an in-house work force or requisitioned what was required from another state entity. Price was not considered; because all government employees were assumed to be working for the common good, little or no attention was paid to overseeing contract performance. Today, the laws of all four expect that when a government agency needs to procure a product, service, or construct a public facility, it will draft a tender document stating the need, put it out for competitive bid, fairly and impartially evaluate the tenders received, award the contract to the firm offering the best value, and then ensure the contract is faithfully executed.

One measure of how far the procurement systems of the four have progressed is to compare their scores on the World Bank's 2017 *Benchmarking* study with those of EU member states. *Benchmarking* scores countries from 0 – 100 on six dimensions: 1) need assessment, call for tender, and bid preparation, 2) bid submission, 3) bid opening, evaluation, and award, 4) content and management of the procurement contract, 5) performance guarantees, and 6) promptness of payment to suppliers. The scores for EU member states and the four partnership countries are shown on Table 6 on the following page. The total score for the four is reported in the far-right hand column. It ranges from 305 to 488; the median is 371.

The total scores are at best a very rough measure of the quality of a nation's procurement system. For example, as the table shows, several member states score "zero" on the performance guarantee dimension when in fact they do have effective ways for ensuring contractors perform; these methods simply are not captured in the Benchmarking methodology (which in fairness to the Bank is still being developed).

More importantly, a simple total of the scores on all indicators assumes each indicator contributes equally to a good system. But this is not true. It may be good practice to include a payment schedule as part of the tender document, an indicator the Bank uses in scoring the need assessment/bid preparation dimension, but a far more important indicator of the quality of a procurement system is whether all tender documentation is publicly available, another indicator the Bank used to score need assessment/bid preparation. Yet both are weighted equally. Furthermore, the presence of certain provisions can obviate the need for others. A professional, highly-trained procurement cadre will make provisions limiting the discretion of poorly-trained personnel unnecessary if not counterproductive.

Even with these caveats the scores give at least a sense of where a country's procurement system stands compared to others. And as the table shows, the reviewed countries are all approaching EU standards. Armenia, the one with the lowest score, is not that far from the median score of member states, and its score does not take account of all the changes to its procurement law made since a new law took effect in April 2017. Moreover, Georgia is very close to the median score for EU member states and Moldova and Ukraine both exceed it. Any analysis of the four countries procurement systems and efforts to align them with to EU standards simply cannot ignore the substantial progress all four have made in the past two decades plus.

This progress continues, making even the very recent assessments by the World Bank and TPPR dated. The overhaul of Armenia's procurement law effective April 2017 addresses several issues spotlighted in the World Bank report. A new bid review system came into effect in Moldova in September 2017; this past April Georgia amended its procurement law to make it harder to subdivide a tender and thus evade thresholds for full competitive bidding, and in November 2017 Ukraine's parliament gave state auditors broader powers to monitor procurement.

Table 6. Review Countries Compared to EU Member States

	Need Assessment, Call for Tender, and Bid Preparation	Bid Submission	Bid Opening, Evaluation, and Award	Content and Management of the Procurement Contract	Performance Guarantee	Payment of Suppliers	Total
Armenia	60	39	64	59	50	33	305
UK	66	50	64	59	34	50	323
Ireland	73	43	64	60	0	85	325
Netherlands	78	39	64	50	22	75	328
Finland	66	50	64	59	0	100	339
Luxembourg	67	71	64	68	0	75	345
Sweden	66	75	64	68	0	75	348
Georgia	70	59	71	77	42	33	352
Croatia	70	67	79	40	30	67	353
Czech Rep.	78	78	64	60	0	75	355
Lithuania	70	39	79	82	14	75	359
Portugal	58	29	57	73	82	67	366
Slovakia	90	78	50	73	0	75	366
Greece	63	78	71	64	34	57	367
Latvia	68	71	57	50	50	75	371
Ukraine	70	59	86	70	50	37	372
Cyprus	70	57	86	73	30	59	375
Moldova	70	69	71	68	70	37	385
France	69	71	64	73	58	50	385
Slovenia	68	69	43	73	62	75	390

Estonia	70	82	64	73	14	88	391
Belgium	66	71	50	59	86	67	399
Malta	68	51	86	82	66	57	410
Germany	76	29	79	82	78	67	411
Poland	87	81	57	64	74	75	438
Hungary	80	71	79	77	62	76	445
Bulgaria	88	67	43	82	94	75	449
Romania	67	94	64	82	82	67	456
Austria	78	83	64	73	74	85	457
Denmark	88	75	64	59	74	100	460
Italy	70	82	64	82	78	100	476
Spain	68	94	67	73	86	100	488

5.2 Civil Society's Role in Reform

One reason why the countries reviewed have made such rapid progress on procurement reform may be attributable at least in part to a second notable trend across the four countries: the depth of expertise on procurement law and policy within local civil society groups and the close working relationships evident between these groups and procurement policymakers. Few civil society organizations in any country could have produced the detailed, highly technical analyses of the procurement laws TPPR project participants have.

It is also apparent in interviews that civil society groups and procurement staff are forging strong bonds. Civil society members were quick to explain the challenges procurement personnel in their countries face. Procurement agency staff must on the one hand ensure that civil servants in hundreds if not thousands of agencies follow the correct procurement procedures while, as common in democracies both established and emerging, some elected officials pressure agency personnel to favour their supporters. Members of several civil society groups acknowledged this lobbying and explained that through investigative journalism and close monitoring of suspect procurement they were helping procurement agency staff curb it.

