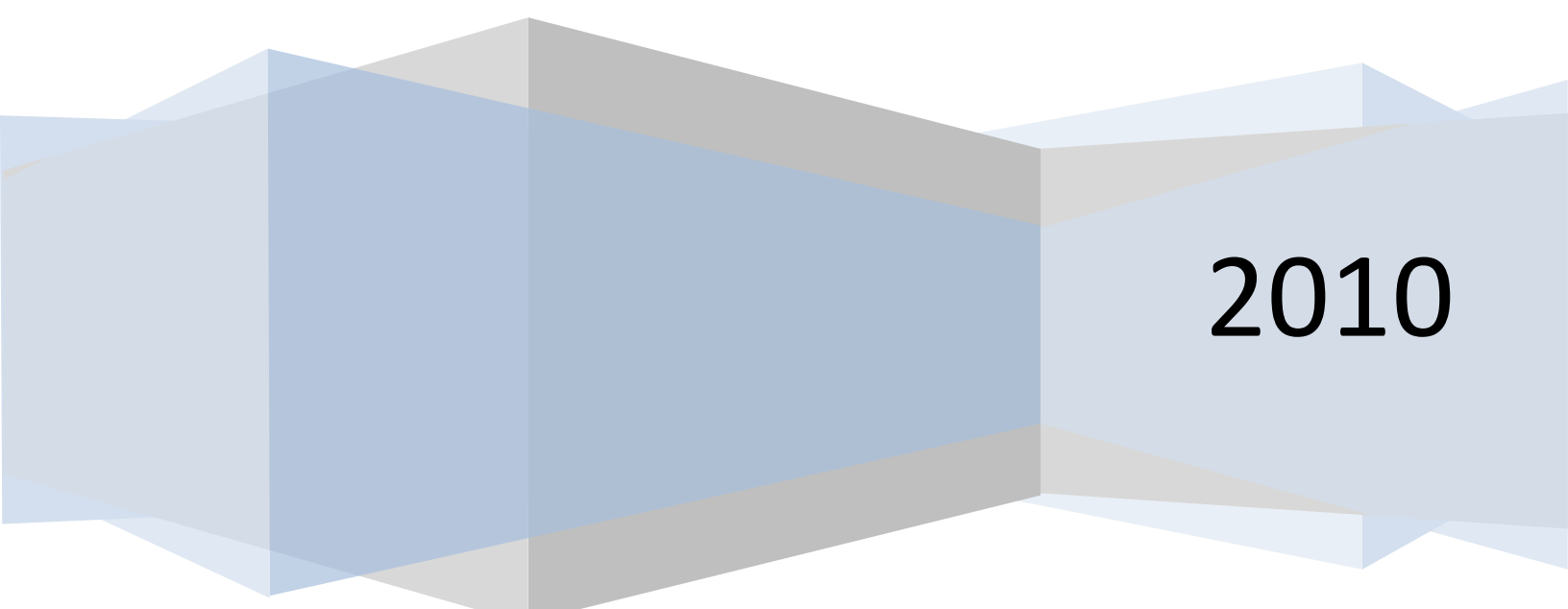


Albania - Preliminary Report on Benchmarking and Draft Capacity Assessment

Sponsored by the UNDP

Casals & Associates/Claro & Associates



2010

PREFACE

This report presents the findings and recommendations of an assessment of Albania's public procurement system. A team of international consultants ("the Assessment Team") from Casals & Associates and its strategic ally, Claro & Associates aided by three local consultants contracted by UNDP, working in coordination with the international donor community in Albania, carried out the work from March 17 through April 23, 2010. This is a *preliminary* document that includes facts, observations, findings, and commentary believed to be accurate as of today, with the caveat that the scope of the report is limited to a sample of institutions agreed upon in advance with UNDP-Albania, and that the assessment is based on interviews with and data made available by officials working in these institutions, interviews with and data made available by local stakeholders, other data made available by the Government of Albania, as well as data available in the public domain. The Assessment Team will issue a final report after a thorough and comprehensive review of possible comments, feedback, and suggested adjustments submitted by UNDP-Albania, Albanian Government Authorities, and other local stakeholders. Nothing in this preliminary report should be viewed as presupposing the results of the comprehensive review mentioned above and nothing in this report should be viewed as overruling or conflicting with the statements of fact or commentaries that will be contained in the final report.

The Assessment Team wishes to acknowledge the following representatives of the government of Albania (GOA) and members of the international donor community for their kind support and collaboration during the performance of the assessment: Mrs. Valbona Kuko, Director (DSDC) Council of Ministers; Mrs. Alpina Qirazi, DSDC Coordinator, Council of Ministers; Mrs. Klodiana Cankja; Director of the Public Procurement Agency (PPA); Mrs. Gülden Türköz-Cosslett, UNDP Resident Representative; Messrs: Norimasa Shimomura, UNDP Country Director and Arben Rama, UNDP Democratic Governance Cluster Manager; and Jakob Schemel, UNDP Management Support Officer; Ms. Xhesi Mane; UNDP Democratic Governance Program Associate; Francesca Acquaro, EU Commission's Delegation to Albania; Mr. Sean Huff, USAID Program Officer; Mrs. Iliriana Dana, USAID Deputy Program Officer; Astrid Wein, Head of Austrian Development Agency Office; Mr. Knut Leipold, World Bank Procurement Specialist; Mrs. Greta Minxhozi, World Bank Senior Operations Manager, and Nevila Como, Program Officer, Donor Technical Secretariat.

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I. INTRODUCTION

1. Background, Objectives, Methodology and Scope

- 1.1. In 2009, the Government of Albania (GOA), represented by the DSDC, requested the United Nations Development Programme (UNDP), to support their continued efforts to improve their public procurement system, through the conduct of an independent assessment of its public procurement system following an internationally recognized methodology, taking stock of the significant improvements undertaken by the GOA since the issuance, in 2006, of the World Bank's Country Fiduciary Assessment Report (CFA).
- 1.2. This request reaffirmed the GOA's commitment to deepen its procurement reform and its efforts to modernize its public procurement system, reflecting a long-term commitment to promote transparency and accountability in its public financial management administration; create an efficient market economy, increase the public trust in the professionalism of its civil service. These goals are also firmly anchored in its larger European Union (EU) accession agenda.
- 1.3. As a country with clear political and legal commitments to undertake a series of steps towards admission into the EU, Albania is aware of the need to further harmonize its legislation with the EU procurement directives. This harmonization process is aimed at bringing its public procurement system in line with the standards of the EU Member States before accession.

2. Objectives for the Assessment

- 2.1. The key objectives based on which the assessment of the GOA's public procurement system was conducted were to:
 - Benchmark the public procurement system in Albania against internationally recognized best practices;
 - Measure progress since earlier diagnostic exercises;
 - Prepare a detailed capacity development plan that can further elaborate implementation of the Corporate Plan, and provide a basis for mobilizing resources for necessary reforms and capacity development; and,
 - Develop a case study on this exercise for publication by UNDP on the assessment and development of a capacity development plan.

3. Methodology and Scope

- 3.1. The assessment was conducted utilizing the OECD/DAC Methodology for Assessment of the National Procurement Systems (Version 4, July 17, 2006). Accordingly, Base Line Indicators (BLIs) were scored not only in terms of the adequacy of the formal elements that characterize the four pillars of a public procurement system, but also contemplating the actual level of performance and compliance of the relevant elements that conform the system, through the application of Compliance and Performance Indicators (CPIs), whenever applicable.
- 3.2. The combination of BLIs and CPIs, along with the involvement of the broad array of stakeholders in the private and public sector, along with the members of the international donor community represented in Albania, provide a solid analytical foundation to support a comprehensive diagnosis of the GOA's procurement system.
- 3.3. Accordingly, the assessment encompassed, but was not limited to, a review of all relevant laws and regulations, previous assessments and reports from the World Bank, SIGMA¹ and US-AID; as well as interviews and case reviews of a sample of contracting authorities (CAs) at the national and municipal levels. The sample, which included 8 institutions at the national level and 2 municipalities at the local level (see Annex 2 for details), was selected by the "Advisory Group for the Procurement Assessment" ("Advisory Group" or "AG"). The AG consists of representatives of the GOA (Director of the DSDC, Council of Ministers and the Director of the Public Procurement Agency); UNDP; the World Bank; US-AID; EU Commission, and the Austrian Development Agency (see complete details in Annex 3).
- 3.4. The assessment was performed by Casals & Associates, Inc. ("Casals"), in association with its strategic ally Claro & Associates, Inc. ("Claro"), referred to jointly as the "Assessment Team."
- 3.5. The Assessment Team consisted of Fernando A. Fernandez, Senior Associate of Claro (Team Leader) and Aleksander Dardeli, Director of Rule of Law and Justice Reform Programs of Casals, with the expert assistance of three national consultants: Mrs. Silvana Rusi; Mrs. Zana Zvokopola; and Mr. Deni Guga. In addition, Mrs. Nevila Como participated in her capacity of expert liaison with the GOA and the donor community.
- 3.6. The assessment consisted of two phases; field and home based work for information gathering, interviews and benchmarking, followed by diagnostic analysis, validation, formulation of recommendations, development of the action plan, formulation of a case study and report writing. The field work took place from March 17 through April 23, 2010. During the field work the Assessment Team conducted interviews with major stakeholders from the public and private sectors; civil society and international donors; field reviews of tender processes, including the review of relevant documentation of a tender sample and their subsequent

¹ Support for Improvement in Governance and Management – A joint initiative of the OECD and the European Union, principally financed by the EU.

contract administration process. Annex 3 contains all notes resulting from the reviews of tender processes and their related contract management.

- 3.7. Upon conclusion of the field work and based on the information resulting from its review of previous relevant assessment reports; analysis of the legal framework and applicable rules and regulations for public procurement, along with the results of interviews and the analysis of a limited number of procurement statistics, the Assessment Team proceeded to analyze the system in terms of the OECD/DAC methodology. A complete detail for the rating of each pillar, indicator and sub-indicator is included in this report.
- 3.8. The second phase of the work, consisting of the formulation of a gap analysis and of a capacity development plan, and a facilitation exercise with the major GOA's stakeholders and the international donor community, is scheduled to take place during the week of May 17, 2010. Shortly after completion of this second phase, the Assessment Team will release its final assessment report, which will incorporate all relevant comments or changes resulting from the stakeholders' facilitation meeting, as well as the gap analysis, detail action plan, and case study.
- 3.9. Although the current public procurement system has benefited greatly from the improvements of the legal and regulatory framework through the passage of the amendments to the public procurement law (PPL), and the GOA's decision, since January 1, 2009, to mandate the use of the electronic procurement platform, the review found room for improvements in a number of areas as detailed under "Main Findings and Recommendations" below. These improvements are needed to make the system more agile; to further align it with internationally recognized best practices and EU-Directives; to help develop the national procurement market through the creation and nurturing of a strong partnership with the private sector; and to make it more open, predictable, efficient and transparent, thereby enhancing public trust in the system. The proposed reforms would also generate significant savings to the government by reducing the system's transaction and operating costs and, more important, by driving lower market prices for government purchases.
- 3.10. These reforms for the most part should focus on some improvements to the legal and regulatory framework (i.e. the PPL; Rules and Regulations; and, Procurement Manual). The most significant aspects of the reform, however, entail a more profound change management process inherent to:
 - Integrating the public procurement system with the public financial management system by linking the e-GP platform and the procurement plans with the budgetary system (as part of the ongoing development of the Integrated Financial System);
 - viewing and formally treating the public procurement process as encompassing from planning what, when, how, and how much to purchase to effectively implement public

strategy; through contract administration and execution; completing the public expenditure cycle;

- enhancing the institutional capacity and organization of the procurement function;
 - strengthening the day-to-day operations of the system to achieve consistency and predictability across the spectrum of Contracting Authorities (CAs); developing a strong partnership with the private sector and civil society; and implementing a common and integrated internal control framework;
 - continuing the modernization and strengthening of the internal and external audit functions;
 - enhancing, as part of a broader e-Government strategy, the e-GP platform both in terms of hardware and software, including the development of extended smart query capabilities;
 - simplifying and streamlining the current organizational setup of the procurement function, which today entails 1,700 procurement units involving 5,100 civil servants. The suggested streamlining is meant to significantly reduce the size and functions currently assigned to the procurement units embedded within the structure of each line ministry and public institution, and not to affect the organizational structure of the line ministries and public institutions themselves.
- 3.11. Moreover, most of the reforms proposed are designed to enhance transparency, predictability and public trust in the system, and reflect a new trend in public procurement, whereby greater emphasis is placed on performance than on conformance and compliance with formalities. This performance focus is especially prevalent in the EU community.
- 3.12. This review identifies a number of relevant issues along with possible actions that, if implemented, could help improve the overall performance of the public procurement system of Albania. To facilitate their consideration and subsequent prioritization, all issues identified have been categorized according to their degree of impact in the fulfillment of the four strategic objectives of public procurement systems: efficiency; transparency; increased competition; and conformance with international best practices. Likewise, the possible actions identified in connection with each issue, have been classified in terms of the estimated degree of difficulty; cost; and time involved in their implementation. The purpose of this matrix, which is included as Annex 1, is to provide the GOA with a tool to assist it in deciding how to formulate a successful strategic action plan for the next phase of the reform of the public procurement system.

4. Opportunity Presented by This Review

- 4.1. As a medium term goal, the GOA is committed to achieving successful accession to the EU, and to modernizing its public financial management and procurement systems. This review provides the GOA as well as all major stakeholders with an insightful understanding of the issues affecting the current system and the possible ways to consolidating the improvements already achieved, while continuously closing the gap with internationally recognized best practices and EU Directives. This approach is aimed at allowing the GOA to plot a defined improvement plan sequencing the actions in terms of their expected degree of impact towards continuously fostering the overall betterment of the system.
- 4.2. Since the 2006 CFA performed by the World Bank, the GOA, supported by and working in close coordination with UNDP; the EU Commission; the World Bank; US-AID; and other relevant members of the international donor community, has been improving the public financial management and procurement systems. Currently, the World Bank is financing a full-scope system audit of the e-GP platform, to take stock of recent updates to implement the recommendations resulting from a previous audit performed with the support of US-AID, in 2008². Likewise, the EU through the Twinning Program, has been supporting the strengthening and modernization of the internal and external audit functions, and is currently finalizing its plans to continue supporting the improvement of the public procurement system through the IPA 2008.
- 4.3. Through this assessment, conducted under the oversight of the AG, assembled by UNDP, all major stakeholders have the opportunity to choose which actions they may wish to support through endorsing a common diagnostic and action plan, thus further optimizing the overall effectiveness of international cooperation in Albania.

² Systems audit performed by KPMG.

II. OVERVIEW OF THE EXISTING SYSTEM

The following briefly describes the main features of the Albanian procurement system.

5. Institutional Organization

5.1. The PPL and its implementing legislation sets up a procurement organization that consists of a central Public Procurement Agency (PPA), which is legally responsible for regulation and oversight functions, and approximately 1,700 functionally independent contracting authorities (CAs) at central and local government levels. Complementing this structure, the 2007 amendment of the PPL created a Directorate for concentrated procurement at the Ministry of Interior on behalf of the Executive Branch; a Public Procurement Commission (PPC), which was established by law No. 10270 and became operational in April 2010; and a Public Procurement Advocate (PPAV), a non-binding ombudsman who provides advice and guidance³.

The PPA is legally established as a “central body” reporting directly to the Prime Minister, and financed by the state budget. The PPA is responsible for:

- a) Drafting legislation and regulations for the approval of the Council of Ministers (CoM);
- b) Monitoring procurement activities;
- c) Producing the “Public Procurement Bulletin”;
- d) Promoting and organizing the training of central and local government officials involved in procurement;
- e) Assisting contracting authorities by providing advice to ensure adequate and consistent application of the PPL; and,

5.2. While no official information could be obtained to ascertain the work force currently assigned to working in the public procurement organization, as described above, a conservative estimate, based on the PPL⁴, which calls for, as a minimum, 3 professional staff per CA, is of 5,100 civil servants assigned to public procurement.

5.3. A particular feature of the Albanian system is that amendments to the PPL and to the Rules and Regulations are passed by the Council of Ministers (CoM) through “Decisions,” and formally approved by the Parliament.

5.4. The PPL constitutes the primary legislation on public procurement, complemented by the Rules and Regulations approved by the CoM, which are aimed at providing further guidance on the

³ The PPAV directly conducts investigations on allegations received about potential violations of the PPL, including potential cases of fraud and corruption.

⁴ PPL Chapter V, Article 1(b).

application of the Law. While a procurement manual⁵ exists, it is not in use since it was developed prior to the enactment of the 2009 amendments to the PPL.

6. Institutional Capacity

- 6.1. Through the 2009 amendments the PPL was significantly overhauled, closing the gap with the EU Directives. These many changes to the law, coupled with the CoM's decision to mandate all procurement tenders to be processed electronically through the e-GP platform exacerbated even further a deficient capacity of the human resources responsible for the day-to-day operations of the system throughout the 1,700 CAs.
- 6.2. While the PPA, working in coordination with the Training Institute for Public Administration (TIPA), which controls the budget resources for the training of all civil servants in Albania, provided training in the use of the e-GP platform, the coverage of such training at central and local level only encompassed 1,600 of the 5,100 procurement officials. It should be noted that TIPA's annual budget amounts to \$90,000 a year; and that to fulfill its mandate, TIPA is required to train 6,000 government civil servants per year. Additionally, During October - November 2009, the PPA organized trainings funded through its own resources for contracting authorities. The total number of trained staff from contracting authorities reached 1,053 people. For 2010, the PPA has planned a repeat of the 2009 training in the use of the e-GP platform. However, no training had been conducted at the time this assessment took place.
- 6.3. The Department of Public Administration (DOPA), which is responsible for defining the job descriptions and the career stream of all government civil servants does not provide for a separate job description and career path for public procurement officials. Accordingly, the type of expertise and professional formation of procurement officials varies widely across the system, and the lack of incentives coupled with budgetary constraints, hinder the ability to attract qualified professionals.

7. e-GP Platform

- 7.1. Introduction of the e-GP platform undoubtedly had a very positive effect in reducing corruption and overall opacity of the public procurement system, while increasing transparency. As an example indicative of this positive trend, the average number of offers per bidding process increased from 2 in 2008, to more than 6 in 2009; while the number of complaints was reduced from 1 every 21 offers to 1 every 33 offers.

⁵ Financed through a US-AID grant in 2007.

- 7.2. The e-GP platform was developed and implemented (software and hardware) with the support of the Millennium Challenge Corporation (MCC) and US-AID, in 2007. According to US-AID, the e-GP platform was not designed to accommodate the volume of transactions currently being processed. Although the e-GP platform was upgraded during 2009 in terms of number of servers and software, lack of a suitable archive solution coupled with the sheer number of transactions is significantly affecting the processing capacity of the system. Unless an archive solution is implemented soon, the ability of the e-GP platform to keep live transactions for more than a year becomes questionable. Lack of an archive solution also precludes using the system for audit and control purposes and affects the running of queries, given that most of the processing capacity is absorbed by the relatively high volume of information that has to be processed by the system every time a query is run.
- 7.3. The procurement information in the tables below corresponds to manually processed transactions for 2007 and 2008, and electronically for 2009.

Table 1 – Bidding Processes from 2007 through 2009

Number of Tenders Processed						
2007	Below Threshold	Open Tenders	Restricted Procedures	Other Procedures	International Open Tenders	Total
Civil Works	971	1,170	8	16	1	2,166
Goods	1,150	1,101	11	26	0	2,288
Services	674	505	3	56	0	1,238
Total	2,795	2,776	22	98	1	5,692
	49.1%	48.8%	0.4%	1.7%	0.0%	100%

Number of Tenders Processed						
2008	Below Threshold	Open Tenders	Restricted Procedures	Other Procedures	International Open Tenders	Total
Civil Works	689	738	2	197	7	1,633
Goods	1,701	1,839	9	16	22	3,587
Services	1,039	1,852	2	2	5	2,900
Total	3,429	4,429	13	215	34	8,120
	42.2%	54.5%	0.2%	2.6%	0.4%	100%

Number of Tenders Processed						
2009 ⁶	Below Threshold	Open Tenders	Restricted Procedures	Other Procedures	International Open Tenders	Total
Civil Works	725	447	4	217	3	1,396
Goods	1,853	1,154	7	5	5	3,024
Services	1,252	1,599		3	3	2,857
Total	3,830	3,200	11	225	11	7,277
	52.6%	44.0%	0.2%	3.1%	0.2%	100%

⁶ Open tenders represented approximately from 90% - 93% of the total procurement value during the years 2007 – 2009, while small value purchases represented approximately 6% - 7% during the same period.