5.3 Procurement Data Online

An area where the four have made notable progress is publishing data on their procurement systems online in a single place where it can be downloaded and analysed. Table 7 shows that all four i) publish procurement data online on a timely basis through a single portal, ii) it can be accessed at no cost by any user, and iii) tender notification data, bid protests and award information is all posted. Of the four, only Armenia has yet to post the data in a form that can be downloaded for analysis in Excel, Stata, SPSS, and other software programs.

Table 7. Availability of Procurement Data on Internet

Data Assessment	Armenia	Georgia	Moldova	Ukraine
Data provided timely and up to date?	Yes	Yes	Yes	Yes
Available in bulk?	No	No	Yes	Yes
Machine- readable?	No. PDF, Word doc. and RAR	Yes. CSV	Yes. CSV	Yes. JSON
Available online?	Yes	Yes	Yes	Yes
Available for free?	Yes	Yes	Yes	Yes
Comprehensive portal?	Yes	Yes	Yes	Yes
Publicly available?	Somewhat	Yes	Somewhat	Yes
Coverage of Tender cycle?	Tender notification, Bid protests, Awards	Tender notification, Bid protests, Awards	Tender notification, Bid protests, Awards	Tender notification, Bid protests, Awards

Table 8 shows the information each country posts online when announcing a tender. It is in three parts:

- 1) *buyer*: who is responsible for the purchase – the name and division of the procuring entity; its address; and type of entity (ministry, state-owned enterprise, municipal or regional governments;
- 2) *tender details* – what criteria will be used in selecting the supplier; the estimated price; whether it is for service, goods or works; and its CPV (common procurement vocabulary) code, an EU-wide method for classifying all purchases which then allows a country to compare the price paid for a service, good, or the construction of a public facility against what other countries are paying for it;
- 3) *dates* – when was the tender announced; when are bids due; and the start and end dates for the contract that will be awarded.

Table 8. Online Data: Call for tender

		AR	GE	MD	UA
Buyer	1. buyer's name	•	•	•	•
	2. buyer's department	•	•	•	•
	3. buyer's id	•	•	•	•
	4. buyer's address		•	•	•
	5. buyer's type		•		•

Tender	6. tender id	•	•	•	•
	7. procedure type		•	•	•
	8. award criteria		•		•
	9. estimated price	•	•	•	•
	10. service, supply, work		•	•	•
	11. CPV codes	•	•	•	•
	12. administrative unit		•		•
	13. status		•	•	•
Dates	14. publication date	•	•	•	•
	15. bid submission deadline	•	•	•	•
	16. contract start/end dates		•	•	•
Percent information posted online			50	100	81

The availability of these data facilitates oversight of the procurement process in several ways. An analyst could compare tender publication dates against submission deadlines broken down by purchasing entity. The comparison would immediately show if some ministries or local governments or state-owned enterprises are not allowing potential bidders sufficient time to prepare their bids, a sign either procurement staff do not appreciate market realities or that the times are being shortened as part of a corrupt scheme. Likewise, using the CPV codes the prices a ministry or other purchasing entity is paying for a good, service, public construction can be compared with the prices others are paying to see if they differ substantially.

The table lists 16 separate pieces of information that the *DIGIWHIST* project and the Sunlight Foundation (described on page 9) recommend be reported. Both Georgia and Ukraine post data on each whereas Moldova does not post data on three and Armenia, at least before full implementation of its new procurement statute, is missing data on eight.

Table 9 displays the availability of similar data for the award notification stage of the procurement process. Twenty-four separate pieces of information, again drawn from the work of the DIGIWHIST project⁷ and the Sunlight Foundation⁸, are divided into four

⁷ Digiwhist (2017), *An Implementer's Guide for Open Public Procurement Data*, available at www.digiwhist.eu, accessed December 2017

categories. Three – “buyer,” “tender,” and “dates” call for the same data as that for tender notification. The fourth category lists eight items of information that good practice requires be reported on the tender process: 1) bidder’s name, 2) its id number, 3) bidder’s address, 4) total number of bids submitted, 5) total number of bids excluded, 6) bid price, 7) time each bid submitted, and 8) the beneficial owner or owners of the bidder.

Table 9. Online Data: Award Notification

		AR	GE	MD	UA
Buyer	1. buyer's name	•	•	•	•
	2. buyer's department	•	•	•	•
	3. buyer's id	•	•	•	•
	4. buyer's address		•		•
	5. buyer's type		•		•
Tender	6. tender id	•	•	•	•
	7. procedure type	•	•	•	•
	8. award criteria		•		•
	9. estimated price		•		•
	10. service, supply, work		•		•
	11. CPV codes	•	•	•	•
	12. administrative unit		•		•
	13. status		•	•	•
Bids	14. bidder's name	•	•	•	•
	15. bidder's id	•	•	•	•
	16. bidder's address		•		•
	17. no. of bids submitted		•	•	•
	18. no. of bids excluded		•		
	19. bid price		•	•	•

⁸ Sunlight Foundation (2013), [Procurement Open Data Guidelines 2013](http://www.sunlightfoundation.com), available at www.sunlightfoundation.com, accessed December 2017

	20. time bid submitted		•		•
	21. beneficial owner(s)	•			
Dates	22. call for tender publication		•	•	
	23. date award published	•	•	•	•
	24. contract start/end dates		•	•	•
Percentage posted online		42	96	58	88

As the table shows, the degree to which the four countries post online data complying with these recommendations varies significantly. Georgia posts all but information on beneficial ownership whereas Armenia posts data on only 42 per cent, or 10 of the 24, recommended items. Moldova and Ukraine fall in between, with Ukraine posting 21, or 88 per cent, of the items and Moldova 14 or 58 per cent.

The Georgia/Armenia comparison highlights a critical point made above. From a comparison of a tally of the recommended items, one would conclude that on this dimension Georgia is doing far “better” than Armenia, posting 23 items to Armenia’s 10. Such a comparison assumes though, as the discussion above explained, that each of the 24 items contributes equally to improving the transparency of the procurement system and thus reducing corruption risks. But Armenia reports bidder’s beneficial ownership, information critical to assessing corruption risk, whereas that is the one item of information Georgia does not report. At present, there is no methodology for deciding whether reporting beneficial ownership should outweigh the information items Georgia reports. Hence, it is not possible to say whether Armenia’s procurement system is more or less vulnerable to corruption risk than Georgia’s. The most that can be said is that it is important that countries report all 24 items online.

5.4 Common Challenges Remaining

The four countries reviewed face several common challenges. One of the most difficult is preventing bid rigging on public tenders. The practice thrives in markets with few competitors, and on many tenders, even large ones, procurement agency staff reported they were pleased to receive more than a single bid and surprised to receive more than two or three. When only a handful of companies bid, it is far easier for them to collude. The best antidote for combating bid rigging in public procurement is, as the OECD advises, to expand the number of bidders. But the countries reviewed face several obstacles in doing so. Their own private sectors are still weak; many industries remain dominated by one or two large firms that are a legacy of the past and that can exercise effective control over market prices. The four are also handicapped, by geography; they are too far from major

European business centres to attract bids from many EU firms. And for reasons of language, history, and geo-politics, many potential suppliers in neighbouring countries are either reluctant or cannot enter their procurement markets.

A second weakness common across the four (and indeed common in many countries) is the lack of oversight of contract execution. Long after pharmaceuticals or medical supplies have been bought and paid for, hospitals and doctors discover drugs are out-of-date and equipment faulty. Oversight is especially weak during the construction of highways, public buildings, and other infrastructure when poor-quality materials or slipshod work can easily be hidden as the structure progresses. Primary responsibility for contract oversight is vested with the agency letting the contract, and thanks to often close ties between agency personnel and contractors, there are many opportunities for corruption. State audit agencies in the four are slowly gaining more authority to review contract performance, but they are often hampered by a lack of funds.

What makes contract oversight more difficult is the absence of an audit clause in the tender documents. An audit clause gives authorities the right to examine the contractor's project-related records without a court order. Experience has shown that surprise audits of a contractor are an effective way to uncover wrongdoing. Regular use also serves as a deterrent. A contractor which knows auditors could appear at its premises at any time to inspect its records will be less likely to submit inflated invoices or commit other corrupt or fraudulent acts. None of the four countries reviewed include an audit clause in their standard tender documents.

One important trend for combating corruption is only beginning to take hold in the countries reviewed: a requirement that corporations have their own corruption prevention programs, with an ethics code barring employees from paying bribes or engaging in other corrupt acts and containing sanctions, up to and including termination, for violators. To date, only Ukraine imposes such a requirement. The anticorruption agency issued an order in early March 2017 that required any firm bidding on a tender of more than UAH 20 million, or a little more than €620,000, to have a program. The extent and quality of implementation remains to be seen.

Other weaknesses observed across the four countries were the absence of coordination across the several government agencies involved in procurement and the poor-quality of methods used to estimate procurement prices. As this report shows, procurement reform requires the ever-greater involvement of state audit agencies, law enforcement authorities, and line-ministries; inter-agency coordination is thus of growing import. Yet in none of the four is there a cabinet- or ministerial-level body responsible for overseeing procurement policy.

Nor have any of the four promulgated rules ensuring estimates of procurement prices are rigorously calculated. Without a careful estimate what a road, a batch of pharmaceuticals,

or even an office cleaning service will cost, contracting agencies cannot be sure the winning tender truly represents value for money or whether it is the result of a bid rigging scheme among tenders. Nor can agency personnel know that if the winning tender is below the estimate, the government has realized any savings. Cost-estimating is an important skill in a market economy, and one that takes time and resources to develop. Particularly when government is making purchasing decisions on costly infrastructure and communications and IT equipment, it is a critical skill.

6 RECOMMENDED REFORMS

6.1 Region Wide

The analysis above shows that the risk of bid rigging in public tenders is especially great in the four countries. It also reveals that the four countries have to date concentrated on eliminating corruption risks at the contract preparation, tendering, and contract award stages to the exclusion of measures to reduce corruption once a contract is awarded. Only Ukraine has taken steps to enlist the private sector in the fight against corruption, and none of the four governments have created a high-level body to coordinate procurement reforms across the whole of government. Below are four measures to address these shortcomings.

Recommendation 1: Screen bids for collusive patterns

Software programs are available that analyse bids received on public tenders for patterns suggesting the companies bidding agreed to rig the bid. The simplest compare bid prices against the estimated price; more sophisticated ones incorporate factors such the bidders' locations and the pricing of different components in bills of quantity submitted on construction tenders. The European Union's Directorate-General for Competition, the OECD Secretariat's Competition Division, and the governments of several Council of Europe member states have either developed such programs or have access to them and can provide assistance on their use. Bid screens are one of many measures the four countries should embrace to fight bid rigging. Again, the EU, OECD, and national governments have extensive experience in this area and can supply advice and guidance help on implementing a program to counter bid rigging.