7.4. The scope of the public procurement market in Albania for the years 2005 through 2009 (actual) and 2010 (estimate) in billions of Albanian lek is as follows:

INDICATORS	2005	2006	2007	2008	2009	2010 (a)	2010 (b)
1. Operation & Maintenance	24.5	22.8	25.3	28.8	31.8	32.3	37.3
2. Capital expenditure, of which:	38.4	51.1	57.0	93.8	105.1	67.4	86.1
2.1 Domestic financed	24.3	35.4	48.2	50.2	82.5	38.6	59.5
2.2 Foreign financed	14.1	15.7	8.8	43.6	22.6	28.8	26.6
3. Total O&M + Capital expenditure	<i>62.9</i>	<i>73.9</i>	<i>82.3</i>	<i>122.6</i>	<i>136.9</i>	<i>99.7</i>	<i>123.3</i>
4. GDP	814.8	882.2	966.7	1,087.9	1,143.4	1,242.8	1,242.8
5. O&M / GDP	3.0	2.6	2.6	2.6	2.8	2.6	3.0
6. Capital expenditure / GDP	4.7	5.8	5.9	8.6	9.2	5.4	6.9

Source: Ministry of Finance, INSTAT

(a) 2010 Budget (after deducting frozen funds)

(b) Macro Framework 2010 (Decision 7 January 2010)

7.5. Consistent with the PPA's view that its procurement responsibilities end with the award of the procurement contract, the e-GP platform does not capture any information pertaining to contract management. Consequently, vital information such as changing orders; actual quantities of goods delivered; actual amounts paid; and other relevant information on contract performance and completion falls out of the scope of the PPA, and rests solely within the purview of each government entity. Furthermore, the e-GP platform is not linked to the budget system, for which automatic verification of the availability of funds cannot be effected through the e-GP platform as a pre-condition for initiating a tender process. Although the primary responsibility for ensuring proper availability of funds prior to initiating a purchase order rests with the appropriate line ministry or public institution, the e-GP platform ought to become the primary control for ensuring the sufficiency of budget funds⁷.

7.6. Following an independent audit of the e-GP platform conducted by KPMG in 2008, with a US-AID grant, the PPA commissioned an overhaul of the e-GP platform in 2009 to implement several critical deficiencies affecting data access and security. An audit of the e-GP platform will be conducted early in 2010 by an independent consulting firm contracted under the financing of the World Bank.

7.7. Based on current PPA's estimate, the sheer volume of transactional information resulting from 2009 procurement processes has almost fully utilized the storage capacity (i.e. archiving capacity). Furthermore, the existing platform has very limited query capabilities and does not take advantage of its ability to store live data to produce information to support decision

⁷ One of the observations resulting from the review of procurement transactions reviewed revealed serious deficiencies in the management and control of budgetary appropriations which are subsequently changed following the approval of the purchase order.

making. Consequently, along with further improvements to the software to modernize its platform and make it more user friendly and able to feed the strategic planning and decision making process, it is vital to seek a medium-term solution for the archiving of data. This in turn, would allow for appropriate quantities of data to be stored, permitting data-mining to occur, and relieving computer processing resources that are currently absorbed in the processing of transaction information.

- 7.8. In this regard, the upcoming audit of the e-GP platform mentioned above, should provide GOA with the required information to guide the decision making process with regards to future upgrades or modifications of the current software and hardware platforms.
- 7.9. Connectivity, while relatively good at the central level, it is not yet consistent in the interior of Albania, which hinders the use of the system. This is an issue that should be considered as part of a broader e-Government strategy.
- 7.10. When the e-GP platform was designed, its security setup contemplated two profiles only, contracting agency, and PPA. Although according to PPA the e-procurement platform has a profile for internal and external auditors, such profile – which has been modeled after the audit law – can only be accessed once the auditors have communicated and obtained authorization from the head of the institution. Consequently, the SSA auditors have to request specific access to the tenders selected from the head of each institution they wish to audit. This constitutes an overly cumbersome process and contradicts the practice that both internal and external auditors should have unrestricted access to all transactions (except for the information maintained in the lockbox corresponding to ongoing tenders, due to confidentiality reasons)⁸.

8. Supervision and Control

- 8.1. As part of its commitment to modernizing its public financial management and procurement systems, on November 6, 2009, the CoM approved the “Policy Paper and Action Plan for the Public Internal Financial Control for 2009 – 2014” (PIFIC).
- 8.2. The PIFC recognizes the need to approve, among others, specific laws in external and internal audit, and the adoption of an internal control framework based on internationally accepted standards, like C.O.S.O.⁹ in the US.

⁸ Adoption of an unrestricted access profile for SAA auditors would necessitate a modification of the existing law creating the SSA, which requires the SSA to obtain permission from each line ministry and public institution it wants to audit, to access their systems and transactions. Revision of the law is highly recommended to eliminate an inherent limitation in the scope of the SSA audits, and should specify that the PPA should guarantee unrestricted access to SSA auditors for them to properly discharge their professional responsibility.

⁹ Internal control framework developed by the Treadway Commission of the Committee of Sponsoring Organizations, established by the U.S. Congress.

- 8.3. Albania has embarked on an ambitious and challenging path to modernizing its public financial management system. While initial steps towards adoption of an integrated control framework and modernization of the internal and external audit functions are beginning to take place, implementation of these changes will necessitate several years to come to fruition, and a considerable effort and resources to support a highly challenging and significant change management process that should not be underestimated since it's one of the most relevant elements in ensuring the success of the reforms.
- 8.4. Direct control of the public procurement system falls with the PPA, through its monitoring and oversight functions, and with the internal audit function exerted by each institution, while the external control function is the responsibility of the SSA.
- 8.5. Through an EU financed Twinning Program, the capacity of the SSA has been strengthened and modernized. This project also supported the strengthening and formal creation in all government institutions of an internal audit function. A review of reports issued by the SSA and the institution's internal auditors in the institutions reviewed by the Assessment Team showed a rather formalistic approach focused solely on compliance.

9. Market Development

- 9.1. While the majority of contractors and representatives from the private sector and civil society interviewed during the assessment expressed a favorable opinion of the e-GP platform and its ability to increase competition, most of them are concerned about the confidentiality of the process and fear that government procurement officials may have access to the contents of bids prior to bid opening, even if kept in the lockbox. While no proof of such complaints was offered, one of the chief elements contributing to this concern could be explained by the lack of a communications strategy and proactive engagement with the private sector by the PPA¹⁰.
- 9.2. The functions and responsibilities listed in the PPL for the PPA do not include the engagement of the private sector. Consequently, the PPA does not have funding in its budget to provide training to the private sector or strategy to proactively engage the private sector and develop a strong partnership to help build the local procurement market.
- 9.3. Although the Albanian private sector and the civil society have experienced a considerable development, particularly from 2006 through 2009, their level of organization and engagement with the government sector is characterized by some distrust and perceptions of lack of transparency and corruption. Nonetheless, the 2009 corruption survey published by Transparency International shows a relative improvement for Albania, which moved from position 111 in 2006, to 95 in 2009.

¹⁰ PPA is not legally required to engage with the private sector.

10. Legal Framework

- 10.1. Enacted in 2006, Albania's Public Procurement Law (PPL) provides a comprehensive legal framework for public procurement. It has been frequently amended in the past three years to reflect the provisions of Directive 2004/18/EC of the European Parliament and Council concerning the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Its initial version was modeled on other sources, particularly the UNCITRAL Model Law on the Procurement of Goods, Works, and Services (1994). Its internal organization is still reminiscent of the UNCITRAL¹¹ Model Law, but its substantive provisions have been significantly amended to ensure greater compliance with the *Acquis Communautaire*¹².
- 10.2. The PPL was amended in late 2009 to be brought into greater compliance with the provisions of EC Directive 2004/17 (Utilities Directive) covering entities that operate the water, energy, transport and postal services. The PPL has now brought utilities within its scope of application and includes important provisions for sectoral contracts (Article 58). The PPL also provides now for framework agreements (Article 35). The rationale behind introducing these new modalities was to enhance efficiency in the expenditure of public moneys for goods, services, and works.
- 10.3. Moreover, review procedures have been brought into greater compliance with the requirements of the EC Remedies Directives (89/665/EEC, 92/13/EEC and 2007/66/EC), establishing a PPC that will take over review functions of the PPA and by formally empowering the PPC to conduct timely and effective review of procurement complaints.
- 10.4. However, further improvement is advisable. The PPL amendments have not addressed concerns that its provisions on the scope of its application leave room for evasion by stating vaguely that "other contracts may be regulated by other legislation." Because the PPL does not apply to concessions, there is a lingering risk of overlapping between the legal concepts of "concession" and "procurement contract." A recent amendment based on the directives, which allows authorities the discretion of shortening up to a maximum of 7 days the time limit for responding to tenders that are announced electronically runs counter to best practice and the very concept of fair opportunity provided to bidders¹³.

¹¹ The internal structure of the law including definitions, principles and institutional set-up resembles the UNCITRAL model law

http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html

¹² The body of Community legislation by which all EU Member States are bound. Countries joining the EU must have implemented the existing *Acquis Communautaire* by the time of accession.

¹³ According to the PPA, shortening of time-limits for receipt of requests to participate and for receipt of tenders stipulated in article 43 of the PPL, paragraphs 1, through 7, was implemented based on the directives of the European Community which provide that whenever an e-procurement system is used, the contracting authority may consider it appropriate to reduce time-limits up to a maximum of 7 days. The Consulting Team is of the view that such reduction is ill-advised considering that the use of an e-procurement system does not necessarily contribute to reduce the amount of time required by bidders to prepare and submit their offer. In turn, such reduction may have the undesired effect of hindering the ability of the GOA to obtain good value-for-money.

- 10.5. The PPL is seen by government officials and users of the procurement system as highly complex and rather rigid, which in turn affects the operational efficiency within contracting authorities. The PPL establishes a highly complex procurement “machine”, the very existence of which makes it difficult to create institutional capacity in the PPA to carry out its regulatory and advisory functions effectively. The inherent complexity of the PPL stems from comments received throughout our field-work from both contracting authorities and bidders; consideration of the existing organizational structure consisting of 1,700 procurement units; and a comparison to other countries based on our cumulative experience in the field. Further, because of a significant number of amendments and the rather recent shift to adopt almost exclusively electronic procedures, the PPL in its entirety creates the impression that it has been stretched to its limits to accommodate various policy priorities and that, instead of a coherent whole; it resembles a changing patchwork of initiatives.
- 10.6. The PPL is an overarching regulatory umbrella for the operations of about 1,700 contracting authorities. While the PPL in itself simply borrows this structure from the Law on Budget (its appendix lists all the budgetary units of the Government which are in turn considered under the PPL procurement units), the sheer number of contracting authorities in a relatively small country such as Albania with modest human and financial resources makes uniform and effective application of the PPL difficult. Further, while fragmentation and decentralization of authority regarding procurement is indicative of greater responsiveness to government and/or public needs, it also risks shifting responsibility for decision-making to low tier government officials without proper accountability lodged in higher tiers of government.
- 10.7. The secondary (or subsidiary) legislation implementing the PLL has also evolved in the right direction. The Assessment Team takes note of several Council of Ministers Decisions including those establishing the Directorate for Concentrated Procurement, and amending the procurement rules to provide, among others, binding rules for effective e-procurement. The subsidiary legislation includes model tender documents for goods, services, and works. It also includes general conditions of contracts for public sector contracts.
- 10.8. However, further steps need to be taken to make the secondary tier of legislation more helpful for the implementation of the PPL and more responsive to the very concept of effective and transparent procurement. Despite important amendments to the PPL in 2009, little thought seems to have been given to the urgent need to reflect these amendments in the procurement rules. No amendments have been issued as yet. The PPA has yet to adopt a fully functional and widely embraced procurement manual which will effectively help contracting authorities and users. Some important concepts used in the subsidiary legislation do not seem to be conducive to transparent and effective procurement. To mention one example, the introduction and actual widespread use of the concept of the estimated value of a contract and the so called “ceiling on funds” (“fondi limit”) in many procurement procedures sets the stage for potential for errors or abuses.

III. MAIN FINDINGS AND RECOMMENDATIONS

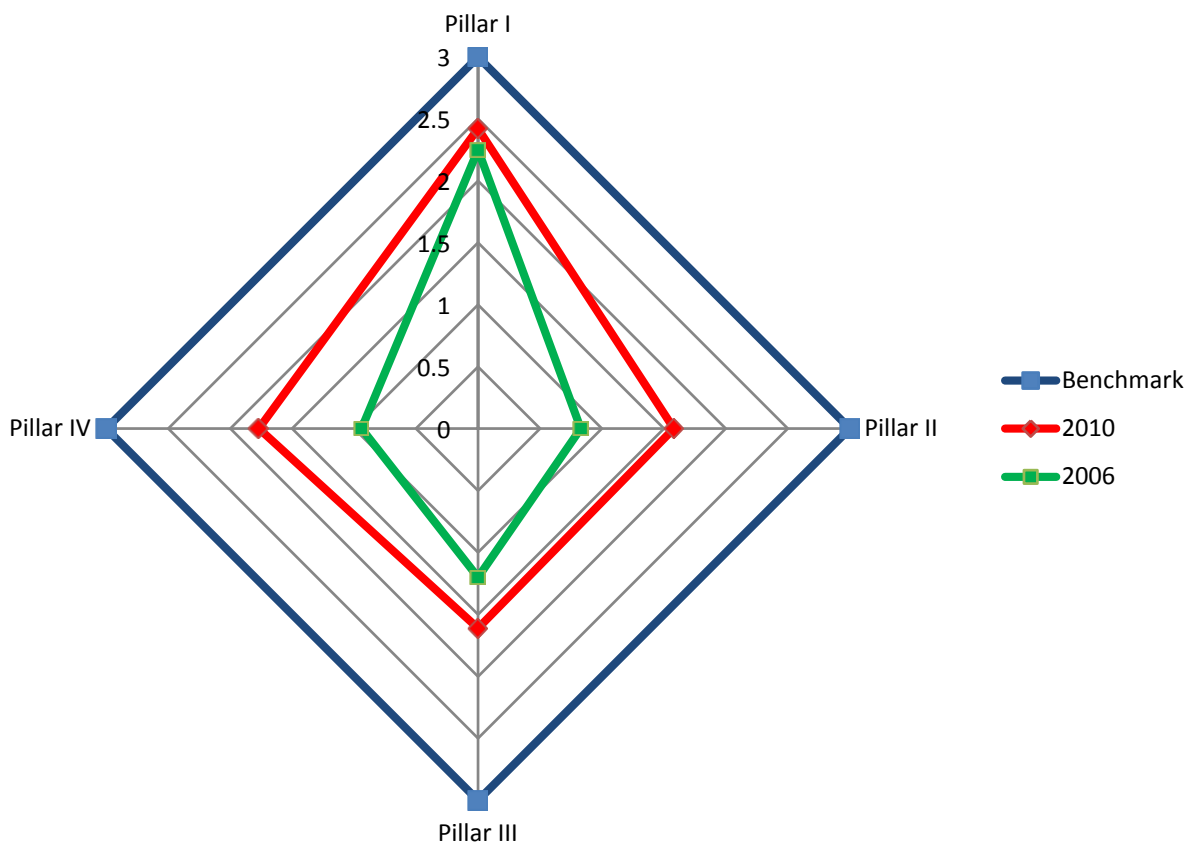
11. The main findings and recommendations presented here are aimed at ensuring that the system fosters better fiscal management and supports the GOA's objectives. This assessment does not present a traditional action plan, but instead includes a matrix of proposed areas for improvement and possible actions that the GOA is encouraged to consider (see Annex 1). The matrix is intended to serve as a tool for the GOA to use in deciding on the actions to be taken, its priorities, and the timing of implementation, thereby leading to the formulation of an action plan for improvements.
12. As in many other countries, decision makers in Albania have traditionally viewed public procurement as an administrative, almost clerical function (a series of purchasing events). However, procurement is now viewed internationally as a strategic government function that should be used to promote better fiscal management and to support the government's development policies. As such, its key objective is not control, but the system's ability to deliver works, goods and services efficiently and economically, within a robust framework of transparency, ethics, and accountability principles.
13. While the Albanian legal framework for public procurement system has undergone significant improvements; the capacity of its institutions; level of operations; market development; the internal control framework, and the internal and external control functions, have not evolved at the same pace. Consequently, while certain minor adjustments to the PPL are in order, the Albanian public procurement system has the opportunity to benefit the most from a series of actions towards:
 - implementing framework contracts for small purchases and purchases of energy;
 - discontinuing the practice of publishing the "limit fund";
 - discontinuing the use of a formula to identify abnormally low offers, replacing it with appropriate mechanisms to deal with "lowballing"
 - simplifying procurement processes;
 - modernizing and upgrading the e-GP platform;
 - enhancing the capacity of the PPA and CAs while significantly simplifying and reducing the current structure of 1,700 CAs through implementing a solid change management strategy;
 - developing a specific job description and career stream for public procurement officials and a training strategy to support it;
 - developing and implementing a strategy to proactively engage the private sector as a partner in the development of a more efficient, competitive, transparent and ethical procurement market;
 - fully integrating the procurement system with the public financial management system, and

- enhancing the planning function; adopting a common integrated internal control framework; and modernizing the internal and external control function.

IV. RESULTS FROM THE ASSESSMENT BASED ON THE OECD/DAC METHODOLOGY FOR PUBLIC PROCUREMENT SYSTEMS (VERSION 4)

14. Overall, the assessment of the 12 BLI indicators and its 56 sub-indicators, supplemented by the assessment of the applicable CPIs, is consistent with the various improvements introduced to the PPL and with the introduction of the e-GP platform as the sole conduit of public procurement in Albania since January 2009.
15. The two graphics below depict the assessed level of the public procurement system for each of the four pillars representative of the expected ideal capacity of a public procurement system (Graphic 1), and for each of the 12 BLIs (Graphic 2), as of March 2010, as well as the opportunities for improvements with respect to the benchmark. Furthermore, the graph also shows the improvements since the previous assessment conducted by the World Bank in June 2006. Table 2 also shows the assessed level of capacity for each pillar in comparative form for 2010 and 2006.