Recommendation 2: Include audit clauses in all contracts

Every public contract should have a provision giving the government the right to inspect the accounts and records and other documents relating to a bid submission and the performance of the contract performance; that provision should include specific language granting the government the authority to have them audited, either by government auditor or auditors appointed by the government. In every one of the four countries reviewed, interviewees said one of the greatest risks of corruption in their procurement system arose after the contract was awarded. The product purchased failed to conform to the specifications, change orders on highway or other infrastructure projects were fraudulent, or services paid for were never performed. Evidence from industrialised and developing nations both show that a powerful deterrent to corruption in contract implementation is the ability to conduct unannounced, surprise audits of a supplier. An audit clause ensures governments can do so without delay or legal challenge. As with the use of bid rigging software, introduction of audit clauses should be the first step in a program to strengthen the oversight of contract performance, one on which the EU, the OECD, national governments, and the World Bank and other donor agencies can provide advice and guidance.

Recommendation 3: Require major suppliers to establish anticorruption compliance programs

An anticorruption compliance program is the private sector analogue to a government ethics code. Just as government ethics codes bar government employees from accepting bribes, putting their own interests ahead of the governments, or committing other corrupt acts, anticorruption compliance programs bar those who work for private- or state-owned corporations from similar conduct. Ukraine recently joined nine Council of Europe members or observers – Canada (Quebec), the Czech Republic, France, Germany, Mexico, Spain, Switzerland, the United Kingdom, the United States – in having some form of compliance law. As explained above, beginning last March any company winning a public contract in Ukraine valued at € 620,000 or more must institute a compliance program.

With the October 2016 publication of the International Standard Organisation's ISO 37001, which sets a global standard for corporate anti-bribery programs, many more governments are expected to follow suit. No government should be expected to bear exclusive responsibility for fighting corruption in public procurement, and Armenia, Georgia, and Moldova should join Ukraine in enlisting companies winning contracts of any significant size on their tenders to join the fight by establishing compliance programs.

Recommendation 4: Establish a high-level procurement coordination council

Procurement is a critical element of governance. In the countries reviewed it accounts for a significant share of government spending and directly affects citizens' lives through everything from the purchase of medicines to the construction of roads and infrastructure. Procurement corruption saps citizen confidence and trust in government. It therefore merits the continuing attention from the highest levels of government.

As the four countries move to bring their systems into line with EU procurement directives, new agencies have been created and the responsibilities of existing ones expanded. Yet in none of the four is there a senior official or high-level body overseeing all these activities. There is no mechanism that ensures that the views of all agencies involved in procurement are heard in the policy-making process. Interviews in the four nations revealed that critical information one agency learned in carrying out its procurement-related duties was not shared with other agencies with procurement responsibilities. Each government should create a coordinating body with all government agencies with procurement responsibilities represented and where the courts, prosecutors, and other entities independent of government can be consulted and informed. A first task of that body would be to implement the recommendations in this report.

6.2 Country Specific Recommendations

6.2.1 Armenia

6.2.1.1 Background

Armenia became a party to the World Trade Organisation's Revised Agreement on Government Procurement in April 2015, and enacted a new procurement law, effective April 2017, to bring Armenia into compliance with the agreement. The Finance Ministry was given responsibility for procurement policy, and a new, independent agency established to hear complaints about tenders. In addition, procedures for e-tendering were clarified, and certain exemptions from the previous law narrowed. The law contains several provisions to prevent corruption that were recommended by civil society. The most significant of these, highlighted above, is the requirement that the beneficial owners of the winning bidder be disclosed.

Another important corruption-risk reduction measure in the new law is the section on issuing sole source contracts. For procurements deemed an emergency, and thus exempt from competitive bidding requirements, the agency issuing the tender must disclose the tender for two to three days. This gives procurement authorities and citizens a chance to determine if indeed the procurement is truly an emergency or simply an end-run around competitive bidding rules. PEFA data shows that in 2014 less than 50 per cent by value of all procurement contracts were let competitively. Finance Ministry data shows that in 2016 the percentage had fallen to seven and through the first nine months of 2017 slightly more than five per cent.

The new procurement law and related changes in the government ethics statute strengthens conflict of interest standards. The procurement law now requires members of the tendering committee to sign a statement stating they have no connection to any bidder, and the revised ethics law requires more government officials to file a financial disclosure statement. Changes in the ethics law will soon also require government employees to list their financial interests on the disclosure statements-- making it easier to police conflicts.

6.2.1.2 Recommended reforms

Recommendation 1: Adopt the Open Contracting Partnership data standards

Transparency is only as good as the ease with which citizens can access public financial actions. In Armenia, the ease of accessible information is a weakness. While the government has established a single, comprehensive e-procurement portal, with a wide range of pertinent information, the disclosures suffer from inconsistent and non-standardized variables. Figure one below is a printout of beneficial ownership data from the portal. As a visual inspection reveals, it cannot be read. Nor can the data be discerned by text recognition

software. Adopting the data standards promulgated by the Open Contracting Partnership would remedy such problems.

Figure 1. Armenia: Printout of Beneficial Ownership Data

[illegible]

Recommendation 2: Bulk downloads per year either in CSV or JSON format by calendar year

Large data aggregation broadens the outreach for citizens to monitor outcomes of the public procurement process. Additionally, these formats are data agnostic, which extends the basis for business intelligence on the Armenian procurement sector.

Recommendation 3: Provide physical addresses for private firms in the award notifications

Physical addresses are important to cross-reference if more than one firm operates from the same location. This is a useful source of information for bid-rigging or collusion by multiple firms from similar owners or network linkages.

Recommendation 4: Provide estimated price for contract value in electronic form

This variable is only available sporadically in word documents and PDFs and should be available in electronic form in the e-procurement site.

Recommendation 5: Include administrative unit for purchasing authority or place of performance (if applicable) for goods and services

The administrative units provide access to geo-referencing to monitor expenditures relative to population density and other characteristics to scrutinize if expenditures are justifiable.

Recommendation 6: Provide comprehensive access to private firm registry

Interviews suggested that access to information on private firm information is currently only available for a fee to citizens and only available to other bureaucratic departments with strict legal justification. Efforts should be made to provide basic information on private organizations free of charge and without legal justification.

Recommendation 7: Debar individuals responsible for procurement violations

Currently, if a company is found to have paid a bribe or otherwise corrupted the procurement process, it is ineligible to compete for public contracts for two years. But only the company is debarred, not those individuals it employed who committed the wrongful act. This omission means they can simply create a new company to bid for future contracts. This loophole should be closed and in reviewing debarment policies policymakers should consider lengthening the period of debarment from two years. For serious violations, some EU member states and international organizations impose a lifetime ban.

The Armenian authorities may wish to review the reported slow payment of government suppliers as well. Along with Georgia, Armenia scored lower than any EU member state and both Moldova and Ukraine on the World Bank's supplier payment rating (see Table 6). Where payments are delayed or payment procedures are cumbersome and time-consuming, the risk of corruption is ever present. Suppliers may be tempted to pay bribes to receive what they are owed quickly and in full; alternatively, government personnel may be tempted to seek a bribe to timely process a payment request. A reputation for late-payments can discourage companies from bidding, dampening competition and thus raising corruption risks.

6.2.2 Georgia

6.2.2.1 Background

Previous assessments by the EBRD, PEFA, the World Bank, and TPPR found Georgia to be a pace-setter on procurement reform among emerging market economies. Georgians say what prompted reform was a 2008 World Bank report concluding the procurement system was at "high risk" of corruption. A law was then enacted in December 2010 containing numerous reforms. The most important one scrapped paper-based tenders in favour of electronic procurement. Continued automation and computerization since has made the procurement system ever more transparent. As Tables 8 and 9 show (pages 22 and 23), the eProcurement System, the official portal operated by the State Procurement Agency, provides access to all information related to public procurement in Georgia: annual procurement plans, tender notices and documents, bids and bidding documents, decisions of tender evaluation commissions, all relevant correspondence, contracts and amendments to the contracts, and payments made through the Treasury.

Greater transparency has opened the system to more firms on non-discriminatory terms, encouraging greater competition and thus minimizing corruption risk. Automation has made it easy to introduce corruption risk management tools. For example, procurement authorities can now easily monitor whether an agency is awarding an unusually large number of contracts to the same firm or a tender has been tailored to favour a certain bidder.

Electronic tendering is used for purchasing homogeneous objects where the contract price is equal to or above GEL 200,000, or about € 67,000. The tender notice and accompanying documentation must be public for at least 15 days. The winning bidder is selected using software that allows for a reverse auction. As the auction progresses, the price decreases as sellers are given the opportunity to submit ever lower bids while still meeting the specifications of the original contract. In Georgia, there are three rounds of bidding, that is, bidders have three chances to lower their prices to win the contract.

Online reverse auctions put downward pressure on prices, a result not attainable using a single round, best price paper-based bidding system. Research shows that the use of reverse auction software can result in an average price reduction of 18–20 per cent following the initial auction's completion.

Figure two below shows how the system works. It is taken from the chapter on Georgia by Ana Chania and Kakha Demetrashvili of the Georgian State Procurement Agency appearing in the 2017 book *Digital Governance and E-Government Principles Applied to Public Procurement*.

6.2.2.2 Recommended reforms:

Recommendation 1: Require the disclosure of beneficial ownership information

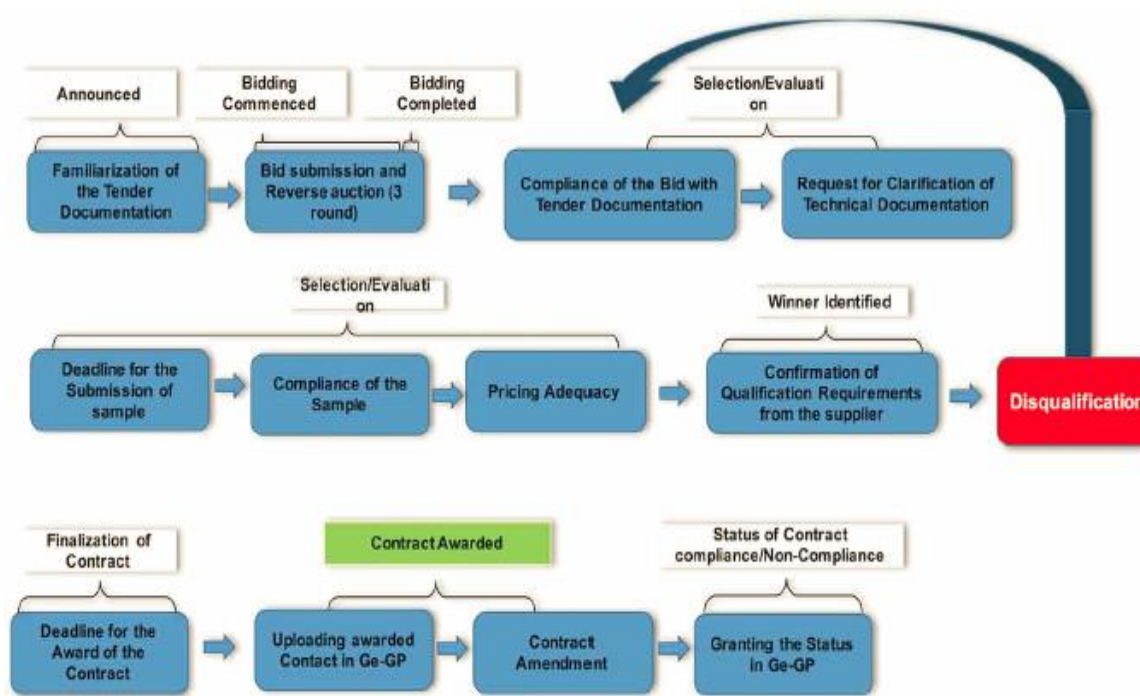
A global consensus exists that knowing the identity of the natural persons behind a company bidding on a public contract reduces corruption risks. Georgian policymakers have long acknowledged the importance of determining the beneficial ownership of bidders, and at the 2016 London Anticorruption Summit the government pledged to “take steps to ensure transparency of the ownership and control of all companies involved in public contracting.” Georgia should move expeditiously to fulfil this commitment and in doing so can draw on the experience of neighbouring Armenia.