Graphic 1 – Assessment of the Public Procurement System of Albania



Graphic 2 – Assessment of the Public Procurement System of Albania

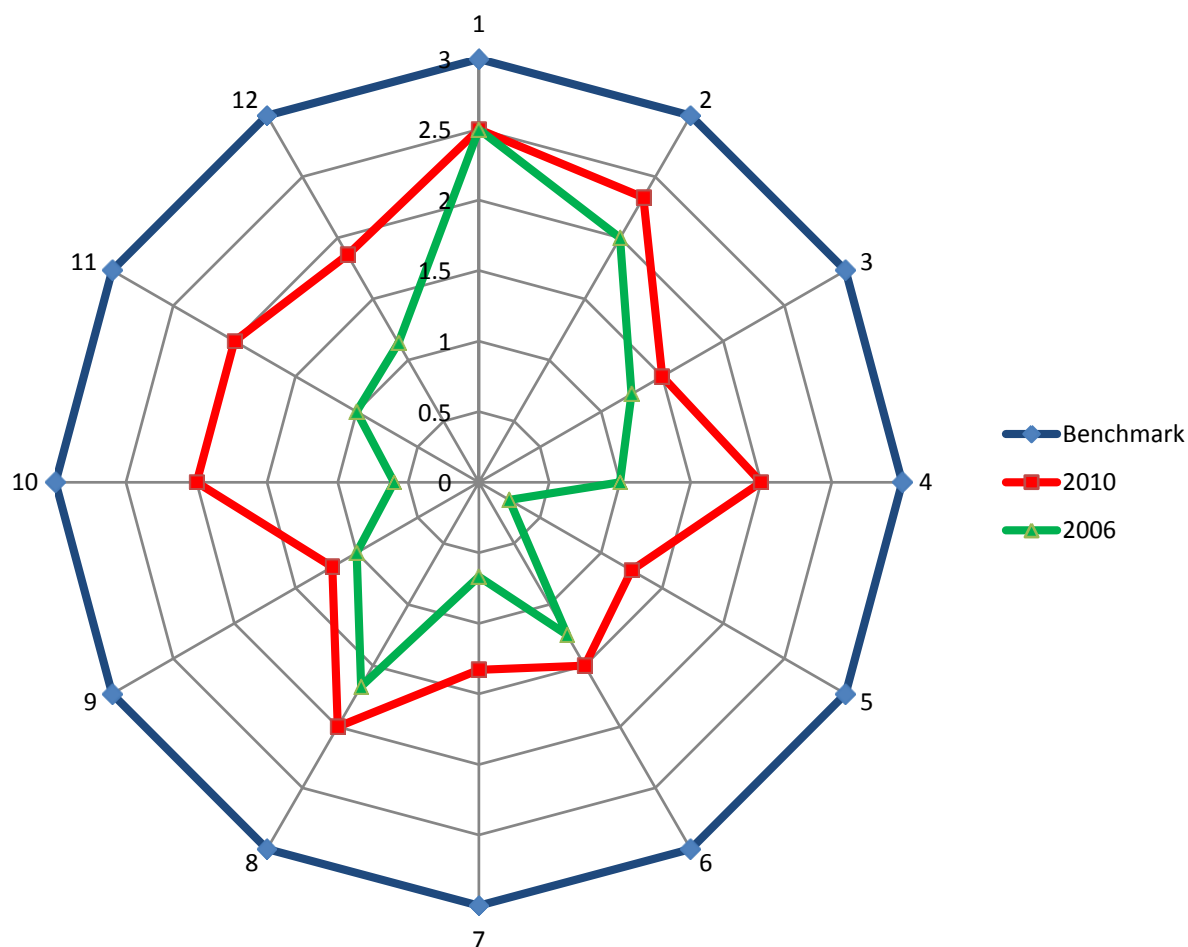


Table 2 – Assessed Level of Capacity of the Albanian Public Procurement System 2006 – 2009

Pillar	2010	Assessed Capacity	2006	Net Change
I. Legal Fmwrk.	2.42	Satisfactory	2.25	8%
II. Inst. Capacity	1.58	Relatively Low	0.83	81%
III. Market Dvlpt.	1.61	Relatively Low	1.2	25%
IV. Int. & Trpcy.	1.77	Relatively Low	0.94	79%

V. DETAILED BENCHMARKING ANALYSIS

16. This section provides a detailed analysis of the assessed level of capacity for each of the 12 BLIs and their 56 sub-indicators, classified under each of the four Pillars that are deemed –by the international community- representative of the capacity of a public procurement system.
17. Each sub-indicator is based on internationally recognized best practices in public procurement. The scoring system ranges from 3 to 0 for each BLI sub-indicator, with 3 representing the ideal level of compliance and performance with the stated standard. A score of 2 is for cases where the system exhibits less than full compliance and performance and consequently necessitates some improvements in the assessed area. A score of 1 indicates an area where substantive work is needed to attain a reasonable level of compliance and performance. A rating of 0 is the residual, indicating a failure to comply with the proposed standard. No decimals are admitted in the scoring of sub-indicators, while the scoring at the BLI and Pillar level correspond the arithmetical average of the individual scores for each sub-indicator. There is no aggregate scoring for the system as a whole since each Pillar refers to a different dimension of the system.
18. To facilitate the relation between the assessment analysis below and each of the relevant findings stated under Section III. – “Main Findings and Recommendations”, the matrix contained in Annex 1 classifies all findings under the corresponding Pillar.

PILLAR I. – LEGISLATIVE AND REGULATORY FRAMEWORK

19. A legislative and regulatory framework is the starting point for a sound governance system and as such is covered through Pillar I of the OECD/DAC Methodology. Pillar I encompasses two indicators and 14 sub-indicators, which have been scored following a scale from 0 to 3, as explained above.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
<i>Pillar I – Legislative and Regulatory Framework</i>		
<i>1 – Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations</i>		
<i>1(a) – Scope of application of the legislative and regulatory framework</i>	Since emerging in 1991 from four decades of Communist rule, and 10 years after devolution into lawlessness, Albania has undergone a remarkable transformation. Aggressive market reforms, government modernization, and active engagement with the international community have brought about NATO membership, a Stabilization and Association Agreement with the European Union (EU), greater freedoms, and better living standards. Expanding at an average rate of 6% per annum,	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>Albania’s economy is one of the fastest growing in the Balkans.</p> <p>Albania is politically organized as a parliamentary democracy. The President is the head of state and is elected to serve for a 5-year term by the Assembly of the Republic of Albania (hereinafter referred to as the Parliament). The President appoints a Prime Minister from the ruling Party. The Prime Minister nominates the appointees to the Council of Ministers for ratification in the parliament, and thereafter becomes the chairman of, the Council of Ministers. Executive power rests with the Council of Ministers.</p> <p>Enacted in 2006, Albania’s Public Procurement Law (PPL) provides a comprehensive legal framework for public procurement. It has been frequently amended in the past three years to reflect the provisions of Directive 2004/18/EC of the European Parliament and the Council concerning the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Its initial version was representative of other sources, particularly the UNCITRAL Model Law on the Procurement of Goods, Works, and Services (1994). Its internal organization is still reminiscent of the UNCITRAL Model Law, but its substantive provisions have been significantly amended to ensure compliance with the applicable <i>Acquis Communautaire</i>.</p> <p>In essence, the PPL and its implementing legislation sets up a procurement system that consists of a central Public Procurement Agency (PPA) with a regulatory/oversight function, approximately 1,700 functionally independent procurement units at central and local levels of government, a directorate for concentrated procurement on behalf of the Executive Branch, a Public Procurement Commission (PPC) (a body that reviews and makes determinations on administrative complaints); and a Public Procurement Advocate (PPAD), a non-binding ombudsman who provides advice and guidance.</p> <p>The PPL was amended in late 2009 to be brought into greater compliance with the provisions of EC Directive 2004/17 (Utilities Directive) covering entities that operate the water, energy, transport and postal services. The PPL has now brought utilities within its scope of application and includes important provisions for sectoral contracts (Article 58). The PPL also</p>	

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>provides now for framework agreements (Article 35). The rationale behind introducing these new modalities was to enhance efficiency in the expenditure of public moneys for goods, services, and works.</p> <p>Moreover, review procedures have been brought into greater compliance with the requirements of the EC Remedies Directives (89/665/EEC, 92/13/EEC and 2007/66/EC), establishing a PPC that will take over review functions of the PPA and by formally empowering the PPC to conduct timely and effective review of procurement complaints.</p> <p>In order to place recent changes in proper context, our assessment followed up on the recommendations of the World Bank Country Fiduciary Assessment of August 2006 (page 19). While great effort has been placed to bring the PPL into compliance with the directives, there are still a few recommendations that have not been formally incorporated into the law, such as the need for:</p> <ul style="list-style-type: none"> • further definition of emergency and force majeure; • further definition of non-discrimination; • selection of consultants for service contracts on the basis of technical qualifications alone; and, • providing an opportunity to debarred parties to protest the debarment. <p>The Consulting Team understands that the above definitions are already reflected in the appropriate body of law (Administrative Code). However, for purposes of transparency and completeness, it would like to encourage the PPA to consider adding a specific reference to the applicable body of law on the PPA’s web-site.</p> <p>The PPL’s scope is extensive. As stated in its Article 1, the PPL sets out the rules applying to the procurement of goods, works, and services. Some public contracts are exempted: defense contracts; secret contracts or contracts requiring special security measures; contracts regarding financial services, arbitration services, or broadcasting services; as well as contracts which are governed by agreements with other states or international organizations (Articles 5, 6, 7, and 8 of the PPL). Albanian authorities have yet to address earlier concerns,</p>	

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>raised by the World Bank and Sigma (a joint initiative of the EU and the OECD), that PPL’s provisions and the scope of its application, allows evasion and loopholes. For example, the PPL in its Article 4, states vaguely that “other contracts may be regulated by other legislation.” Although the preceding is based in the Directive, the Directive is considered as a starting point, and not necessarily indicative of international best practice. Given the fact that the PPL does not apply to concessions, there is a lingering risk of overlapping between the legal concepts of “concession” and “procurement contract.”</p> <p>We take note that amendments to the Law on Concessions are being prepared that purportedly would resolve this concern. However, as of now the governing legal framework is lacking in this regard.</p> <p>The Assessment Team, through its consultations, found that the PPL is considered by officials and users of the procurement system as highly complex and rigid, which in turn affects the operational efficiency within contracting authorities. Indeed, the PPL establishes a highly complex procurement system, which makes the creation of institutional capacity in the PPA difficult and impacts its ability to carry out its regulatory and advisory functions effectively. Further, because of a significant number of amendments and the recent shift to adopt almost exclusively electronic procedures, the PPL at times creates the impression that it has been stretched to its limits to accommodate various policy priorities and that, instead of a coherent whole, it resembles a patchwork of initiatives (though they may be commendable).</p> <p>As noted above, the PPL provides a framework that regulates the day to day activities of 1,700 contracting authorities defined in the Budget Law (its appendix lists all the budgetary units of the Government which are in turn considered under the PPL procurement units). The sheer number of contracting authorities does not seem commensurate with the constraints of a relatively small country with limited human and financial resources. Such overly heavy organizational structure makes uniform application of the PPL extremely difficult and unnecessarily costly. To underscore the significance of this point, if the average number of employees per procurement unit is 3 (as required by Council of Ministers’ Decision No 1 of</p>	

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009, Chapter V, Article 1(b)), then the PPL requires approximately 5,100 employees for its effective operation, a staggering number and cost given Albania’s size and resources.</p> <p>While this is a policy concern that does not necessarily relate to the formal soundness of the procurement legislation, it is emphasized because it has ramifications for the effective implementation of the PPL, and because it does affect the long-term viability of the system and the core principle of economy in the use of public resources.</p> <p>Further, fragmentation and decentralization of authority regarding procurement is indicative of a policy decision towards greater responsiveness to government or public needs. Legislators should be aware that this decentralization of authority could also shift responsibility to government officials at lower tiers, without proper accountability lodged in higher tiers of the bureaucracy. It is unclear whether policy options were analyzed or whether regulatory impact analyses were conducted that would clearly present arguments and counterarguments in favor or retaining this complex system or streamlining it. This is another policy concern that does not necessarily relate to the formal soundness of the PPL but that could have a negative impact on the integrity and accountability of the public procurement system.</p> <p>Access to legislation is reasonably good. Applicable legislation may be accessed for free through the PPA’s website (https://www.app.gov.al/), as well as through the online database of the Office of Official Publications (http://www.qpz.gov.al/).</p>	
1(b) – <i>Procurement methods</i>	<p>The PPL sets forth 5 different procurement methods: open, restricted, negotiated with or without publication, requests for proposals, and design contests (Article 29). The PPL explicitly provides that the open procedure is the default procedure. (Article 30). Restricted procedures are to be used when necessary to distinguish between a phase dealing with qualifications and a phase dealing with the actual responsiveness of the offer (Articles 29, 30). The use of a negotiated procedure with or without prior publication is</p>	3

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>intended to be exceptional. However, even under the application of the negotiated procedure without prior publication, the law calls for obtaining quotations from at least 5 economic operators. This in turn entails a competitive process¹⁴.</p> <p>The requirement for publication depends on how the value of the contract relates to the high or the low value thresholds (Article 31). The high value thresholds (Article 27) are currently set by secondary legislation at 1,200,000,000 ALL for public works and 200,000,000 ALL for goods and services (Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009). The low value thresholds are currently set at 12,000,000 ALL for public works, and 8,000,000 for goods and services (Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009).</p> <p>Article 29.5 of the PPL and Chapter VI 2) provides for small value purchase, as a simplified procedure, such simplification still requires appointment of a special commission of 3 members and to obtain at least “...three indications of prices of goods or services.” Consequently, neither the PPL nor its subsidiary legislation provide for the purchase of low value items or small purchased through direct contracting under petty cash accounts. This omission appears unwarranted and may lead to situations in which authorities have to incur needless administrative costs for purposes of implementing cumbersome procurement procedures for minor purchases. Additional subsidiary legislation for purposes of fully implementing the PPL provisions on framework contracts (see below) may provide a solution for the need to efficiently handle small purchases by specifying that framework contracts may be used, among, other for purposes for small purchases.</p>	

¹⁴ A review of tenders performed at the government electricity producing corporation KESH, for purchases of energy from neighboring countries, showed that use of the negotiated procedure entailed a competitive process and also yielded lower prices than those obtained through open international tenders.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>Chapter IV of Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009) is unambiguous in assigning responsibility at an appropriate level for the use of a specific procedure (the head of the Contracting Authority or his/her assignee).</p> <p>Article 28 of the PPL specifically prohibits the fractioning of contracts as a means of bypassing competition.</p> <p>Article 58 provides comprehensive umbrella rules and procedures for procuring sectoral or framework contracts. However, Article 58/3 – which would seem to exclude from the application of the PPL sectoral contracts for the resale and lease to third parties of, <i>inter alia</i>, energy, water, transportation and postal services – is vague and likely to generate problems in implementation. Also, Article 58/6 provides for an unnecessary exclusion from the scope of application of the PPL for purchases of energy, fuels and water if such goods are used for the production of energy. It should be noted that while the definition adopted by the PPL is the same as that included in the Directive, inclusion of this wording in the Directive assumes there is a separate legislation regulating public utilities and their procurement, which is not the case in Albania.</p> <p>Broadly speaking, public procurement under the PPL is open to foreign companies. The law is based on the principles of non-discrimination and national treatment for any economic operator.</p>	
1(c) – Advertising rules and time limits	<p>The legislative framework (both the PPL and the secondary legislation) provide clear rules and criteria related to, and indeed require, the public advertising of tenders in accordance with specified time limits of a sequence of steps.</p> <p>Article 38 of the PPL provides that notices for contracts valued above the high-value thresholds must be published in the Public Procurement bulletin as well as a newspaper of wide circulation in Europe. It also provides that notices for contracts valued below than the high value thresholds but higher than the low value thresholds must be published in the Public</p>	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>Procurement Bulletin. The Public Procurement Bulletin produced in Albanian only and is accessible for free at: https://www.app.gov.al.</p> <p>In the case of open procedures above the high value thresholds, the minimum time limit for submitting tenders is 52 days from the date of publication of the contract notice (Article 43 of the PPL).</p> <p>Article 43 of the PPL also specifies, among other, the following time limits:</p> <ol style="list-style-type: none"> a. for requests to participate, 20 days from the date of publication of the contract notice for restricted or negotiated procedures with publication valued above the high threshold; b. for receipt of tenders, 20 from the date of sending the invitation for restricted procedures; c. for receipt of tenders, 30 days from the date of publication for open procedures between the high and low value thresholds; d. for requests to participate, 15 days from the date of publication of the contract notice for restricted or negotiated procedures with publication valued between the high and low thresholds; e. for receipt of tenders, 15 days from the sending of the invitation for restricted procedures valued between the high and the low thresholds. <p>Article 43 also provides for a reduction by 7 days in the case of the 52 day time limit or the 30 day time limit (described above) if electronic means are used. Although such reduction was implemented based on the directives, it should be mentioned that the directives do not “mandate” an across the board reduction of time-limits by 7 days, but recognize the ability for the contracting authority to reduce time-limits up to a maximum of 7 days. The Assessment Team views this provision as ill-advised. The purpose of the time limits is to ensure that bidders have adequate time to respond to a tender. While the introduction of e-procurement may arguably make it easier for authorities to evaluate tenders, it does not necessarily make it easier for bidders to respond to a tender.</p>	

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
<i>Pillar I – Legislative and Regulatory Framework</i>		
	<p>As a consequence, bidders may not have appropriate time to prepare their bids and this could result into the GOA not being able to get real value-for-money through public procurement.</p> <p>Also, the 52 day minimum specified in Article 43 of the PPL is impractical and incompatible with procedures used for sectoral contracts under Article 58 of the PPL and particularly those for the purchase of energy. The PPL needs to be amended to provide for more realistic minimum periods that are applicable to procedures for sectoral contracts.</p> <p>Article 39 of the PPL provides the main criteria regarding contract notices. Chapter III, Article 2(a) of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 specifies comprehensive requirements for notices of contract awards.</p>	
1 (d) – <i>Rules on participation</i>	<p>Article 45 of the PPL provides reasonable exclusion criteria for prospective bidders. These include: criminal convictions, professional misconduct, insolvency, and failure to pay taxes. Article 46 of the PPL provides rules about the qualification of bidders. <u>Except for Paragraph 1(b) of Article 46 which provides for qualification on the basis of technical ability, which may create an opening for arbitrariness,</u> the rules are intended to be non-discriminatory and to encourage participation by small and medium enterprises. They also, to the extent, possible favor pass/fail type criteria. The Consulting Team recommends GOA to further refine applicable criteria in the secondary legislation.</p> <p>The rules are also intended to be proportionate to the nature and size a contract to be awarded. Article 47 of the PPL provides the disqualification criteria. Our review has not found any provision or legal instrument that would seem to favor participation by government owned or controlled economic operators.</p> <p>One point of concern is that while grounds for debarment seem by and large clear, neither the PPL, nor the subsidiary legislation provide the applicable administrative rules or procedures as to how debarred parties can appeal the debarment. Debarment procedures are contained in the</p>	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>Administrative Code. However, for sake of transparency and completeness of information, the Consulting Team encourages PPA to include a specific reference to the Administrative Code in the PPA’s web-site.</p> <p>Also, the Consulting Team underscores the fact that while the overarching rules on participation and qualitative selection are generally adequate and non-discriminatory from a normative point of view, the supporting secondary tier of legislation is, in certain instances, vague and creates room for potential errors or abuse.</p>	
1(e) – <i>Tender documentation and technical specifications</i>	<p>Article 41 of the PPL provides that each CA will use standard documents, as provided by the public procurement rules. Article 42 of the PPL provides the framework for clarifying and modifying tenders. Article 13 of the PLL states that the PPA should favor the use the international standards in the preparation of technical specifications.</p> <p>Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 establishes in Chapter III the minimum tender documents by enumerating elements of a general and specific nature.</p> <p>Chapter V, Article 2 of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 specifies the rules governing the preparation of technical specifications. According to it, each Procurement Unit is responsible for drafting the technical specifications except in cases where it lacks expertise. In these cases, the technical specifications are drafted on behalf of the Contracting Authority by specialists within or without the Contracting Authority.</p> <p>Article 23(3) specifically states that the use of international standards and, in their absence, other standards, is encouraged when preparing tender specifications. While this general principle is commendable, the Consulting Team’s review shows that these provisions necessitate of further guidance and clarification in the Public Procurement Rules.</p>	3

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
1(f) – <i>Tender evaluation and award criteria</i>	<p>Articles 53 and 54 of the PPL provide the general rules for the evaluation of tenders. These rules make possible, in principle, the submission of alternatives if a Contracting Authority does not receive economically sound tenders. Chapter V, Article 4 of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 provides more detailed rules that must be made public in advance of the tender evaluation. These detailed rules are largely sound. Although technical criteria for tender evaluation are of the pass/fail nature, the low level of institutional capacity and the overall complexity of procedures warrant greater specificity. This could be achieved through a revision of the Procurement Regulations.</p> <p>Article 58 of the PPL specifies the procedures for awarding sectoral contracts. These procedures are compatible with the <i>Acquis Communautaire</i> and generally sound.</p> <p>Chapter VI, Article 3 of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 provides step-by-step rules for contracts for services. These rules sufficiently distinguish between the technical and monetary aspects of the evaluation process by providing for a points-based, two-tier evaluation process, the first tier of which focuses on the technical proposal and the second tier of which focuses on the cost proposal.</p> <p>Article 56 of the PPL provides the framework for dealing with abnormally low tenders. Chapter V, Article 4(ë) of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 provides the rule for assessing whether an offer is abnormally low. According to this provision, an offer is abnormally low when it is greater than the arithmetical median of all the discounts (difference from the ceiling price) of all remaining offers plus one fifth of that difference¹⁵.</p>	2