Recommendation 2: Debar individuals responsible for procurement violations

Order 19 of the chair of the State Procurement Agency, issued February 29, 2015, and updated January 24, 2017, provides that suppliers failing to comply with procurement rules can be barred from competing for a public contract for one year. A review of recent debarment actions revealed that while companies were debarred, the individuals it employed who committed the violation were not. With smaller companies owned by a handful of persons, the owners can easily circumvent the debarment by creating a new company to bid for future contracts. Individuals as well as companies should be subject to

debarment. One year is likely too short a period, and policymakers should consider lengthening it. As noted in the section on Armenia, for serious violations, some EU member states and international organizations impose a lifetime ban.

Figure 2. Electronic Tender Procedures in Georgia⁹



Recommendation 3: Professionalize cost-estimating methods

Procuring entities can only judge the reasonableness of the bids they receive if they have a professional estimate of the expected cost. Good cost-estimates are especially critical where, as in Georgia, the estimate sets an upper-bound on what government can pay in a competitive tender. Furthermore, the State Procurement Agency cannot make an accurate estimate of what newly-introduced procurement rules save the government without exacting estimates of the costs of different tenders. A recent report by the state audit agency found cost- estimates to be high, and interviews with procurement staff disclosed concerns that, particularly on large infrastructure projects, insufficient resources were devoted to cost estimates. Cost-estimates should be prepared using the same rigorous methods used by EU member states. Those who prepare them should sign them, and the estimates should be periodically audited for accuracy. One rule of thumb is that if more than half an agency's

⁹ Ana Chania and Kakha Demetrashvili (2017). Public Procurement Reform in Georgia: The Way from Paper-Based Procurement to an E-Procurement System. In Dr. Rajesh Kumar Shakya (The World Bank, USA), *Digital Governance and E-Government Principles Applied to Public Procurement* (Chapter 7, pp. 151-169). Hershey, Pennsylvania: IGI Global.

estimates vary from the winning bid by more than 10 per cent, its cost estimating procedures need revision.

Recommendation 4: Increase oversight of the use of simplified procurements

A simplified procurement permits an agency to contract with the entity without going through competitive process. While sole sourcing can be necessary, when a single supplier holds the rights to a good or, in the language of the Georgian procurement law, there is an “urgent necessity” requiring an immediate purchase, sole sourcing is permitted. Sole sourcing is an area where the risk of corruption is high. For this reason, Georgia requires an agency seeking to use a simplified procurement to justify its request and obtain the permission of the State Procurement Agency and the government. While these are important safeguards, interviews disclosed that corruption risks remain significant. Government requests for its use, typically for high value tenders, are almost always approved, and the Ministry of Internal Affairs is not required to secure procurement agency approval.

Two procurement areas that may need attention, but which the report authors were unable to examine in depth, are the bid protest system and the slow payment of suppliers. Interviews disclosed concerns that the current bid protest system made it too easy to file a protest, clogging the system with meritless complaints. While, as discussed above, a bid protest system is one way to reduce corruption risks, its abuse can reduce its effectiveness if time that could be spent on well-grounded complaints is wasted on those brought to harass agency personnel or delay procurements. Like any court or tribunal, increases in filing fees, loser-pays rules, and other means are available to sort well-founded from groundless complaints. Care must be exercised to ensure the sorting method does not deter valid complaints.

As explained in the Armenian section, the World Bank’s assessment of supplier payment processes showed that along with Armenia Georgia scored lower on the ease and speed with which suppliers were paid than all EU member states plus Moldova and Ukraine. And again as explained above, where payments are delayed or payment procedures are cumbersome and time-consuming, corruption risk is present. The Bank’s *Benchmarking Public Procurement* draws attention to an issue that merits further review by Georgian authorities.

6.2.3 Moldova

6.2.3.1 Background

As the rankings on the EBRD, PEFA, and World Bank assessments show, since the 2012 EBRD assessment Moldova has made steady progress in reforming its procurement system. The procurement statute was substantially rewritten in 2015 to bring it closer to the standards in EU procurement directives. The new law, which took effect May 1, 2016, contains several provisions that when fully implemented will reduce corruption risks.