¹⁵ For example, if the fund limit is 750,000 lek, and five offers are received as follows: 749,950; 749,000; 749,400; 748,900; and, 745,000; the formula would calculate and compare the following factors: Average price offered $(749,950+749,000+749,400+748,900+745,000)/5 = 748,450$ lek; Difference with fund limit = $(750,000 - 748,450) = 1,550$ lek; factor = $(1,550 + 1/5*1,550) = 1,860$; difference between lowest price and fund limit = $(750,000-745,000) = 5,000$; then if 5,000 is greater than 1,860, offer of 745,000 lek is of abnormally low price. However, the relative difference with respect to the limit fund is only 0.6%.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>This rule is inappropriate since it artificially produces an abnormally high number of abnormally low offers even in situations where the supposedly abnormally low price would appear normal on its face and in effect.</p> <p>Although not included in the PPL, Chapter 3, 2-a) of the subsidiary legislation requires publication of the estimated fund for a particular procurement in the “contract notice.” A review of a sample of tender processes at 10 contracting authorities, encompassing approximately 40 tenders, shows that the maximum fund available is always provided in the tender documents made available to bidders. This practice should be discontinued because not only it encourages bidders to bid artificially low amounts and therefore decrease the quality of the goods, services, or works they provide but also when combined with the technical specifications, it can be effectively used to favor a specific supplier. The practice of publishing the maximum limit funds deprives the public authorities from obtaining best value in procurement and may lead to additional administrative costs. Such change would be best effectuated through an amendment of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009.</p>	
1(g) – <i>Submission, receipt and opening of tenders</i>	<p>Articles 48 through 52 of the PPL provides the general criteria for submitting tenders, verifying receipt, preserving the security of tenders, modifying and withdrawing tenders, and opening of tenders.</p> <p>These general criteria are amplified in Chapter V of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009. This Chapter provides step-by-step rules for submitting and opening tenders. They outline a defined and regulated proceeding for opening tenders and require that the modality of submission be specified clearly in advance of the submission. (In the overwhelming majority of cases, this is a rather moot point, as tenders are conducted by using the e-procurement platform). The rules are also clear and detailed on the duty to maintain adequate records of the proceedings.</p>	3

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>One point of some concern is that while the subsidiary legislation provides that members of an evaluating committee must sign statements to the effect that no conflict of interest would arise by their participation in the evaluation process, there is no explicit language which would require that during the evaluation period, information relating to the examination, clarification and evaluation of tenders must not be disclosed to the participants or to others not involved officially in the evaluation process. While the provisions of Article 21.1 of the PPL might make this point seem redundant, the Consulting Team’s view is that it needs to be clearly stated in applicable legislation¹⁶.</p>	
1(h) - <i>Complaints</i>	<p>The PPL unambiguously establishes a right of review of decisions made by Contracting Authorities or the PPA. The 2009 amendments to the PPL have established a two-tier complaints review system.</p> <p>The first tier is intra-systemic. An aggrieved party may file a complaint with a Contracting Authority within 7 days of becoming aware of the alleged irregularity (Article 63 of the PPL). A CA must review the complaint and make a decision on its validity within 7 days of receipt of the complaint, a period during which the award of the contract is suspended. If the complainant is not satisfied with the decision of the Contracting authority, s/he or its authorized agent may file a complaint with the PPC within 7 days of the decision made by the Contracting Authority.</p> <p>Complaints with the PPC follow the extra-systemic tier in that the PPC is an independent agency tasked with administrative review authority over procurement decisions. Its decisions are final on the administrative level, but subject to judicial review. Its decisions can be appealed in the District Court of Tirana (a first level court) which, in such a case, would have original subject matter jurisdiction over the dispute. Article 64 of the PPL describes PPC’s scope of authority and the matters that are</p>	3

¹⁶ PPL Article 21.1 “The relevant information recorded by the CA according to Article 12 of the PPL shall, on request, be made available to any interested person after a tender has been awarded, or after awarding procedures have been terminated without resulting in a procurement contract. Such request may be submitted anytime and the CA is obliged to make the information available within 5 days following the receipt of a request.”

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
<i>Pillar I – Legislative and Regulatory Framework</i>		
	<p>subject to review by the PPC.</p> <p>Additionally, the PPL gives the PPA the authority to initiate an administrative investigation in all cases where it determines that there has been a violation of the PPL.</p> <p>Rules of Procedure of the PPC were approved subsequent to the performance of this assessment, and as such there analysis have not been included as part of this assessment.</p> <p>To understand the significance of the 2009 amendments, it is necessary to summarize the essence of the EC Remedies Directives (89/665/EEC, 92/13/EEC and 2007/66/EC). The original remedies directives date from 1989 as to supply contracts (89/665/EEC), and 1992 as to utilities (92/13/EEC). The current versions (the “Remedies Directives”) resulted from updates adopted in 2004: Directive 2004/18/EC, applicable to contracts for public works, supplies, and services, and Directive 2004/17/EC, applicable to contracts in the water, energy, transport, and postal sectors. Those directives provide means by which participants in public tenders (“economic operators”) could seek to enforce European law on public procurement by challenging the actions of public authorities. Their cornerstone is the requirement that each EU Member State establish a means of legal redress before a court or administrative tribunal. On December 20, 2007, the European Parliament and Council of Ministers published a long-awaited directive to enhance remedies available to disappointed bidders in public tenders conducted by any of the 27 members of the European Union (2007/66/EC) (the “New Directive”). This directive was designed to make existing remedies for violations of competitive procurement procedures more viable. The New Directive supplemented and amended pre-existing directives on procurement remedies by requiring a “standstill” period of 10 calendar days after bidders are given notice of the award decision, including a summary of reasons. This will enable a disappointed vendor to initiate a challenge in time for the court or administrative tribunal to preserve the status quo by forbidding execution of a contract pending legal review. In cases of “urgency,” a Member State may limit the initial standstill to seven calendar days; however, this period is extended by an additional three days if a company notifies the procuring authority within the initial seven days of its intent to</p>	

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>protest. To ensure that potential challengers can consider their options during the standstill period, the deadline for requesting legal review cannot be less than 10 days after notice of award. In cases of “extreme urgency,” as defined by the Remedies Directives, no standstill period applies. In order to permit action within these tight timeframes, contracting and review authorities are required to accept notice of review by fax or electronic medium (e-mail). Member State procedures may require companies to bring their complaints first to the procuring authority, before seeking review by the independent tribunal required by the Remedies Directives. In the event the procuring authority rejects the protest, however, there is an additional standstill period of five working days after the authority issues its decision. During that period, the aggrieved company may initiate review by the independent tribunal.</p> <p>The Consulting Team’s review of the 2009 amendments shows that the PPL has been brought into greater (albeit not full) compliance with the <i>Acquis Communautaire</i>. It should be pointed out that – despite a Stabilization and Association Agreement with the European Union – Albania is at present under no obligation to ensure full compliance. The 2009 amendments are decidedly a noted improvement in Albania’s legislative framework for public procurement.</p>	
2 – Existence of Implementing Regulations and Documentation		
2(a) – <i>Implementing regulation that provide defined processes and procedures not included in higher-level legislation</i>	<p>Regulations implementing the PLL (Council of Ministers’ Decisions are largely comprehensive. The overwhelming bulk of them (albeit not everything – a notable exception being the very Council of Ministers’ Decision that establishes the Directorate for Concentrated Procurement) are consolidated in the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009. A set is available on the website of the Public Procurement Agency.</p> <p>Such regulations have been updated regularly. However, because of frequent amendments and the fact that they were not completely consistent with one another, and considering the number of tertiary legal instruments that are required to make them fully functional, regulations are neither optimally</p>	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>organized hierarchically, nor well-structured formally. Further steps are advisable to make such regulations more helpful for the implementation of the PPL and more responsive to the very concept of effective and transparent procurement.</p>	
<p>2(b) – <i>Model tender documents for goods, works, and services</i></p>	<p>Model invitation and tender documents for an extensive range of goods, works, and services procured by government agencies have been adopted. They are available at: https://app.gov.al/ep/BiddingDocuments.aspx.</p> <p>The PPA has adopted a set of standard, obligatory set of templates that are consistent with applicable legislation. These templates are to be used when preparing documents used in competitive tender processes.</p> <p>Responsibility for drafting and regularly updating such model documents has been assigned to the PPA (Article 13.2 of the PPL).</p>	3
<p>2(c) – <i>Procedures for pre-qualification</i></p>	<p>The subsidiary legislation (consolidated in the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009) provides rules on designing and implementing procedures for pre-qualification. Chapter III, Article 3 provides limitations on the content of the procedures for pre-qualifications in works, goods, and services contracts.</p> <p>While not explicit about the use of pass/fail type qualification criteria, this legal instrument is aimed at supporting and favoring the use of such criteria.</p> <p>The subsidiary legislation also provides guidance on the application of pre-qualification criteria (See Chapter III, Article 3 and Chapter V, Article 2).</p> <p>However, while the Consulting Team’s assessment of the procedures for pre-qualification in subsidiary legislation shows that these procedures are largely sound, it should be pointed out that greater definition and specificity on the nature and circumstances of use of such procedures is warranted. What would otherwise be deemed reasonable legislative principles are at times improperly applied to produce scenarios in which seemingly qualified bidders end up being unfairly disqualified</p>	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	from certain procurement actions ¹⁷ .	
2(d) – <i>Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion</i>	<p>Chapter VI of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 provides rules for procedures governing the procurement of consulting services (Article 3) and design contests (Article 4). These rules pay adequate attention to how technical capacity is to be evaluated. These rules allow for a scored evaluation of technical capacity, as well as for a combination of price and technical capacity.</p> <p>Our assessment shows that these rules do not allow for selection on the basis of technical qualifications alone. Sub-indicator 2 d) states that the legal framework should provide for conditions under which selection based exclusively in technical capacity is appropriate. While the law specify conditions where the decision will solely be based on technical considerations, this in practice defaults in the use of a weighted evaluation criteria that assigns at least 30% to price.</p> <p>Our assessment also shows that these rules are not adequately clear on the procedures and methodologies for combining price and technical capacity under different circumstances.</p>	2
2(e) – <i>User’s guide or manual for contracting entities</i>	<p>Chapter XI of the Council of Ministers’ Decision No 1 of January 10, 2007, On the Rules of Public Procurement, amended most recently on January 21, 2009 provides that the PPA is tasked with producing user’s guide and manuals, as well as organizing capacity building activities for purposes of the effective implementation of the PPL.</p> <p>A Guide on Procedures for Public Procurement was produced by a USAID-funded project in 2007 and adopted by the PPA. It is available for consult on the PPA’s website at: https://app.gov.al/ep/ProcurementManuals.aspx. It seems, at the time of production and adoption, this Guide was a dynamic</p>	2

¹⁷ In one instance, the Consulting Team observed that a CA had placed a turnover requirement as a pre-qualification criterion for a bidder that was equal to the value of the contract. The procurement involved purchasing automobiles. The explanation provided was that the CA had applied the principle of proportionality per Article 46 of the PPL. Given the nature of the procurement and the relatively low risk on the part of the government, this rule on qualitative selection was applied in a discriminatory manner.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar I – Legislative and Regulatory Framework		
	<p>document that produced tangible information for users of the public procurement system.</p> <p>However, this Guide has not been update to reflect the important legislative and regulatory changes that have been adopted since 2007 and it therefore of little or no use to users. Our assessment did not identify any specific evidence of ongoing efforts to produce an updated manual or guide.</p>	
<p>2(f) – <i>General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements</i></p>	<p>There are General Conditions of Contract that include the main provisions to be included in contracts for goods, works and services with the Government of Albania. These General Conditions are available at: https://app.gov.al/ep/BiddingDocuments.aspx. While the legal part of the Consulting Team’s analysis shows that these General Conditions may be articulated more clearly and the wording of contracts, in general, may be more clear, these General Conditions of Contracts are generally in keeping with reasonably sound applicable legislation and reflect key provisions of the law that have a bearing on the contractual performance of the parties.</p> <p>To briefly illustrate, the General Conditions of Contract for Works procured in an open procedure include clauses on corrupt practices and conflict of interest confidential or proprietary information, intellectual property, origin of goods, obligations of each party, communications, insurance, reporting, curing defects, warranties, payment, force majeure, amendments, conflict resolution, etc. Other types of contracts include similar General Conditions. We find these General Conditions to be comprehensive and compatible with international best practice.</p> <p>The General Conditions are comprehensive and – by and large – consistent with international best practices such as the use of clauses on avoiding conflicts of interest, protecting intellectual property rights, and amending the agreement. One point of concern, however, is that these General Conditions of Contracts contain no provisions on alternative dispute resolution mechanisms as a method of avoiding costly litigation and promoting efficiency.</p>	3

Pillar II – INSTITUTIONAL FRAMEWORK AND MANAGEMENT CAPACITY

20. Pillar II focuses on how the procurement system, as defined by the legal and regulatory framework, is actually operating in practice.
21. Pillar II encompasses 3 indicators and 12 sub-indicators to assess the institutions and management systems that are integral part of the overall public sector governance of the country. The following table summarizes the result of the assessment of the 12 sub-indicators which have been scored following a scale from 0 to 3, as explained above.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
<i>Pillar II – Institutional Framework and Management Capacity</i>		
<i>3 - The public procurement system is mainstreamed and well integrated into the public sector governance system</i>		
<i>3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multiyear planning</i>	<p>Currently, procurement planning is not fully integrated into the budget formulation process, and budget availability continues to be the main focus of procurement plans instead of the prioritization of institutional needs aligned with strategic government objectives.</p> <p>Overall, timing for budget formulation has noticeably improved with regards to the 2010 budget, but links between procurement plans and strategic objectives are lacking, and links between multiyear estimates and subsequent setting of budget ceilings continue to be unclear.</p>	2
<i>3(b) – Budget law and financial procedures support timely procurement contract execution, and payment</i>	<p>A review of a sample of contracts shows that payments are processed with significant delays due to a lack of available funds. This situation, which directly affects development of the local procurement market and puts local firms at peril, is compounded by the lack of integration of the public procurement system with the public financial management system.</p>	1
<i>3(c) – No initiation of procurement actions without existing budget appropriations</i>	<p>According to law, no procurement action may start without proper budget authorization (Directive No. 1, of January 1, 1996). However, there is no electronic link between the authorization of funding in the budget and the e-GP system. Furthermore, responsibility for budget appropriations rests with each line ministry, and the PPL does not include as one of the PPA responsibilities to ensure there are available funds prior to initiating the procurement action through the system.</p>	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar II – Institutional Framework and Management Capacity		
	Lack of a proper control at the level of the e-GP platform is made evident by the significant volume of overdue payments to government vendors. Such a tardiness is simply explained by the subsequent change effected to budgetary commitments, which creates an unrealistic cash position, resulting in the over commitment of funds. Consequently, enforcement of budgetary authorizations prior to commencing a procurement process through the e-GP platform should contribute to reduce this practice.	
3(d) – <i>Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming</i>	The e-GP system is not electronically linked with the public financial management system. Additionally, the available information on projected cash flow available to budget entities only covers a two-month ceiling set by the MOF for each institution. The scope of the e-GP system does not encompass information pertaining to contract execution and management, for which no information is available on contract completion. Each institution keeps records of contract completion. Controls over contract management are kept by the corresponding technical or operational units that requested the goods, services or works procured. PPA and its units do not contemplate contract management as part of their responsibility, for which the e-GP system was designed to end at contract award.	1
4 – The country has a functional normative/regulatory body		
4(a) – <i>The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework</i>	<p>The degree of independence of the PPA is considered to be similar to that of a cabinet minister, since both, cabinet ministers and the head of the PPA are appointed and report directly to the Prime Minister. Furthermore, the PPA is obliged to present an annual report to the Council of Ministers. While independence is always relative, considering the line of dependency, the PPA is considered to be established at a level affording it a reasonably adequate degree of authority and independence.</p> <p>The PPL established the PPA as a “central body” reporting directly to the Prime Minister, financed by the State budget.</p>	3

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar II – Institutional Framework and Management Capacity		
<p>4(b) – <i>The body has a defined set of responsibilities that include but are not limited to the following: providing advice to contracting entities; drafting amendments to the legislative and regulatory framework and implementing regulations; monitoring public procurement; providing procurement information; managing statistical databases; reporting on procurement to other parts of the government; developing and supporting implementation of initiatives for improvements of the public procurement system; and providing implementation tools and documents to support training and capacity development of implementing staff.</i></p>	<p>PPA is responsible for drafting legislation and regulations for the approval of the Council of Ministers; monitors procurement activities¹⁸; produces the Public Procurement Bulletin; promotes and organizes the training of central and local government official involved in procurement; and assists CAs with advice to ensure adequate and consistent application of the PPL. Upon establishment of the PPC in April 2010, the PPA has ceased from performing administrative review of complaints (see Pillar IV, indicator 10(b) for further reference).</p> <p>As stated in the PPL, PPC’s decisions and instructions, in the area of public procurement, are administratively final¹⁹.</p> <p>Although the PPL (Article 19/1) defines the creation of a Public Procurement Committee as the highest body in the field of procurement, responsible for examining complaints and for taking decisions that are administratively final, the PPC has not formally established. Subsequent to the performance of this assessment, in April 2010, the members of the PPC were formally appointed; its organizational structure consisting of 18 positions was approved; and its budget was also approved; effectively becoming operational in May of 2010.</p> <p>Establishment of the PPC eliminated the conflict of interest that existed prior to April 2010, due to the fact that the PPA acted not only in a capacity of a policymaking, oversight and advisory body, but also as reviewer of appeals. This in turn undermined the perception of fairness and transparency over the appeal process of complaints.</p>	3
<p>4(c) – <i>The body’s organization, funding, staffing, and level of independence and</i></p>	<p>With a current roster of 36 positions, the PPA is still considered to reasonably staffed. However, following the decision of establishing the PPC, the government expects to transfer to the PPC some of the PPA’s assigned positions previously dedicated</p>	2

¹⁸ Article 2 of the PPL defines the monitoring function of the PPA as encompassing the procurement process through the contract award, hence limiting its oversight capacity on contract execution. This in turn, poses an internal control risk and limits the ability of timely preventing or detecting payments in excess or for items, quantities or quality different than that contracted. Currently, contract administration responsibilities rest solely with the requesting unit of each budgetary unit (i.e.: line ministries; municipalities; autonomous institutions, etc.).

¹⁹ Decisions of the PPC can be appealed at the courts. However, in the opinion of trade associations, chambers of commerce and entrepreneurs interviewed as part of this assessment, public confidence in the effectiveness of the courts is very low, and the process is regarded as very onerous and time consuming. This in itself constitutes a major systemic barrier.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar II – Institutional Framework and Management Capacity		
<i>authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities</i>	to the complaint review function. Consequently, the level of staffing of the PPA and that of the PPC, will have to be assessed once the PPC is in operations. The last reform of the PPL conferred the status of civil servants to all members of the PPA, including to the PPA’s Director.	
<i>4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions</i>	Establishment of the PPC, as stated under indicator 4(b) above, eliminated the perceived conflict of interest that existed through April 2010, as a consequence of the PPA to performing incompatible functions.	2
5 – Existence of Institutional Development Capacity		
<i>5(a) – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information</i>	The e-GP platform, which is structured as a partially transactional system ²⁰ , is the natural “tool” to capture relevant procurement information needed to retro-feed the decision making process regarding public expenditures and procurement. Information to be produced by the e-GP platform should help assess the overall performance and quality of the procurement system; review the adequacy of the strategic direction for developing the market; plan and exploit opportunities for further aggregation of procurement; and for the overall optimization and integration of the public procurement system into the public financial management system. However, the ability for gathering and reporting on relevant procurement information is still lacking due to lack of advanced query capabilities ²¹ , software and hardware	2

²⁰ The e-GP platform was designed to handle a procurement transaction from the initiation of the procurement process upon formal approval of the purchase order by the head of a budget unit, to the award of the contract. Furthermore, the e-GP platform –consistent with the PPA’s view that the procurement process ends with the contract award- does not contain any information regarding contract execution, limiting the ability of fully tracking overall performance of the procurement process.