Notable changes include: the time for tender submission has been lengthened; those convicted of corruption or membership in an organized criminal gang within the past five years may no longer bid on a public tender, and conflict of interest rules have been tightened. Furthermore, appeals of decisions on bid protests are no longer heard by the agency letting the tender; after a year plus delay, an independent agency was established to hear them.

Additional reforms are still required, however. One is creating and maintaining a recognized profession of procurement specialists within the civil service. This demands first aligning pay grades and professional rankings for procurement staff across government. Until this is done, one agency will be tempted to “poach” those expert in procurement from one another no matter what overall government priorities are. An example occurred with the new bid protest agency. It hired away eight of the procurement agency’s most experienced staff by offering higher salaries, leaving the agency short-staffed in critical areas. Creating a procurement cadre will also require on-going staff training programs. A 2016 survey by the Moldovan Institute for Development and Social Initiatives, “Viitori,” found that almost 60 per cent of those involved in procurement from both the public and private sector believed procurement staff had “poor knowledge and low skills.”

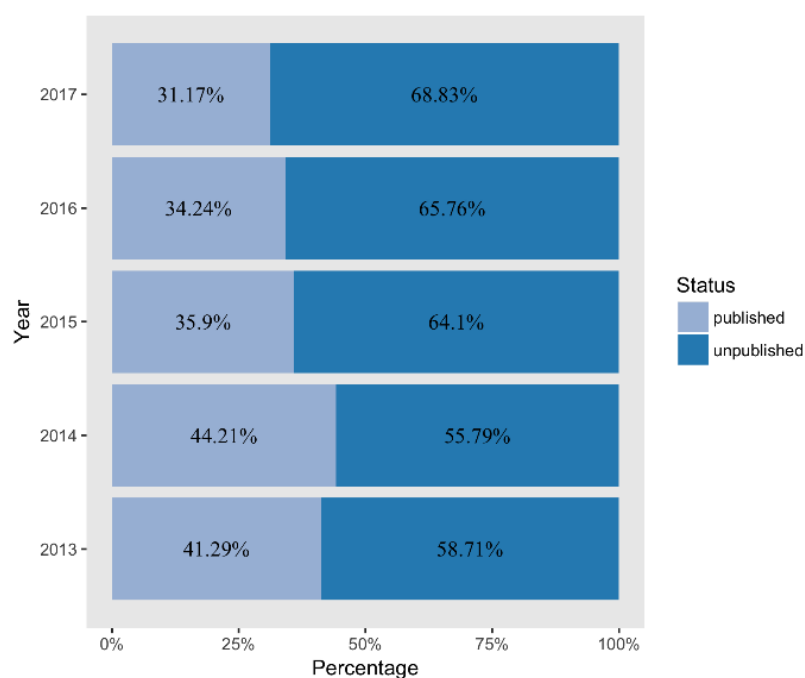
State-owned enterprises and municipalities need to be subject to the public procurement law. While a few state-owned enterprises and some municipal entities have vague internal guidelines, others have no guidelines at all. The risk of abuse in both cases is high; the corruption scandal shaking the foundations of the Brazilian state is the result of exempting the state oil company from the national procurement law. Several interviewees cited instances where state-owned road agencies had issued subcontracts to their own employees, clear conflicts of interest.

Conflict of interest rules need tightening and existing rules better enforcement. Interviewees explained that a common source of conflicts was the system of person networks, or *cumătrism* in Romanian, that exists in Moldova. Based on bonds of personal loyalty rather than financial ties, network membership leads decision makers to favour those in their network at the expense of the public interest. The current conflict of interest law does not address the problem. Current law does require members of group responsible for a tender to declare financial conflicts in writing but not only are these filings not made public, but members of the working group often fail to submit one.

Moldova has made noteworthy progress in the dissemination of public procurement data thanks to close cooperation between the Moldovan Ministry of Finance and the Open Contracting Partnership. The ministry’s website provides access to public procurement data in bulk on a yearly basis. Additionally, Moldova became the first country in the world to cooperate with the World Bank’s BOOST initiative with the result that it now provides data sets on public financial information.

But while Moldova scores well on the quality of the open source data availability, the picture is less bright when the quantity of contracts publicly available is considered. Open Contracting data (<http://opencontracting.date.gov.md/>) displayed in figure three shows that for the period 2013 – 2017, while the per cent of contracts publicly available has risen, it remains low; just under 69 per cent of public contracts were available for public inspection in 2017. The lack of transparency is compounded when factoring in the considerable discretionary capacity at the local level for matters dealing with financial and administrative practices. Local government employees can bestow special privileges on local firms or, thanks to a lack of specialized training, fall victim to fraudulent practices perpetrated by suppliers. An October 2016 joint study by the OECD and UCLG¹⁰, a global network of municipal and regional governments, emphasises that local administrative practice in Moldova is risk-prone in need of attention for public procurement reform.

Figure 3. Moldova: Published v. Unpublished Contracts



6.2.3.2 Recommended reforms

Recommendation 1: Make state-owned enterprises and municipal entities subject to the public procurement law

The public procurement law reflects the considered judgment of Moldovan policymakers informed by advice from the EU on how best to mitigate corruption risks in procurement. All government entities should be bound by it.

¹⁰ OECD and UCLG (2016), *Subnational governments around the world Structure and finance*, available at www.oecd.org, accessed December 2017

Recommendation 2: Establish a procurement cadre within the civil service and ensure those within it receive regular training

No matter how good the rules, without trained procurement staff to implement them, the rules are of little value

Recommendation 3: Increase the percentage of published contracts available through Moldova's Open Contracting Portal

The goal should be 100 per cent.