²¹ US-AID, who as part of its developing efforts to help strengthening the public procurement system of Albania, financed the design, programming and implementation of the e-GP platform, stated that the original system and its hardware had not been designed to handle a large volume of transactions as it is now the case. Similar concerns were raised by KPMG consulting, which performed an audit of the e-GP platform in 2008. The PPA has echoed those concerns and with the assistance of the same consulting firm that had originally designed the e-GP platform, performed several changes to address the bulk of the auditors’ recommendations, including the purchase of several additional servers. However, the solutions implemented did not encompass implementation of a solution

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar II – Institutional Framework and Management Capacity		
	limitations pending implementation of a suitable solution to the archiving of effected procurement transactions, which are currently absorbing an inordinate amount of the processing capacity.	
5(b) – <i>The country has systems and procedures for collecting and monitoring national procurement statistics</i>	As mentioned under 5(a), while the e-GP should, by definition, play the primary role in capturing relevant information to feed the analytical process required to ensure adequate decision making in terms of implementing public policy through effective and efficient procurement, the current system does not currently capture or produce information such as the one suggested under Compliance and Performance indicators by the OECD/DAC methodology. Furthermore, on-line query capabilities of the existing system are very limited and preclude running basic queries, such as how many tenders were awarded in a given year to the same vendor.	1
5(c) – <i>A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented</i>	<p>The PPA is formally tasked with the responsibility for designing a strategy for training of public procurement officials both at central and local government levels. In so doing, the PPA partners with the Training Institute for Public Administration (TIPA), which has a budget of approximately \$90,000 a year for training 6,000 government employees. The latter is considered largely inadequate to satisfy the training needs of approximately 5,100 civil servants assigned to the 1,700 CAs, without including private sector organizations, which are the natural partners of the government in the public procurement process. In 2009, the PPA in partnership with the TIPA, trained approximately 700 employees at the local government level and 900 at the central government level. These trainings focused on the use of the e-GP platform only.</p> <p>PPA does not have a training strategy. Plans are drafted on a yearly basis, based on what is considered a priority area at that time.</p> <p>Training for 2010, is expected to focus on the use of the e-GP platform.</p>	1

to the lack of a suitable archive procedure. A new audit of the e-GP platform –financed by the World Bank- is expected to take place in the near future. However, the changes introduced to the system did not encompass upgrades/changes to the hardware, for which concerns affecting the performance and storage capacity of the system have yet to be addressed.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
<i>Pillar II – Institutional Framework and Management Capacity</i>		
	<p>Training does not include the private sector, since the PPL does not formally recognize as a mandate for it to provide training to the private sector or organized civil society, and as such has no budget allotment for that purpose. However, as in prior years, PPA is willing to facilitate training to the private sector if the private sector covers the cost of developing and rendering the training.</p>	
<p>5(d) – <i>Quality control standards are disseminated and used to evaluate staff performance and address development issues</i></p>	<p>Although PPA has drafted some preliminary plans, it lacks of a formal strategy for developing a career path and an accreditation program for procurement specialists.</p> <p>While there is a performance evaluation system, lack of a specific terms of reference and of a career path for procurement officials, render the performance assessment as a perfunctory exercise that is not designed to actually measure and address performance gaps and build capacity through recruitment of qualified professionals and training.</p>	1

Pillar III – PROCUREMENT OPERATIONS AND MARKET PRACTICES

22. Pillar III focuses on the operational efficiency and effectiveness of the procurement system at the level of those institutions responsible for issuing individual procurement actions. It looks at the market as one mean of judging the quality and effectiveness of the system.
23. Pillar III encompasses 3 indicators and 10 sub-indicators to assess whether the country’s procurement operations and practices are efficient; the functionality of the public procurement market; and the existence of contract administration and dispute resolution provisions.
24. The following table summarizes the result of the assessment of the 10 sub-indicators which have been scored following a scale from 0 to 3, as explained above.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar III – Procurement Operations and Market Practices		
6 – The country’s procurement operations and practices are efficient		
6(a) – <i>The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities</i>	<p>Capacity of procurement officials varies widely among different line ministries. To illustrate this point, our review of a random sample of procurement processes at 10 CAs, showed inconsistent application of the law and other errors that are indicative of capacity shortcomings throughout the system. These findings are corroborated by the 2008 Annual Report of the SSA, which quotes having found errors and inconsistent application of the PPL in connection with 60% of the procurement processes selected for review.</p> <p>Representatives of private sector associations that were interviewed as part of our assessment consistently pointed to lack of capacity and understanding of government procurement officials.</p> <p>In addition to the Annual Report of the SSA, the PPA’s Annual Report provides useful data to ascertain the existing gap between capacity and requirements.</p> <p>The low capacity levels are perpetuated through a lack of budget allocations to support training and of a strategy to enhance the professional profile of public procurement officials through a specific career path.</p>	1

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar III – Procurement Operations and Market Practices		
6(b) – <i>The procurement training and information programs for government officials and for private sector participants are consistent with demand</i>	<p>As indicated under 5(c) and 6(a) there are procurement training programs, but their overall scope and effectiveness is undermined due to the lack of a strategy and appropriate budget resources to implement it.</p> <p>In our interview with the Administrator of TIPA, we gathered information about the trainings provided in 2007 and 2008 to form trainers of trainers, in government procurement. However, no information could be obtained about how many of those trained still remain in the system. Statistical information on government staff rotation could not be obtained during the field work phase of the assessment.</p>	1
6(c) – <i>There are established norms for the safekeeping of records and documents related to transactions and contract management</i>	<p>While there are formal requirements as to the number of years that public records are to be kept, lack of a formal internal control framework creates a somewhat erratic and inconsistent level of compliance. Furthermore, following mandatory use of the e-GP system for conducting all public procurement at local and central government levels, coupled with inherent electronic archive constraints, question the ability of the PPA to ensure full archiving of electronic records on public procurement transactions after one year. This in turn poses a serious risk of securing an appropriate audit trail. In accordance to commercial law, proposals and other tender documentation provided in hard-copy are to be kept for 10 years.</p>	2
6(d) – <i>There are provisions for delegating authority to others who have the capacity to exercise responsibilities</i>	<p>PPA is responsible for the oversight of procurement processes performed by CAs.</p> <p>Following the establishment of the PPC in April 2010, all complaints, which were being processed by the PPA, are now directly addressed by the PPC.</p>	2
7 – Functionality of the public procurement market		
7(a) – <i>There are effective mechanisms for partnerships between the public and private sector</i>	<p>Although PPA has offered some limited training and assistance to the private sector, as stated in 5(c), the PPA does not have as one of its functions to provide training to the private sector or to work with it to help develop the market in Albania. Accordingly, PPA’s limited budget does not provide for resources to undertake training activities for the private sector, unless the private sector pays for it. As a result, there is no strategy on how to work with the private sector to help develop the market. There is been little private sector consultation and</p>	1

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar III – Procurement Operations and Market Practices		
	although the private sector welcomed the introduction of the e-GP platform, it remains suspicious of the level of security afforded by the system, as well as of the government’s ability to manipulate the process.	
<i>7(b) – Private sector institutions are well organized and able to facilitate access to the market</i>	With the exception of the association of constructors, the American Chamber of Commerce, and the Chamber of Commerce of Tirana, the private sector and civil society are not well organized.	1
<i>7 (c) – There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market</i>	<p>The private sector in Albania shows growth over the past 3 years. In particular, construction and commercial enterprises have developed at a steady pace. However, the global financial crisis has had an impact on the accelerated pace of growth showed by the Albanian economy over the past few years. As a result, access to credit, while unrestricted, has become more difficult. Furthermore, due to the increasing financial costs and the unpredictability of the government’s funding, which results in significant delays in paying obligations, private sector firms, especially small and medium size companies, are hesitant to participate in public procurement.</p> <p>There are no constraints for foreign firms to participate in public procurement tenders, other than the fact that only international bids are advertised in English. While virtually, all tenders are open to both local and foreign firms local tenders are all published in Albanian language only. This in turn may restrict the GOA’s ability to obtain good value-for-money in procurement of items that are not produced in Albania. Nonetheless, it should be noted that the PPL does not afford any margin of preference or preferential treatment to local bidders over international bidders. Furthermore, definition as to when a tender should be local or international is done through the establishment of procurement thresholds, which are approved by the Council of Ministers and revised every two years, or when the conditions so warrant. The Consulting Team likes to encourage the PPA – as part of a clear strategy to develop the local procurement market – to consider the possibility of establishing criteria in the secondary procurement legislation of when the procurement of specific items, regardless of the thresholds, should require that the RFP be published both in Albanian and in English.</p>	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar III – Procurement Operations and Market Practices		
8 – Existence of contract administration and dispute resolution provisions		
8(a) – Procedures are clearly defined for understanding contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner	Contract administration responsibilities, including inspection and tests prior to acceptance and payment for works, goods and services, are clearly defined. However, one of the consequences of advertising the fund limit is the potential acceptance of lower quality of works, goods and services.	2
8(b) – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of a contract	Albania accepts either UNCITRAL or the International Chamber of Commerce (Paris) arbitration rules for resolving contract disputes whenever the government is a party. Conflicts and disputes arising from procurement contracts are resolved based on the Civil Code of Albania. SBDs do not contain information on ADR mechanism, but refer only to courts.	2
8(c) – Procedures exist to enforce the outcome of the dispute resolution process	Albania is a member of the New York Convention on Enforcement of International Arbitration Awards. The evaluation team was not able to find records of enforcement that might be indicative of the effectiveness of the courts in this regard.	1

Pillar IV – INTEGRITY AND TRANSPARENCY OF THE PUBLIC PROCUREMENT SYSTEM

25. Pillar IV focuses on the adequacy and performance of the integrity and internal control mechanisms and systems, as well as on the internal and external audit function, that are considered necessary to support adequate implementation and performance of the legal and regulatory framework. Consequently, this Pillar takes aspects of the procurement system and governance environment and seeks to ensure that they are defined and structured to contribute to integrity and transparency.
26. Pillar IV encompasses 4 indicators and 18 sub-indicators to assess the adequacy of the country’s control and audit systems; the efficiency of the appeals mechanism; the degree of access to information; and the adequacy of ethics and anticorruption measures in place.
27. The following table summarizes the result of the assessment of the 18 sub-indicators which have been scored following a scale from 0 to 3, as explained above.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
<i>Pillar IV – Integrity and Transparency of the Public Procurement System</i>		
<i>9 – The country has effective control and audit systems</i>		
<i>9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework</i>	<p>On November 6, 2009, by Decision No. 640, the Council of Ministers approved the “Policy Paper and Action Plan for the Public Internal Financial Control for 2009 -2014.”</p> <p>The PIFC recognizes the need to improve the managerial accountability, internal controls, risk management, accounting service, and monitoring. Decision No. 640, concludes recognizing that “...This will require the preparation of the FMC Law,...” as well as the approval of specific laws in External and Internal Audit, and the adoption of an integrated internal control framework based on international accepted standards, like C.O.S.O. in the U.S.</p> <p>Albania has embarked on an ambitious and challenging path to modernizing its public financial management system. While initial steps towards adoption of an integrated control framework and modernization of the external and internal audit function are beginning to take place, implementation of these changes would require several years, and a considerable amount of resources to support a highly challenging and significant change management process.</p>	1

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
	<p>At the time of this assessment, due to the absence of a defined internal control framework, each institution is responsible for establishing their own set of regulations for authorizing and processing of financial transactions and contracts. Furthermore, when combined with the absence of detailed job descriptions, the internal control varies from institution to institution and poses significant risks when it comes to ensuring adequate segregation of duties between the authorization, registration, processing and safekeeping functions.</p> <p>Through the EU funded Twinning project, the capacity of the State Supreme Audit has been modernized. This project also supported the strengthening and formal creation in all budget entities of an internal audit function. Our review of procurement transactions revealed a fair amount of focus on the part of both the SSA and the internal auditors in the review of procurement transactions. However, the aim of those reviews –based on the findings and recommendations- appears to be too formalistic and focused solely on compliance.</p> <p>Reports for 2009 performance of the SSA were not available at the time of this assessment. The 2008 Annual Report of the SSA shows a broad coverage of procurement processes at the central government level of approximately 87% of procurement processes tendered. The number of processes found in non-compliance represented approximately 60% of the processes audited, with a total amount of assessed economic loss of 779,815,000 lek.</p>	
9(b) – <i>Enforcement and follow-up on findings and recommendations of the control framework provide an environment that foster compliance</i>	According to the 2008 Annual Report of the SSA, compliance with outstanding recommendations has significantly improved from previous years. The current compliance rate is of approximately 80%. Typically, institutions have 20 days upon final issuance of the audit report to comment on recommendations and to provide a plan for their implementation. According to the SSA, enforcement of administrative and disciplinary measures as well as damage recovery improved in 2008.	2
9(c) – <i>The internal control system provides timely information on compliance to enable management</i>	Compliance with outstanding audit recommendations issued by both, internal auditors and the SSA, are tracked in each institution in a centralized manner, typically by the General Counsel. However, timeliness in compliance and reporting	1

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
<i>action</i>	varies significantly from institution to institution, due to the lack of standard procedures. Nonetheless, the SSA noted a significant improvement in the overall rate of reporting and compliance compared to previous years.	
9(d) – <i>The internal control systems are sufficiently defined to allow performance audits to be conducted</i>	As stated in 9(a), lack of an integrated internal control framework along with a relatively incipient internal audit function, hampers the conduct of performance audits. Most audits on projects financed by international donors consist of financial audits, which are different in scope and consequently different in the level of assurance on the internal control system over operations.	0
9(e) – <i>Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance</i>	<p>While auditors are generally conversant with the PPL, they have not yet had access to the e-GP platform. The initial setup of the e-GP platform requires auditors to obtain authorization to access the e-GP platform from the head of each institution they want to audit. Although this process mirrors the Audit Law, when considered together with a very limited training taken by SSA auditors has effectively constrained the SSA’s ability to audit procurement processes through the e-GP system in 2009.</p> <p>Starting on January 1, 2009, by decision of the Council of Ministers all public procurement transactions are to be conducted through the electronic platform. This decision, along with the stand-still created by the cumbersome process for auditors to access transactions due to the lack of an unrestricted “Auditor” profile in the e-GP, hampers the effectiveness of the external and internal audits of procurement. Additional training for auditors is planned for 2010.</p>	1
10 – Efficiency of appeals mechanism		
10(a) – <i>Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law</i>	The PPL establishes the PPA as the highest body in the area of public procurement. An important concern highlighted in 4(b), is that currently, and until formal establishment of the PPC (based on law No. 10170 of October 22, 2009), through the appointment of its members, the PPA will continue to draft all procurement legislation for approval of the Council of Ministers; and advice CAs on application of the PPL and on specific procurement transactions, while complaints are reviewed by the PPC, an independent body defined in the PPL	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
	and formally in place since April 2010. Establishment of the PPC has effectively eliminated the conflict of interest that existed before by having the complaint review function under the PPA.	
10(b) – <i>The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed</i>	<p>Through the date of completion of the field work related to this assessment, PPA was still responsible for the review of complaints.</p> <p>As mentioned above, starting April 2010, the GOA has formally established and put in place the PPC, which has an organizational structure consisting of 5 members and 18 staff positions with a dedicated budget. This structure, along with its functional dependency from the Prime Minister, affords the PPC with the required level of independence and staff to ensure adequate handling of complaints. However, due to the fact that the PPC was not in operations at the performance of this assessment, the current grading assigned to this indicator does not reflect its actual performance, which will have to be assessed after its first year of operations.</p> <p>The number of complaints have almost doubled in 2009 (1,100), with respect to 2008 (564), and 2007 (645). Among the reasons for such increase (this can be considered as a measure of success of the introduction of the e-GP platform), is the fact that the average number of bids per tender process increased from 2 to almost 8. Consequently, the actual frequency of complaints when measured on the total number of bids received has decreased from 1 complaint every 21 bids in 2007-2008, to 1 complaint every 33 bids in 2009. However, the relative number of complaints resulting in either cancellation of the procurement process or modification of the bidding documents continues to be approximately 30% over the period 2007-2009; while the number of complaints dismissed either because of being filed after the expiration of the 5 days allotted or due to lack of sufficient information or failure to comply with requirements still is at 70%.</p> <p>One of the chief complaints expressed by those contractors and suppliers interviewed throughout this assessment is the lack of consistency and capacity of procurement authorities to handle complaints. This, in turn, impinges upon the required level of fairness, and transparency that is to be expected by the private sector. In particular, we observed a transaction pertaining to</p>	1

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
	the procurement of vehicles where two bidders complained about the inclusion of a financial requirement for them to show a level of annual sales during the three years preceding the call for tender, of at least the maximum amount of the contract, for 300 vehicles. Such requirement which appears unjustified given the inherent risk associated in this type of procurement (i.e. the government would only pay upon delivery of the vehicles), was reviewed and dismissed by the PPA ²² , which sided with the opinion of the procurement selection committee established by the CA in connection with that tender. This example raises concerns about the independence, objectivity and transparency of the complaint and appeal mechanisms.	
10(c) – <i>The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information</i>	The review of procurement transactions and contract administration at 10 entities shows inconsistencies in the replies to complaints, indicative of lack of dedicated resources as well as lack of capacity.	1
10(d) – <i>Decisions are published and made available to all interested parties and to the public</i>	Complaints are not published in the PPA’s web site. Replies to requests for clarification during the course of an RFP are processed through e-mail, using the accounts defined by the bidders in a dedicated mail box assigned to each bidder. Appeals are registered in the courts’ docket. In 2009, of approximately 1,100 complaints received in connection with 7,277 advertised tenders, or 15.1%. Of these complaints, 23.4% (257) resulted in cancellation of the procurement process; 3.5% (38) resulted in modifications to the technical specifications or bidding documents; while 73.2% (805) were dismissed due to lack of compliance with formal requirements or missing information.	3
10 (e) – <i>The system ensures that the complaint review body has full authority and independence for resolution of complaints</i>	Decisions of the PPA can only be appealed through the courts. The amendment creating the PPC does not change the appellate procedures, which are stated in the PPL. The private sector points to significant delays and costly proceedings as the major deterrents to pursue appeals on decisions of the PPA.	3

²² The requirement of requesting bidders to show a level of sales equaling the total amount of the contract for each of the three years ended prior to the year of the RFP, is allowed by a decree of the Council of Ministers, for which the PPA considered that use of such maximum requirement by the respective CA had not contravened the law.

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
11 – Degree of access to information		
11(a) – <i>Information is published and distributed through available media with support from information technology when feasible</i>	Information is published in the “Public Procurement Bulletin”, weekly and posted on the PPA’s website. Information posted for contract awards corresponds to calls for tenders; award notices; and cancellations. The website has links to the “Public Procurement Bulletin;” the PPL; amendments; SBDs; a procurement manual (which is largely outdated since it does not incorporate any of the amendments introduced in 2009); and decisions of the Council of Ministers.	2
12 – The country has ethics and anticorruption measures in place		
12(a) – <i>The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior</i>	<p>Albania has ratified several international treaties and conventions related to corruption and is member to some of the major international organizations and programs dealing with corruption and/or organized crime. The Civil Law Convention on Corruption (Council of Europe) was ratified by on 7 June 2000 by the Albanian parliament with the passing of Law No. 8635. The duties and liabilities of this convention are partially adopted in the internal legislation. However, some amendments are still pending, including some involving the Civil Code, the Code of Administrative Procedures, and the Status of Civil Servants, because they have not yet been approved by Parliament. All these laws require a voting majority of three-fifth of all members of parliament, so passing them demands cross-party consensus, which hardly seems likely in the current political environment.</p> <p>The Criminal Law Convention on Corruption (Council of Europe) was ratified by the Parliament with the passing of Law No. 8778 on 26 April 2001. This has been changed with Law No. 9369 from 14 April 2005, which has removed all reserves. The definitions included in this convention have already been adopted as amendments in the Penal Code and the Penal Procedural Code. The Additional Protocol to Criminal Law Convention on Corruption (Council of Europe) was ratified by the Albanian Parliament with Law No. 9245 from 24 June 2004, but it has still not been fully implemented in the national legislation.</p> <p>The United Nations Convention Against Corruption (UNCAC)</p>	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
	<p>was ratified by the Albanian Parliament with Law No. 9492 on 13 March 2006. Most of the provisions of this convention have now been adopted in the national legislation. However, a few provisions still remain to be incorporated.</p> <p>Albania has also ratified a number of key conventions in the broader field of economic crime, including the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (since 2001), the Convention on Cybercrime (since 2002). Albania has been a member of the Group of States Against Corruption (GRECO) since the ratification of the Criminal Law Convention on Corruption in 2001, and is also member to the Stability Pact Anti-Corruption Network (SPAI).</p> <p>Albanian legislation relevant for anti-corruption has improved substantially in recent years. The Criminal Code criminalizes both active and passive bribery and undue influence of public officials (articles 244, 245, 245/1, 259 and 260). The Criminal Procedural Code was amended in 2004 to include enhanced regulation of financing of political parties, conflict of interest, rules of ethics in the public administration, criminalization of active and passive corruption, and the use of special investigation means and further improvements are in the pipeline. The Law on the Prevention and Combating Organized Crime adopted in September 2004 provides the legal basis for combating economic crimes performed by organized criminal groups.</p> <p>Albania took a significant step forward when it adopted the Law on declaration of Properties by Officials in 2002 and the Law on prevention of Conflict of Interest in 2005. Both laws provide comprehensive regulations, clear rules and duties, strict limitations of personal interest of politicians as well as mid- and high-level officials in relations their duties, severe administrative penalties and linkage with the criminal laws. As a result of the two laws, the High Inspectorate for Declaration and Auditing of Assets (HIDAA) is currently in a quite strong position to fulfill its mandate. Furthermore, a number of recent laws have focused on simplifying the administrative procedures for businesses, such as the PPL, the Law on Registration of Businesses as well as numerous amendments to various laws which has abolished some licenses and simplified remaining procedures to obtain the necessary ones.</p>	

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
	<p>The government’s current draft anti-corruption strategy (“the Cross-cutting Strategy for Prevention, Fight on Corruption and Transparent Governance 2007-2013” described further below) includes a pipeline of further suggested legislative changes. This includes a Law on Limiting the Immunity of Members of Parliament and Ministers as well as amendments to the Civil Service Law, Civil Code and Civil Procedural Code.</p> <p>The PPL confers to the PPA with the authority to exclude an economic operator from participation in awarding procedures for a period of 1 to 3 years in cases of fraud, corruption or non-fulfillment of contractual obligations (PPL Article 3). The PPL also makes specific reference to corruption and conflicts of interest (Article 26); and to exclusion criteria of candidates and bidders convicted by final judgment due to: participation in a criminal organization; corruption; fraud; money laundering; and, forgery.</p> <p>However, “fraud” and “corruption” are not defined or characterized in the PPL. Specific reference to fraud and corruption and conflict of interest, applying to economic operations and civil servants is contained in the PPL (Article 26).</p>	
12(b) – <i>The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices</i>	The PPA is empowered to exclude economic operators (i.e. individuals and firms) from participating in awarding procedures for up to 3 years (see 12(a) above). Furthermore, under articles 45 through 47, the PPL establishes conditions for exclusion of bidders under certain conditions involving fraud and corruption. The PPA also has the capacity to impose penalties and recommend sanctions (ranging from monetary penalties to debarment for firms and individuals, as well as to CAs and civil servants) to those involved in procurement for inappropriate conduct and fraud and corrupt practices. However, the penalties and sanctions are not well defined either in the PPL or in the Procurement Rules.	2
12(c) – <i>Evidence of enforcement of rulings and penalties exists</i>	Enforcement of penalties and sanctions against economic operators are published in the Public Procurement Bulletin posted in the PPA’s website, and also reported in the PPA’s Annual Report.	2

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
<p>12(d) – <i>Special measures exist to prevent and detect fraud and corruption in public procurement</i></p>	<p>Albania, with the assistance of the international donors has an ongoing anticorruption program. However, the Assessment Team could not obtain sufficient information on the coordination of that program among the government entities involved.</p> <p>The creation of the PPAD in 2007, affords an additional level of assurance in connection with the overall transparency and fairness over procurement operations. In its Annual Report for 2008, the PPAD indicates that of the allegations received, 354 had enough merit to warrant a full investigation. In 210, the PPA has initiated an administrative action, whereas 144 were resolved without the need to resorting to an administrative investigation.</p> <p>Of the recommendations issued by the PPAD, 129 supported the claims raised by the bidders; 30 involved recommendations to the reevaluation of the bids received; and 102 called for the invalidation of the tender. Of the 354 cases investigated, the PPA supported the conclusions of the PPAD in all but 64 cases.</p> <p>The Assessment Team also took note of the comment included in the 2008 Annual Report of the SSA, which quotes that encountered non-compliance with procurement processes in approximately 60% of the cases reviewed. Typically, the non-compliance findings refer to issues such as: delays in the initiation of tendering procedures; delays in payments; shortcoming and infringements on freelance consultancy payments; application of inconsistent legal provisions; lack of observance of proper contract resolution provisions by implementation units; and inadequate calculation of the fund limit.</p>	2
<p>12(e) – <i>Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors</i></p>	<p>By and large, confidence in the public procurement system among civil society and economic operators is generally low. Very few private associations and NGOs are actively involved in the public procurement process. Furthermore, the PPA does not have a strategy or any mechanism to proactively engage the private sector and civil society in a dialogue to improve the public procurement market.</p> <p>The PPAD, created by the PPL to safeguard the legal rights and interests of suppliers against irregular actions or omissions of</p>	1

Base Line Indicator/Sub-Indicator	Summary Assessment	Score
Pillar IV – Integrity and Transparency of the Public Procurement System		
	<p>contracting authorities. The PPAD is appointed for 5 years by parliament, following a recommendation of the Council of Ministers.</p> <p>The PPAD has no power enforcement of his own and to a large extent its functions duplicate the monitoring tasks of the PPA. However, considering the inherent conflict of interest in the performance of the review function that existed until April 2010 that the PPC was formally put in place, the work being performed by the PPAD plays a supportive and effective role to the reviews or investigations conducted either by the PPA or other competent authorities.</p>	
12(f) – <i>The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior</i>	<p>The PPA features in a box located in the upper left corner of its main web-page under the title “Telephone”, two telephone numbers. Although these numbers correspond to the numbers of the hotline, no explicit reference is made to them as belonging to the hotline. to report allegations of fraud and corruption. The PPAD has also had meetings with trade associations and chambers of commerce and civil society to entice their cooperation and make them aware of the functions, structure, and proceedings of the PPAD. The PPAD has a dedicated resource to maintaining the hotline.</p> <p>During the meetings the assessment Team had with economic operators, they commended the work of the PPAD and feel confident about the confidentiality afforded by the PPAD to cases reported.</p>	2
12(g) – <i>Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions</i>	<p>Relevant legislation is included in Law No. 9131 (September 2003) on Rules of Ethics for Public Administration, and Law No. 8549 (November 11, 1999) on Status of Civil Servants. Financial disclosure of personal assets for those who deal with public financial management is required by law.</p> <p>The Assessment Team was not able to obtain evidence of the existence of a code of conduct or ethics endorsed by trade associations and chambers of commerce. In the absence of a code of ethics, those interviewed during the performance of the assessment noted that they comply with the requirements of the PPL, Article 26, which refers to conflicts of interest, fraud and corruption.</p>	3

VI. PROGRESS SINCE 2006 ASSESSMENT

28. The tables below provide a follow-up of the status of implementation of all recommendations contained in the previous assessment of the public procurement system issued by the Operations Policy and Services Unit for Europe and Central Asia Region of the World Bank in August 2006, Report No. 38028-AL “Albania Country Fiduciary Assessment.” For purposes of producing the following update, the status of implementation of recommendations has been classified as either: “implemented”, when substantially all elements contained in the original recommendation have been assessed as being in place and operating adequately; “Partially Implemented”, when not all elements of the recommendation have been assessed as being in place or operating adequately; “Under Implementation”, when the elements contained in the recommendation are in the process of being put in place and consequently their level operation cannot be assessed; and, “Not Implemented”, when the elements referred to in the original recommendation have been assessed as not having been implemented and consequently they are not in place.
29. All recommendations either “Partially Implemented”, “Under Implementation”, and “Not Implemented”, that were deemed substantial for the proper operation of the public procurement system have been incorporated as current recommendations resulting from the 2010 assessment of the public procurement system of Albania.

Pillar I - Legislative and Regulatory Framework		
#	2006 Finding/Recommendation	2010 Status
1	There is a practice of disclosing “limit funds” (estimated cost) in bid notices.	<u>Not Implemented</u> - Although the PPL does not require publication of the “fund limit”, PPA requires all CAs to publish the maximum “fund limit” in each tender.
2	Strengthen provisions on use of direct procurement by defining the “force majeure,” “emergency,” and urgent situations (Article 17 and 19).	<u>Not Implemented</u> - The Assessment Team is uncertain about the need identified in 2006 warranting this recommendation. However, it takes note that this recommendation has not been implemented.
3	PPL should be revised to regulate the public utilities separately from other procurement, either as a separate chapter under existing law or separate law.	<u>Implemented</u> – Public utilities are an integral part of the PPL under Chapter V/1 “Procedures for Awarding Sectoral Contracts”, Articles 58/1 to 58/10.
4	Improve and strengthen consulting services provisions to select consultants not based on the lowest price, but based on qualifications and quality of services (Article 21).	<u>Partially Implemented</u> – PPL Articles 3 and 4, provides for rules for procedures governing procurement of consulting services. However, these rules do not allow for the selection of

Pillar I - Legislative and Regulatory Framework		
#	2006 Finding/Recommendation	2010 Status
		consultants solely on the basis of technical qualifications and they are not adequately clear on the procedures and methodologies for combining price and technical capacity under different circumstances.
5	Revise PPL to include, at a minimum, all relevant information for contract award notice.	Implemented – Contract awards are published in the PPA’s website. PPL properly define the minimum information to be included in the contract award notice, in compliance with best practices in public procurement.
6	Amend PPL to fully define non-discrimination, - including any grounds, not just on the basis of nationality (Article 9).	Implemented – PPL Article 20 complemented by the Rules and Regulations.
7	Amend PPL to indicate the method of delivery of bids, whether by mail, hand, courier, or any other modality (Article 30 – 31).	Implemented – PPL Article 22, and Chapter IV “Electronic Procurement” set the basis for the method of delivery of bids, requiring advanced electronic signature for electronic tenders.
8	Create a separate complaint review body other than PPA.	Implemented – The PPL established the PPC, and in April 2010, the PPC was formally in place and operating with an organization structure providing for 18 staff positions and a dedicated budget ensuring its independence and capacity to perform its functions as intended.
9	The time for preparation of bids in local open tenders is relatively short “minimum 20 days.” This should be increased to 28 days (Decision No. 335).	Not Implemented - This recommendation has not been implemented. Instead, Article 43 of the PPL has been amended to allow – in the case of electronic bids – a shortening by 7 days of the time limits for preparation. The Assessment Team finds this amendment ill-advised.
10	Bidders should be given the opportunity to appeal debarment decisions (Decision No. 335).	Implemented – Bidders can appeal debarment decisions through the courts.
11	Limit fund (estimated price) should be calculated realistically based on market prices. Also, national standards on cost analysis for construction works should be updated regularly and then used (Instruction No. 1).	Implemented – PPL Chapter III “Common Procurement Rules”, Article 28, “Methods for calculating the estimated value of public contracts.”

Pillar I - Legislative and Regulatory Framework		
#	2006 Finding/Recommendation	2010 Status
12	There is a need to prepare high quality technical specifications to promote the broadest possible competition following internationally accepted standards.	<u>Partially Implemented</u> – Although the PPA has managed to attain some improvements with respect to the situation assessed in 2006, the review of more than 40 procurement tenders, still shows that the nature of complaints received by the CAs and PPA, points at a considerable number of instances where technical specifications were either wrong or lacked of sufficient information. This reveals uneven capacity in the different CAs.
13	SBDs should be amended to mandate signing of the minutes of bid opening by bidders, in order to avoid subsequent changes by procuring entities.	<u>Implemented</u>
14	SBDs should be amended to specify that the bids for all tenders, if submitted before the deadline for bid submission, should be kept safely.	<u>Implemented</u>
15	SBDs for goods should be improved to decrease changes in quantities after the contract signing. Maximum allowance could be up to 15 percent increase/decrease of offered quantity. The current limit of 30 percent is very high.	<u>Implemented</u> According to the PPL, the maximum allowance up to 90 days after contract signing is 20%.

Pillar II - Institutional Framework and Management Capacity		
#	2006 Finding/Recommendation	2010 Status
1	The procurement planning process should start at least three months prior to the upcoming fiscal year. The MTBP and annual budget should be linked, and expenditure cycle made realistic so that competitive procurement methods and efficient use of resources are ensured.	<u>Partially Implemented</u> – Timing for procurement budget planning has substantially improved in 2009. However, there is no linkage between the budget and the public procurement system yet.
2	Implementation should be followed through better reporting and a commitment should be made to establish a control system.	<u>Partially Implemented</u> – Reporting has greatly improved through the implementation of the e-GP platform. However, more work is still needed, along with Albania's adoption and implementation of a common integrated internal control framework across the government.
3	The PPA director and all other professional staff should be civil servants in order to avoid	<u>Implemented</u> – The PPA director and all other professional staff are considered members of

Pillar II - Institutional Framework and Management Capacity		
#	2006 Finding/Recommendation	2010 Status
	political interference (Article 8).	the civil service as stated in the PPL.
4	An independent Procurement Review Body should be established to handle complaints (Article 8).	Implemented - The PPL established the PPC, and its members, organizational structure and budget were formally approved and put in place in April 2010.
5	Web-based procurement information should be published with a provision for systematic update of tender invitations, RFPs, and contract awards, and so forth.	Implemented – PPA’s website through the e-GP platform and the weekly “Public Procurement Bulletin”, provides information of tenders, RFP’s, contract awards and penalties.
6	The website should also contain annual statistics on procurement, which should be updated regularly.	Partially Implemented – Statistical information on procurement procedures is not systematically collected and reported yet, only for total number of tenders advertised and awarded. Additional statistical information is reported annually in the PPA’s Annual Report.
7	The PPA should be tasked with developing a national strategy for public procurement training, and the government should allocate adequate resources to implement such strategy over the next 3 to 5 years.	Not Implemented – PPA has been working towards strengthening its focus on training. With that aim in mind, it implemented a dedicated position for training. However, lack of funding and information has hampered development of a training strategy.
8	PPA organization, funding, and staffing should be reviewed by the government to increase its level of independence and authority	Implemented – Chapter II “Public Procurement Organization”, Article 13, defines the PPA as a central body, with a legal and public personality reporting to the Prime Minister, and financed by the state budget.

Pillar III - Procurement Operations and Market Practices		
#	2006 Finding/Recommendation	2010 Status
1	Make the required level of competence among procurement staff consistent with their responsibilities. The PPA needs to initiate a dialog within government. In particular, the Department of Public Administration (DOPA) should establish a separate career stream for procurement in the civil service, both at central and local government levels. This action should	Partially Implemented – Although overall capacity has improved since 2006, there are still significant capacity gaps both at central and local government levels. A separate career stream, as well as specific job descriptions for public procurement officials has yet to be established.

Pillar III - Procurement Operations and Market Practices		
#	2006 Finding/Recommendation	2010 Status
	be supported with separate job descriptions, qualification requirements, career structures, and salary scales for procurement officers.	
2	Capacity in internal audit units in the ministries should be strengthened to take a more active role in assuring compliance with public procurement procedures.	<u>Partially Implemented</u> – The EU-Twinning project has provided much needed training and support to both the State Supreme Auditors, as well as to the creation of the internal audit function in each line ministry. However, consolidation of the internal audit function across the government is a process that is expected to take a couple of years. Specially, considering that the government lacks of an integrated internal control framework.
3	Standard bidding documents should include an alternative dispute resolution mechanism, such as arbitration.	<u>Not Implemented</u> – Standard bidding documents do not include an alternative dispute resolution mechanism as recommended.
4	The private sector should be seen as a development partner. More outreach programs should be organized to improve private sector capacity in bidding for public procurement tender.	<u>Not implemented</u> – Implementation of this recommendation requires full engagement of the private sector as part as a strategy including training and an open discussion forum. PPA as defined in the PPL does not contemplate outreach activities with the private sector as one of its mandates, and lacks of budget resources to support such activities. However, the PPA has provided limited training to the private sector and would be willing to continue to do so to the extent private sector institutions are willing to defray the related training costs.
5	Adequate access to credit should be ensured through suitable policy changes by government.	<u>Implemented</u> – Access to credit by private sector operators is considered has considerably improved over the past few years. However, the international financial crisis is also affecting the local financial market posing some constraints in the relevant terms of available financing.
6	Contract administration should be strengthened through suitable training of staff.	<u>Not Implemented</u> – Contract administration is not considered part of the procurement cycle under the purview of the PPA. The latter, coupled with the lack of an integrated internal

Pillar III - Procurement Operations and Market Practices		
#	2006 Finding/Recommendation	2010 Status
		control framework, and insufficient training, contributes to perpetrate weaknesses in contract management.

Pillar IV - Integrity and Transparency of the Public Procurement System		
#	2006 Finding/Recommendation	2010 Status
1	A number of judges should be specialized for procurement dispute cases	Partially Implemented – Some training has been provided through the School of Magistrates.
2	The PPA website should contain complete information on the complaints and status of the complaints	Partially Implemented – Starting April 2010, PPC is responsible for addressing all complaints and as such should be also responsible for publishing relevant statistical information.
3	A beginning in e-procurement should be made by publishing all procurement notices and award results on the PPA website.	Implemented
4	The PPL should be revised to establish an Independent Procurement Review Body (also covered in Pillar I) to increase the confidence of the private sector and other stakeholders in the system.	Implemented – The PPC was formally put in place and started operations in April 2010. It has an organizational structure providing for 18 staff positions, a direct line of dependency from the Prime Minister and a dedicated budget that ensures its independence and functioning.
5	The PPL should be amended to define fraudulent and corrupt practices.	Partially Implemented – Fraudulent and corrupt practices have been defined as in the Directive. However, the PPL does not have a direct cross-reference to the body of law containing those definitions and their scope.
6	A list of debarred companies should be posted on the PPA website	Implemented – Debarred companies are published in the web site of the PPA and also in the Public Procurement Bulletins.
7	PPL (Articles 12, 16) envisages actions for fraudulent practices. These provide for debarment, but procedures need to be defined for debarment companies.	Not Implemented – Neither the PPL or the Procurement Rules and Regulations contain the administrative procedures guiding decisions and proceedings leading to the debarment of companies.

Matrix Capacity Action Plan

Annex 1

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³			
						Time Required	Difficulty	Impact	
Efficiency	Transparency	Competition	International Practices						
Pillar I - Legislative and Regulatory Framework									
	X	X	X	1. The PPL does not cover concessions. Art. 4 of the PPL vaguely references to the application of other laws that are not specified. Furthermore, the PPL provisions for procurement by public utilities (a.k.a. sectoral contracts) lack clarity and congruency. This condition creates confusion among public utilities as to how to best channel their procurement to be in compliance with the law. This results in inconsistencies and opens the door to potential non-compliance and less than transparent procurement	1. Undertake a review of the PPL aimed at: <ul style="list-style-type: none"> Incorporating the treatment of concessions into the scope of the PPL. Clarifying provisions applicable to the procurement by public utilities ensuring that their needs are properly covered without leaving loopholes or provisions requiring further clarification. 	C	B	A	

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Time required: Refers to the approximate amount of time to complete the action. “A” requires less than six months for implementation, “B” requires from six months to a year, and “C” requires at least one year.