Recommendation 4: Broaden the training and professionalization of public procurement for civil servants in municipal areas and educate these authorities on common corruption schemes and red-flag indicators

Again, if those at the municipal level do not understand procurement law and are not trained on common ways bidders seek to evade the rules, corruption risks will remain.

Recommendation 5: Amend the conflict of interest rules to require disclosure of ties created through cumătrism; ensure all members of tender working groups file an interest declaration.

6.2.4 Ukraine

6.2.4.1 Background

The current public procurement law was adopted in April 2014 after extensive discussions with civil society and consultations with the EU, the EBRD, the World Bank, and other development partners. In early 2015 electronic procurement procedures were piloted on small contracts using standards developed by the Open Data Contracting Partnership. The pilot's success led the legislature to approve a new law in December 2015 making electronic procurement mandatory.

Ukraine's electronic procurement system, called ProZorro (Ukrainian for transparent), provides an enormous amount of information for civic monitoring with raw data access, analytic modules for red-flag corruption vulnerabilities, and interactive graphical outputs to condense large data into an intelligible form. As tables eight and nine show, of the four countries reviewed Ukraine is rivalled only by Georgia in the amount of information publicly disclosed. Moreover, the form in which the data is disclosed makes it especially easy for civil society groups and other government agencies to download it and perform their own analysis using Excel, Stata, SPSS, or any other commercial or custom statistics program. The one issue which should be addressed is the lack of direct CSV bulk downloads. Its absence means that users must know how to employ JavaScript Object Notation (JSON) to access the application programming interface needed to download the aggregate data.

ProZorro has been celebrated in the international procurement community, receiving the prize for best public sector initiative at the World Procurement Awards in May 2016. Despite, or perhaps because of, its success, questions about ProZorro have been raised by other Ukrainian agencies involved in procurement. One is whether it includes data on all procurements. A second is whether agencies find it too easy to evade the requirement to conduct electronic procurements, and a third is whether the government's rights to the system are adequately protected.

ProZorro's advocates have made many claims about the amount of money has saved from its use. These claims are based on the difference between the highest price a government agency is willing to pay on a tender and the price yielded through ProZorro. But as with the other countries reviewed, procedures for estimating the government's ceiling price are not rigorously specified. Their accuracy and thus the resulting savings when government pays less remains a question.

6.2.4.2 Recommended reforms

Recommendation 1: Eliminate exemptions to the public procurement law

The entities covered by the public procurement law is the subject of continuing controversy. An accounting chamber analysis found 80 changes had been made to the procurement statute in the last five years of which 90 per cent concerned what state-owned enterprises and other state-chartered organizations were covered by the law. The section of the law specifying coverage has become extraordinarily complex, and many entities which state auditors say are subject to the law argue they are exempt. As explained in the Moldova section, exempting state-owned entities from the law poses extreme risks of corruption. The government should amend the statute to make it clear that all state-owned enterprises and any other entity operating on behalf of the state or chartered by the state are subject to the law.

Recommendation 2: Verify beneficial ownership information

Ukraine was the first European state to write into law a requirement that all companies disclose their beneficial owners. Those that do not cannot bid on public tenders. At present, however, beneficial ownership information is not verified, and interviewees cited examples where simple internet searches showed owners different from what was on the disclosure form. The government pledged at the 2016 London Anticorruption Summit to have in place by June 2017 measures to verify beneficial ownership disclosures. It needs to make good on this pledge expeditiously.

Recommendation 3: Require agencies to justify to the Ministry of Economy the use of sole source contracting

Many agencies hold off on procurements until the end of the year and then invoke the “urgent need” exception in the procurement law that allows them to avoid competitive tendering and procure by issuing a sole source contract. Previously, the Ministry of Economy had to approve such exceptions, but a recent the law took this power away. That power should be restored, and agencies should have to justify in writing their reasons for using sole sourcing.

Recommendation 4: Debar individuals responsible for procurement violations

As in Armenia and Georgia, if a company is found to have paid a bribe or otherwise corrupted the procurement process, it is ineligible to compete for public contracts. In Ukraine, the period is three years. But only the company is debarred, not the owners or employees responsible for the violation. This omission makes it easy to evade sanctions by creating a new company to bid for future contracts. This loophole should be closed and consideration should be given to lengthening the period of ineligibility for serious offenses.

Recommendation 5: Modify ProZorro so users can download CSV in bulk

As explained above, it is difficult for those who do not know how to parse JSON text into datasets to take full advantage of ProZorro. Modifying ProZorro to provide bulk CSV downloads would greatly expand the number of individuals able to use ProZorro data to monitor the procurement system.

Recommendation 6: Resolve issues raised by ProZorro by other agencies

The questions raised about ProZorro by other agencies illustrates why Ukraine should establish a high-level coordinating body to ensure that all agencies involved in procurement exchange information with another. Audit agencies and enforcement authorities should know as much about ProZorro as those responsible for its operation; likewise, its operators should know and address the concerns raised by partner agencies.

Recommendation 7: Professionalize cost-estimating methods

As in the case of Georgia, Ukraine needs to ensure procurement cost estimates are rigorously conducted. The estimate sets an upper-bound on what government can pay in a competitive tender, and if it is too low, either the procurement will not occur or competitive procedures will be by-passed in favour of sole sourcing. Neither outcome serves the public interest.