Degree of difficulty: An estimate of the degree of political, financial, or managerial difficulty involved in implementing the change. “A” means low, “B” means average, and “C” means elevated.

Impact: Estimated effect on the system’s quality, administrative expenses, and efficiency in general. “A” means significant, “B” means moderate. Low-impact measures are not proposed.

Actions rated “A” in all three categories can be implemented relatively quickly and easily and have significant impact.

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
						Time Required	Difficulty	Impact
Efficiency	Transparency	Competition	International Practices					
				practices. For instance, Article 58/6 provides for the unnecessary exclusion from the scope of application of the PPL of purchases of energy, fuels and water if such goods are used for the production of energy.	<ul style="list-style-type: none"> • Revise the contents of the PPA’s web-site to include cross-references to the specific body of law where the meaning and scope of the following relevant legal terms and concepts are properly explained: <ul style="list-style-type: none"> ○ Fraud and corruption; ○ Emergency and force majeure; ○ Non-discrimination ○ Quality based selection of consultants (i.e. based on technical qualifications alone); and, ○ Debarred parties’ opportunities to protest or appeal the debarment decision. 			
X	X	X	X	<p>2. Although the PPL provides for the use of framework contracts, their application and use has not yet been decided by the PPA. Accordingly, the Rules and Regulations do not include guidance on the potential use of framework contracts.</p> <p>In the particular case of Albania, and given government</p>	<p>2. Undertake the necessary steps to effect implementation of the framework contract modality in the short-term. Such steps should encompass –among others – the following:</p> <ul style="list-style-type: none"> • Revision of the e-GP platform to accommodate framework contracts, by providing for 	B	B	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				<p>efforts about improving –among others- the efficiency and effectiveness of its public procurement system, use of framework contracts would result in a cost-effective and transparent solution for the procurement of commodities, recurrent items and small purchases, as well as for purchases by public utilities, such as energy. Especially considering that the PPL does not provide for a direct purchasing modality applicable to petty-cash purchases (i.e. small value procurement that are based on considerations of cost-effectiveness are normally purchased directly and paid through petty-cash).</p>	<p>electronic catalogs and on-line bidding by qualified eligible vendors/suppliers.</p> <ul style="list-style-type: none"> Detailed guidance on the scope of application and implementation of the various types of framework contracts, such for small value purchases, concentrated procurement such as office supplies; medicines; computer equipment; etc.; and purchases by public utilities, such as purchases of energy. <p>If properly implemented, framework contracts would help simplify procurement while contributing to increase the level of participation and competition amongst potential eligible participants. This in turn will produce considerable savings while improving the overall transparency, competitiveness and cost-effectiveness of the public procurement process.</p>			
X	X	X	X	<p>3. Prior to the mandatory adoption of the e-GP platform as the sole conduit for all public procurement processes, time limits for participation were:</p> <ul style="list-style-type: none"> 20 days from publication to the contract notice 	<p>3. Review the current instruction to reduce time limits stated under Article 43 of the PPL, up to 7 days due to the use of the e-GP platform, in order to conform to international best practices.</p>	B	A	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
						Time Required	Difficulty	Impact
Efficiency	Transparency	Competition	International Practices					
				<p>for restricted or negotiated procedures with publication, valued above the high threshold;</p> <ul style="list-style-type: none"> • 20 days for receipt of tenders from the date in which invitations for restricted procedures are sent; • 30 days for receipt of tenders from the date of publication for open procedures valued between the high and low value threshold; • 15 days for requests to participate, from the date of publication of the contract notice for restricted or negotiated procedures with publication valued between the high and low thresholds; and, • 15 days for receipts of tenders, from the sending of the invitation for restricted procedures valued between the high and low thresholds. <p>In preparation of the mandatory use of the e-GP platform, Article 43 of the PPL was amended to provide for a reduction of up to 7 days in case of all procurement time limits, including the 52 day time limit applicable to international open tenders.</p>				

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				This reduction seems to be ill-conceived since the additional effectiveness introduced through the adoption of an e-GP platform does little or nothing to reduce the time or effort required by potential bidders to prepare and submit their bids. Furthermore, some of the time limits described in Article 43 of the PPL were already considered shorter than those considered best practice.				
X	X		X	<p>4. According to Article 43, the time limit applicable to purchases by utilities should be of 52 days. This time limit is considered impracticable for purchases of energy by KESH, the government owned electric power generating company. Energy markets are short-term focused (spot market). Accordingly, international suppliers that can be in a position to supply energy to Albania during the draught season would typically add a considerable surcharge to their prices when asked to quote a price today and keep it valid for more than 7 or 10 days.</p> <p>Given this constraints, KESH has resorted to using the restricted modality with negotiation, which allows them to have more flexibility given its much shorter legally required time-frame.</p>	4. As part of the review of the legal framework, clarify the use of time limits for public utilities providing for more flexible and advantageous applicable time frames that contemplate the nature of the particular market accessed by public utilities to satisfy their specific procurement needs resulting from operational requirements.	C	A	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				A review of purchases of energy by KESH shows that it would greatly benefit from using framework contracts to purchase energy during the draught season. Should that be the case, framework contracts could be structured to qualify international providers of energy committing them to supply energy based on availability at international market prices at the time of actual purchase. Using the framework contract modality, when there is a need for energy, KESH would submit a request to the qualified eligible international providers, who would then transparently compete amongst themselves to offer the lowest possible price. Use of this modality would also contribute to reducing the risk of untimely responses to energy needs during the draught season.				
X	X	X	X	5. While the PPL in Article 56 provides the framework for dealing with abnormally low tenders, it is through the Rules and Regulations, as amended by the Council of Ministers on January 29, 2009 that provision is made for a specific procedure for ascertaining when an offer is to be considered abnormally low. According to this provision, an offer is abnormally low when it is greater than the	5. Amend the Rules and Regulations for Public Procurement to discontinue the use of a formula to ascertain abnormally low prices and replace it instead with a common sense and simple rule based on a relative value referred to the estimated market price, below which bidders have to provide written explanations for their pricing and cost components	B	A	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				<p>arithmetical median of all the discounts (difference from the ceiling price) of all remaining offers plus one fifth of that difference. This rule is inappropriate since it artificially produces an abnormally high number of abnormally low offers to the extent that the majority of offers received are closer to the ceiling price. This, in turn, causes Contract Authorities (CA) to consider as abnormally low, offers that otherwise would be considered normal in all material respects.</p>	<p>justifying the quoted bid price. For instance, offers that are priced below 20% of the estimated market price should be considered abnormally low and in order to be qualified, further written price justification is to be required from bidders. (see UNCITRAL's recommendations on low-balling)</p> <p>Implementation of this recommendation would result in potential savings and contribute to making the public procurement process less discretionary, and more simple and transparent.</p>			
X		X	X	<p>6. While the PPL does not require the use of a ceiling fund or maximum fund available, the Rules and Regulations for Public Procurement when referring to the contents of "contract notice", specifically require the use of a ceiling fund or maximum fund available. Accordingly, all government tenders state the ceiling fund in the face of calls for tender.</p> <p>This practice has undesirable effects, such as encouraging bidders to either bid amounts very close to the ceiling fund or to decrease the quality of goods and services in</p>	<p>6. Amend the Rules and Regulations for Public Procurement to discontinue the practice of advertising the fund limit or ceiling fund in all public procurement tenders.</p>	A	A	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
						Efficiency	Transparency	Competition
				<p>order to offer a price as close as possible below the ceiling fund. Furthermore, when combined with the technical specifications, it can be effectively used to favor a specific supplier.</p> <p>Furthermore, in case of procurement of goods or services where technology is a major component, the use of a ceiling price can deprive the government from obtaining best value in procurement and may lead to additional administrative costs.</p>				
X	X	X	X	<p>7. Despite the 2009 amendments to the PPL, while procurement rules and regulations have been frequently updated, they are neither optimally organized hierarchically, nor well-structured formally.</p>	<p>7. As part of the implementation of amendments to the PPL, revise the contents, structure and organization of the Rules and Regulations for public procurement, and assess the adequacy of the rules governing the internal processes and procedures of the PPC that were recently developed, in light of its functions..</p>	C	B	A
X	X	X	X	<p>8. While overall the PPL and the Rules and Regulations appear to contain sound provisions for pre-qualification, the review of a sample of procurement tender processes revealed instances in which bidders may have been unfairly disqualified due to the inclusion of either unwarranted or unreasonable requirements.</p>	<p>8. As part of the revision of both the PPL and of the Rules and Regulations for Public Procurement, clarify the scope of pre-qualification requirements and the importance of the principles of ensuring fair competition and non-discrimination through the inclusion of requirements that are relevant and commensurate to</p>	C	B	B

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				<p>In one instance, a CA included as a pre-qualification condition a turnover for the three years preceding the call for tender equivalent to the total value of the contract. The explanation given by the CA was that they had applied the provisions of Article 46 of the PPL, referred to the principle of proportionality of financial guarantees. Given the nature of the procurement in question, automobiles, and the relatively low risk for the government in case of a potential non-performance by the bidder, this rule, as applied, appears to be discriminatory.</p> <p>It should also be noted that the initial complaints of two bidders was dismissed by the CA and that a subsequent appeal by one of the bidders directly to the PPA was also dismissed.</p>	<p>the risk to which both the government and the private sector face in connection with a particular procurement process.</p>			
X	X		X	<p>9. A Guide on Procedures for Public Procurement was produced by a USAID-funded project in 2007, and adopted by the PPA. This guide is still available for consultation on the PPA's website at: https://app.gov.al/ep/ProcurementManuals.aspx.</p>	<p>9. Update the Guide on Procedures for Public Procurement and organize it in a way that makes it simple to update its content as new legislation is produced.</p>	B	A	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				Unfortunately, this guide has not been updated to reflect the substantial amendments introduced since 2007. Accordingly, the guide is of little or no value to users, and no ongoing efforts seem to be in place to update it.				
Pillar II – Institutional Framework and Management Capacity								
X	X		X	<p>10. The PPL, which sets the organization of the public procurement function, incorporates as an annex, the budgetary structure, which defines as a budgetary unit each entity that has an assigned budget. Consequently, the PPA consists of approximately 1,700 Contract Authorities, each of which has a minimum roster of 3 staff – as stated in the PPL – yielding approximately between 5,100 and 8,500 civil servants assigned to perform public procurement work.</p> <p>Both the sheer number of individuals assigned and the delegation of authority down the line resulting from the current structure seem excessive for a country the size of Albania and with the volume and nature of Albania’s public procurement operations.</p>	<p>10. Assess the current organizational structure of the public procurement function and as part of the revision of the PPL, contemplate a substantial streamlining of the current structure in line with the size and complexity of Albania’s public procurement needs.</p> <p>Implementation of this recommendation should be effected jointly with a government-wide change management strategy to emphasize and properly “sell” to all stakeholders involved, the need for change.</p> <p>It should be noted that the proposed streamlining of the structure of contracting authorities in line ministries and public offices does not purport a modification of the organizational structure of those line ministers and</p>	C	C	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				The implicit and explicit costs associated to the current public procurement structure, coupled with the lack of capacity and tight budget environment, pose a heavy burden on the sound operation of the public procurement function, and an undue financial strain to the citizens of Albania.	public offices themselves.			
X	X	X	X	11. The public procurement process commences with the signing of the purchase order (PO) by the authorized government official in each institution. The signing of the PO assumes that sufficient funds are available in the budget to pay for its cost. The e-GP platform starts the procurement process based on the PO, which is not entered into the system, and the e-GP platform is not linked to the financial management system (i.e. financial accounting, budgetary and integrated financial information systems). As a result, no assurance is given to the availability of funds to cover all procurement processes initiated in any given year. In addition, budget availability continues to be the main focus of procurement plans instead of the prioritization of institutional needs aligned with strategic government objectives.	11. As part of the broader concept of e-Government, link the e-GP platform with the public financial management platform (i.e. financial accounting, budgetary, treasury and integrated financial information system). Provide for specific procedures and criteria to ensure alignment of procurement planning with the implementation of government strategic objectives.	C	B	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
						Efficiency	Transparency	Competition
				Furthermore, a review of a sample of procurement contracts shows that payments are processed with significant delays due to lack of sufficient funds. This situation, directly affects development of the local procurement market putting local firms at peril, and is compounded by lack of integration of the e-GP platform with the public financial management system.				
X	X		X	<p>12. The PPL does not contemplate as part of PPA's various responsibilities, the oversight of contract implementation or the proactive engagement of the private sector in the development of the market.</p> <p>As a result, the public procurement environment in Albania is characterized by a general sense of mistrust in procurement officials and in the fairness and transparency of the public procurement process at large.</p> <p>Contractors feel that procurement contracts contain harsh legal covenants designed to ensure their compliance but not to protect them from non-compliance by the government, such as lack of timely payment for</p>	<p>12. Revise the scope of work of the PPA to encompass from oversight of the procurement planning process through contract management and completion.</p> <p>Concurrent with expanding its scope, PPA should develop a strategy for fostering a close partnership with the private sector and civil-society to further develop the procurement market in Albania and the continuous improvement of the public procurement process. Such strategy should provide –among others – for the development of:</p> <ul style="list-style-type: none"> • Public-private partnerships • Effective mechanisms to foster open dialogue 	C	C	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				<p>goods, works and services rendered.</p> <p>A review of general conditions for government procurement contracts, as well as a review of contract management for a sample of contracts, showed uneven application and compliance with legal covenants by CAs. Hence, providing a reasonable basis for the private sector belief of an overall lack of capacity, resulting in discrimination and uneven balance of contractors' rights and obligations.</p>	<p>and broad participation of all relevant stakeholders</p> <ul style="list-style-type: none"> Public communication and training 			
Pillar III – Procurement Operations and Market Practices								
X	X	X	X	<p>13. PPA lacks a strategy and a system capable to gather, analyze and report procurement information to adequately support the decision process inherent in managing and developing a sound public procurement system.</p> <p>While the current e-GP platform contains all transactions processed since January 2009, existing hardware and software limitations preclude the ability to store all procurement information and to run queries and reports</p>	<p>13. As part of the scope of the ongoing audit of the e-GP platform being conducted by a consulting firm funded by the World Bank, analyze the capacity of the current platform in terms of supporting data-mining and ad-hoc queries and reporting to support procurement planning and decision-making.</p>	B	B	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
						Time Required	Difficulty	Impact
Efficiency	Transparency	Competition	International Practices					
				that are considered essential to support the decision making process.				
X	X	X	X	<p>14. PPA is formally tasked with the responsibility of designing a strategy for the training of public procurement officials, both at central and local government levels.</p> <p>Training funding is the responsibility of the Training Institute for Public Administration (TIPA), which has an annual budget equivalent to US\$ 90,000 to train up to 6,000 government officials.</p> <p>The above budget is considered largely inadequate to satisfy the training needs of the more than 5,100 civil servants involved in procurement, which accounts for almost the same number of total government employees that TIPA is required to help train annually.</p> <p>Training in 2009 was only focused on the use of the e-GP platform and encompassed approximately 700 and 900 employees at the local and central levels, respectively.</p>	<p>14. The PPA should develop a comprehensive training strategy based on specific curricula for procurement official encompassing from the basic tenets and procedures applicable to public procurement through the more advance concepts, procedures, tools and practices.</p> <p>The Government of Albania should support development of the institutional capacity as a means of attaining the type of improvement of the public procurement that it seeks. Such support should be in terms of an aggressive change management process and through the allocation of the proper resources to attain a positive transformation of the knowledge and skills of procurement officials, and to develop the kind of information and reporting tools required to support decision-making and oversight.</p>	B	B	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				Training plans for 2010 were still being prepared at the time of this assessment though the training will also be focused on the use of the e-GP platform.				
X	X	X	X	<p>15. There is not a specific career path for civil servants assigned to perform as public procurement officials. Accordingly, formulation of a strategy for attracting a cadre of qualified professionals becomes a hap hazardous exercise. The procurement function in Albania needs to be performed by individuals with the type of professional education and experience to allow them to be proficient in the performance of their duties.</p> <p>The public procurement function requires a combination of technical skills such as: accounting; business administration; economics; law; engineering; management; and information systems, just to cite the most relevant ones.</p> <p>Once individuals with those skills are in place, it is also required to have a training strategy that would progressively focus the training of the different specialties in the progressively more challenging and complex types</p>	<p>15. In close collaboration with the Department of Public Administration (DOPA), develop a dedicated career path for the different specialties involved in public procurement. Based on the responsibilities contained in the various job descriptions and the scope of authority assigned to each position along the career path, develop and implement a training strategy covering a 3 to 5 year horizon, along with the corresponding performance and qualitative indicators to measure its success.</p>	B	C	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				of procurement processes and contract management issues, from a legal and operational stand point.				
	X	X	X	16. The PPA has developed standard bidding documents (SDBs) to support different types of procurement. However, those SDBs do not contain information on the applicable alternative dispute resolution mechanism (ADR), but refer only to courts	16. PPA should update SDBs to explicitly refer to the applicable ADR mechanism.	A	A	B
Pillar IV – Integrity and Transparency of the Public Procurement System								
X	X	X	X	17. As stated in the “Policy Paper and Action Plan for the Public Internal Financial Control for 2009 – 2014 (PIFC)”, Albania is in the process of improving its managerial accountability, internal controls, risk management, accounting service, and monitoring. This in an on itself is a very challenging and demanding exercise, which requires no only to have the required level of financial resources, but above all the political commitment and the support from the majority of stakeholders involved.	17. The Ministry of Finance should prioritize implementation of a risk-based integrated internal control framework, in accordance to PIFC, obtaining the political commitment and stakeholders’ support required to consolidate implementation of all reforms articulated in the PIFC. The daunting magnitude and challenge of these reforms, necessitates of a concurrent and well-articulated and financed change-management strategy, to ensure adequate and successful implementation of the reforms	C	C	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				<p>Currently, Albania does not have a uniform internal control framework. As a result, each institution sets its own. This process results in a great deal of inconsistencies among various entities and opens the door to potential undue exposures to non-compliance in critical areas. Lack of an integrated control framework also imperils SSA's auditors as well as internal auditor's ability to plan and conduct performance audits.</p> <p>Furthermore, the review of procurement transactions revealed a rather formalistic approach to auditing with a focus on compliance.</p> <p>Given the existing capacity gap and the lack of experience in the country with modern approaches to risk-based integrated internal control frameworks, and risk-based and operational auditing, the magnitude of the changes to be undertaken would necessitate a government-wide change management strategy.</p>	sought.			
X	X		X	18. The design of the e-GP platform does not contemplate a separate user profile to grant SSA and internal auditors with unrestricted access to procurement transactions. As	18. Revise the contents of the Audit Law in order to guarantee SSA with unrestricted access to all procurement transactions in the e-GP platform, with the	B	A	A

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
						Time Required	Difficulty	Impact
Efficiency	Transparency	Competition	International Practices					
				<p>a result, both internal and the State Control Auditors (SSA), need to obtain permission from the head of the entity they want to audit, for them to access a specific procurement process.</p> <p>Such security design negates the very nature of the audit function. Pronouncement of the International Auditing Standards applicable to the external audit function (INTOSAI), as well as the Standards for the Professional Practice of Internal Auditing (SPPIA) of the International Institute of Internal Auditors (IIA), state that auditors should have unrestricted access to all relevant information required to perform their work.</p> <p>The current situation coupled with the lack of training available for internal and SSA auditors, casts doubts over the level of transparency that should characterize the operations of government entities and in particular over their procurement operations, while negating the benefits of an electronic procurement system.</p>	<p>exception of transactions kept in the lockbox. As part of such revision, modify the e-GP platform, creating a dedicated access profile for both, SSA and internal auditors and grant them access to all procurement information on on-going and executed transactions, with the exception of those included in the lockbox pending e-opening of the tender.</p>			

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
X	X	X	X	<p>19. A review of a sample of procurement transactions and contract administration at 10 government institutions, revealed several instances of inconsistent application of criteria in dealing with complaints, both at the level of CAs and at the PPA.</p> <p>While the uneven and somewhat random criteria applied by CAs and the PPA might be explained by lack of skills combined with insufficient training, some of the instances observed, raise valid concerns about the overall fairness, objectivity and independence of the complaint mechanism.</p>	<p>19. Assess PPC²⁴ and CAs experience dealing with complaints accumulated since 2009 and through today. The assessment should be aimed at extracting lessons learned, and apply them to the implementation of the internal procedures to be applied both by the Public Procurement Committee and by CAs in dealing with complaints.</p>	B	B	A
X	X	X	X	<p>20. The PPA is empowered to exclude economic operators (i.e. individuals and firms) from participating in procurement procedures for up to 3 years. The PPA also has the capacity to impose penalties and recommend sanctions (ranging from monetary penalties to debarment of firms and individuals, as well to CAs and civil servants). However, the range of penalties and sanctions are not well defined either in the PPL or in the Procurement</p>	<p>20. As part of the amendment to the PPL and of the Rules and Regulations, include a well-defined set of vendor sanction provisions articulating the range of penalties and sanctions that can be imposed by the PPA in connection with inappropriate behavior, fraud and corruption.</p>	B	B	A

²⁴ Through April 2010, that the PPC was formally put in place, all procurement complaints were the responsibility of the PPA.

Criteria in Government Policy				Areas for Improvement	Possible Actions	Assessment ²³		
Efficiency	Transparency	Competition	International Practices			Time Required	Difficulty	Impact
				Rules.				
X	X	X	X	<p>21. The Public Procurement Advocate (PPAV) plays a supportive and effective role to the reviews or investigations conducted either by the PPA or other competent authorities. However, the PPAV has been directly involved in the conduct of independent investigations of allegations of potential irregularities involving public procurement.</p> <p>To a large extent, such investigative functions constitute a duplication of the functions conferred in the PPL to the PPC, which through April 2010, date in which the PPC formally started operations, had been performed by the PPA.</p>	<p>21. Once the PPC has been in place and fully operational for about a year, there should be a revision of the investigative role of the PPAV so as not to incur in an unnecessary duplication of functions.</p> <p>Additionally, such assessment should encompass a thorough review of the functions performed by other stakeholders within the public procurement system to ensure there are no unnecessary duplication of functions and the principle of economy of control.</p>	B	B	B
	X		X	<p>22. There is no explicit reference in the PPA's website to a dedicated e-mail and hotline to report allegations of potential improprieties in connection with public procurement processes or the actions of civil servants involved in public procurement.</p>	<p>22. Modify the contents of the PPA's web-site to highlight the telephone numbers reserved for the hotline and provide content explaining that those numbers are to encourage the public to report instances of potential fraud or corruption.</p>	A	A	A

List of Contacts and Procurement Entities Reviewed

Annex 2

In accordance with the OECD/DAC Methodology, the Assessment Team complemented the assessment of the 12 BLI indicators and their 56 sub-indicators with the results of a review of a sample of tender and contract management documentation corresponding to 8 entities and 2 municipalities selected by the Advisory Group.

The resulting notes summarize the work performed in connection with each review and any findings and observations noted by the Assessment Team.

A list of the institutions reviewed as well as the individuals interviewed follows:

	INSTITUTIONS	RESPONSIBLE PERSON	CONTACT DETAILS
1	DSDC	Valbona Kuko	
		Alpina Qirjazi	
2	Public Procurement Agency		
		Klodiana Cankja	Director
		Reida Shahollari	Head of the Training, Integration, Finance and Human Resources Department
		Anilda Sefgjini	Deputy Director
		Gjergji Mocka	IT expert
3	High State Audit	Elvana Tivari	Director , Legal Quality Control
		Pjeter Beleshi	Expert on procurement Audit
		Koco Sokoli	Legal Expert
4	USAID		
		Sean Huff	Supervisory Program Officer
		Ilirjana Dana	Deputy Program Officer
		Sokol Aliko	MCC Project Manager
5	Procurement Advocate	Kreshnik Karalliu	Inspector
		Fatbardh Vrioni	Inspector
6	Ministry of Health	Gjergj Goxhi	Director
		Gjergji Vesho	Head of Procurement Unit
		Anjeza Alliu	Legal Expert
		Ilva Cavo	Procurement
		Theodharaq Zguri	Head of Internal Audit
		Skender Carcani	Head of Finance Department

	INSTITUTIONS	RESPONSIBLE PERSON	CONTACT DETAILS
7	Ministry of Education	Dafina Caushi	Head of Procurement Unit
		Skender Jaku	Head of Internal Audit
8	Ministry of Interior	Etjon Kapedani	General secretary
		Gezim Cekrezi	Director Central Procurement
		Marsuela...	
		Ervin Aliu	9
9	Ministry of Transports	Xhevdet Mehmetaj	General Secretary
		Arben Shkempi	Officer, Procurement Unit
		Mimoza Balla	head of Procurement Unit
		Erleta Bucaj	Officer Procurement Unit
10	KESH	...	Director, Wholesale supply department
		Alion Cenolli	Legal expert
		OsmanHoxha	Procurement Expert1
		Gezim Sharra	Director, Procurement Department
		Klara Mullaj	Officer, Procurement Department
		Ilir Islamaj	Officer, Procurement Department
		Astrit Veliu	Officer, Procurement Department
		Alqivadh Ndini	Officer, Procurement Department
		Suela Shanaj	Officer, Procurement Department
		Artur Kurti	Director Economic Department
		Etis Xhomo	Head of Finance Unit
11	INSIG	Erion Seferi	Head Internal Services
		Antoneta Mancellari	Head of Finance Department
12	Municipality of Kamza	Arben Muja	Deputy Chairman
		Atli Hoti	Director, Legal Department
		Shpresa Xhakrosa	Head, Procurement Unit
13	Municipality of Tirana		

	INSTITUTIONS	RESPONSIBLE PERSON	CONTACT DETAILS
14	CFCU	Mirsa Titka	Officer
15	GRD	Olsa Nikolla	Director, Legal Department
	Interviews		
1	American Chamber of Commerce in Albania	Floreta Luli Faber	Director
2	Infsoft Systems sh.a.	Vladimir Konomi	Sales Manager
3	Albanian Construction Association	Luigj Aleksii,	President
4	Albanian Construction Association	Ilir Hebovija	Editor in Chief
5	ALPET	Albana Laknori	Chief of Juridical Department Affaires
6	Profarma	Anja Novosela	Technical Assistant
7	EDIL AL-It	Xhilda Dervishi	Head Tender Unit
8	FICADEX Albania	Maria Dushi	Administrator
9	Fortune Albania	Erion Cela	Officer, Technical Department

Meetings with the Advisory Group

Annex 3

This annex contains all minutes summarizing the meetings held by the Advisory Group and the Assessment Team during the course of the work.

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11 March 2010

Advisory Group for the Procurement Assessment

Minutes of the Meeting

Location: World Bank Office, Tirana

Date & Time: 11.03.2010, 15.00 – 16.30

Participants: Valbona Kuko, Director of DSDC, Council of Ministers
Alpina Qiriaz, DSDC Coordinator, Council of Ministers
Klodiana Cankja, Director of Public Procurement Agency (PPA)
Nevila Çomo, Programme Officer, Donor Technical Secretariat
Greta Minxhozi, Senior Operations Manager, World Bank, Tirana
Knut Leipold, World Bank, Washington D.C., *via teleconference*
Sean Huff, Programme Officer, USAID
Iliriana Dana, Deputy Programme Officer, USAID
Francesca Aquaro, European Commission Office in Tirana
Astrid Wein, Head of Austrian Development Agency Office in Tirana
Norimasa Shimomura, Country Director, UNDP
Arben Rama, Democratic Governance Cluster Manager, UNDP
Xhesi Mane, Democratic Governance Programme Associate, UNDP
Jakob Schemel, Management Support Officer, UNDP
Fernando Fernandez, Casals and Associates, Procurement Assessment Team Leader
Aleksander Dardeli, Casals and Associates, Procurement Assessment Deputy Team Leader

After welcoming participants and commending UNDP's support to the Procurement Assessment, the Director of DSDC, Valbona Kuko gave the floor to Norimasa Shimomura, UNDP Country Director, to present purpose and objective of the public procurement assessment in Albania.

The overall objective for conducting an assessment of the National Public Procurement System falls within the framework of the Government of Albania's commitment on aid effectiveness, particularly as it aims to strengthen the national procurement system. This will enable development partners to progressively rely on the system once it meets mutually decided standards and thus increase national ownership. Within this context the interrelated key objectives for conducting the assessment exercise are:

- To benchmark the Public Procurement System in Albania against international standards;
- To measure progress since earlier diagnostic exercises;

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- To prepare a detailed capacity development plan that can further elaborate implementation of the Corporate Plan and provide a basis for mobilizing resources for necessary reforms and capacity development;
- To develop a case study on this exercise for publication by UNDP on the assessment and development of capacity development plan.

The introduction of the scope of procurement assessment and preliminary findings were presented by Mr. Fernando Fernandez, Team Leader, "Casals and Associates".

The main objectives of this mission comprise: (i) to contemplate the current baseline procurement capacity as a basis for monitoring its development, and (ii) to identify specific areas that require further assistance in strengthening the national procurement system. The assessment will be based on 12 Baseline Indicators and 59 Sub-Indicators as well as 29 Compliance and Performance Indicators, which reflect internationally recognized best practice. In the course of the assessment, 4-5 procurement processes will be analyzed in each of the nine entities under assessment. Mr. Fernandez emphasized that the procurement assessment should not be seen as an audit but as an analysis that will result in a set of recommendations to strengthen the public procurement system. To date, significant improvements in the legislative framework have been noted since the 2006 World Bank assessment of public procurement. Recommendations of this assessment could focus on other important elements such as capacity development, development of an Internal Control Framework and modernization of internal and external audit.

During the first two weeks of the assessment (1 – 11 March 2010) and following a desk review of existing reports such as World Bank and PPA reports, the team managed to accomplish the following tasks that form part of terms of reference with UNDP in connection with the assessment of the public procurement system of Albania:

- Kick-off meeting with UNDP and the Director for the Department for Strategy and Donor Coordination;
- Meetings with individual donors who have been supporting PPA with several projects during the past years;
- Meetings with the heads of the nine Contracting Authorities selected for review: Ministries of Education, Health, Interior, and Public Works, Directorate of Roads, KESH (Public Energy), INSIG, and the Municipalities of Tirana and Kamza;
- Meeting with PPA at which data was requested from the e-GP platform so as to populate the compliance and performance indicators that rely on statistics from the system;
- Commenced and completed the review of documentation at KESH and are currently reviewing the Contracting Authority at the Ministry of Health;
- The team reported having problems in obtaining information requested from the Ministry of Interior and from the Directorate of Roads at the Ministry of Public Works, due to apparent lack of proper authorization to share procurement documentation with the team.

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- Additional meetings with representatives from businesses and civil society will be conducted in the following week
- During the next five weeks and with the assistance of three local consultants, hired by UNDP to work with international consultants, the review of documentation will be completed, that is required by the methodology to satisfy both compliance and performance indicators for each of the four pillars representative of a public procurement system that are the focus of the assessment.

Questions and answers, comments

Ms. Valbona Kuko, Director of DSDC, highlighted that government expects the results of the assessment to reveal the existing situation in Albania. Therefore it is important to meet and discuss with donors, local and central government authorities and PPA. Also, care should be taken if there are legal constraints not to open certain files.

Mr. Fernandez explained that the team selected the files for review and these should be made available, as this was part of the agreed methodology and Government had agreed to the procurement assessment. Procurement files only remain confidential until the contract is awarded. If there are legal constraints, this jeopardizes the entire system, because there is no transparency. Mr. Fernandez reiterated that the team is assessing the procurement work performed by the institutions to provide recommendations, and is not auditing these institutions. This participatory exercise intends to support Albania in improving its procurement system rather than give judgment. As the information provided by PPA was not readable, and the team kindly requested the Director of PPA to ensure the proper list of tenders is provided to them.

Ms. Cankja underlined this assessment is important for the PPA. The accuracy of the assessment is critical and PPA expects essential details. Albanian legislation is a point of reference for the PPA. The team has the full collaboration of PPA for the data and facilitation with other institutions to access the files needed. PPA Director ensured that the requested info will be provided to the team not later than Monday, 15 March 2010.

Mr. Knut Leipold pointed out that a constructive discussion among the key partners and stakeholders is important for the process and final results of this assessment.

Ms. Astrid Wein commented that donors are keen to support the procurement system and they need to be sure the Albanian institutions use the right practices; and implement existing legislation. She also proposed that another municipality outside of Tirana be selected for the assessment (e.g. Shkoder or Durres).

Next Steps and timeframe of the assessment

Phase I – End of April 2010 - Gathering of the information, Validation of the data, Gap Analysis

Phase II – End of May 2010- Develop an action plan. Focus on capacity development and implementation plan that will allow donors to decide where to intervene for support and improvement.

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15 March 2010

Minutes of the Meeting with Business representatives

Location: UNDP Office, Tirana

Date & Time: 15.03.2010, 15.30 – 17.00

Participants: Floreta Luli Faber, Director, American Chamber of Commerce in Albania
Vladimir Konomi, Sales Manager, Infosoft Systems sh.a.
Luigj Aleksi, President, Albanian Construction Association
Iir Hebovija, Editor in Chief, Albanian Construction Association
Albana Laknori, Chief of Juridical Department Affaires, ALPET
Anja Novosela, Technical Assistant, Profarma
Nevila Çomo, Programme Officer, Donor Technical Secretariat
Arben Rama, Democratic Governance Cluster Manager, UNDP
Xhesi Mane, Democratic Governance Programme Associate, UNDP
Fernando Fernandez, Casals, Procurement Assessment Team Leader
Aleksander Dardeli, Casals, Procurement Assessment Deputy Team Leader

After welcoming the participants the UNDP Head of Democratic Governance Cluster, Arben Rama, gave the floor to the Procurement Assessment Team Leader Mr. Fernando Fernandez for the presentation of the purpose and objective of the public procurement assessment system in Albania.

The overall objective for conducting an assessment of the National Public Procurement System falls within the framework of the Government of Albania's commitment on aid effectiveness, particularly as it aims to strengthen the national procurement system. This will enable development partners to progressively rely on the system once it meets mutually decided standards and thus increase national ownership.

The American Chamber of Commerce notified that it is conducting a survey on with 300 questionnaires including all businesses in Albania. The report will be ready in few weeks and will be shared with partners.

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- (2b) With regards to the standard tender documents, you may find standard tender documents published in the PPA website, but the problem remains how these documents are used to formulate the standards for qualification. There is open procedure, but with limited access. The information is often missing. The economic operators does not know which of the standard documents has been uploaded into the system and if the procurement authority has received their full bidding package. Often they are surprised to hear that one or more of their completed documents has not reached the contracting/procuring authority.
- (2/F) Sector of Public Investments – Model of the contract. There are no bilateral contracts, but one-sided ones. They are favoring only the government. If the companies do not perform they have to fulfill the contract obligations. Whereas it does not follow the same thread for the government. There are several delays in payments. Also there are no interests paid for these delays to the contractors. In theory the contractors can complain and go to the court but it will take a long time. It was pointed out that penalties should be equal for both parties. Practically, the contracts are one-sided. There are also misinterpretations of the law. In general terms: the contractor is in a disfavored position in cases when there is any delay. In these cases the contractors are charged with the percentage of the total contract instead the percentage of the remaining value.
- (12) Participants find the e-procurement system easy to use, but there is still lack of transparency. Transparency should be included as an article in the law does. The government has all range of information for a business, such as their financial statement, number of employees etc, while the economic operator itself is informed only about the total value of the offer, at the moment the offers are opened or published. Price becomes public, but not the specifications and qualifications criteria.

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Attachment – Questionnaire

Chambers of Commerce and Civil Society	
Indicator	Question
1 d) – Rules on participation and qualitative selection	In your experience, do tender documents include provisions limiting participation for reasons other than qualifications or acceptable exclusions?
1 f) – Tender evaluation and award criteria	Do you consider the technical specifications to be reasonable and unbiased? And are the criteria of the pass/fail type? Are you satisfied with the response you obtained to clarifications on tender criteria? Are those clarifications timely and provided to all offerors?
	Are you informed of the results of the award process and have access to the information on other bidders?
	Do you consider the system ensures adequate confidentiality of bidders' information throughout the tender process?
1 h) – Complaints system structure and sequence	Are you satisfied with the response received to complaints you raised about specific tenders? Have those complaints resulted in any action on the part of the PPA?
2 b) – Model tender documents for goods, works, and services	Are standard bidding documents used as default in all tenders? Do they contain standard bidding and contractual clauses making reference to the applicable contractual regulations?
2 f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts	Are general conditions of contracts incorporated in the general conditions of standard bidding documents?
3 b) – Budget law and financial procedures support timely procurement, contract, execution, and payment	What is the average time for payment? Are you aware of delays in contracting or paying as a result of insufficient funding?
4 c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties of the PPA	In your opinion, is the public procurement functions properly staffed and trained to ensure a transparent, fair, effective and efficient procurement process? What are your concerns? Please elaborate
4 d) – Separation and clarity of responsibilities to avoid conflict of interest in the execution of procurement transactions.	In your opinion, does the system ensure adequate separation of duties both at the level of the procurement entity and that of the PPA to ensure there are no perceived or actual conflicts of interest?
6) Efficiency of procurement operations and practices	What is the average number of days elapsed from advertisement of the open tender through contract award?
7 a) – Effective mechanisms for partnerships between the public and private sector	Are there sufficient dialog with the PPA and procurement entities to foster development of public private partnerships?
7 b) – Private sector institutions are well organized and able to access the market	Is the level of the private sector in public procurement, both in terms of dialogue and influencing policy, transparency and fairness as well as satisfying government procurement needs, adequate?
10 b) – Capacity of the system for handling and enforcing complaint decisions	Are you aware of enforced actions regarding decisions affecting specific bids?
10 c) – Fairness of the complaints system	Do you consider the complaint system to be effective, transparent and fair? Are actions being properly enforced?
12 d) – Effectiveness of the anticorruption measures on public procurement	Do you consider the current anticorruption mechanisms and measures to be effective? Has the e-procurement platform reduced the possibility of corrupt practices affecting public procurement?
	What are the areas of the procurement process that in your opinion are still murky and prone to corrupt practices?

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The participants were presented with a questionnaire and were asked to reply to the different questions included in it. The discussion was developed based going through each of the questions of the questionnaire. Following are some of the reactions:

- The participants felt that Contractual Authorities consider themselves as owners of the funds they receive, not as managers of these funds. The available funds should be in disposal of public opinion. Every economic operator should participate in the tender. With the e-procurement in place, there is no corruption but lack of transparency still exists.
- (1/d) There are not good qualification criteria. Nobody is excluded from the tenders. But the qualification criteria many times are set very low or are abusive, leading to bad evaluation of the offers. Sometime qualification criteria are so general and as such every company (even the ones not really qualified for the specific field) can apply for a tender. Whereas, in international tenders, there are qualification criteria which might exclude Albanian operators, or the reference documents are in Albanian.
- In the majority of cases the winner is selected based on the lowest offer. But the procuring/contracting authorities use a formula. This formula that is used is mathematically wrong, it lowers the qualification standards and automatically bring some unqualified bidders offering the minimum price as winners. The adjustment of the formula is really important.
- Sometime the whole procurement procedure fails because of some lots. A better system should be in place to avoid this.
- A system to prepare qualitative qualification standards is missing. In some cases the qualification standards are prepared in a way that they favour some companies (stating a specific number of requested equipments, etc.). Legal acts should be prepared to foresee these.
- The economic operators are not informed about different procurement plans. According to the law every 15th of January the contractual authorities should publish the procurement plans for the current year, but they have not done so.

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