



EBRD UNCITRAL

Public Procurement Initiative



Through its Legal Transition Programme (LTP) the European Bank for Reconstruction and Development (EBRD) promotes commercial law reform in its countries of operation.

In 2008 public procurement was included as part of the LTP agenda to foster reform and promote transparency and efficiency of public contracts in the EBRD countries of operations. The United Nations Commission on International Trade Law (UNCITRAL) adopted the UNCITRAL Model Law on Public Procurement in 2011 (revising the earlier 1994 Model Law on Procurement of Goods, Construction and Services).

The 2011 UNCITRAL Model Law was developed to provide a template for governments seeking to upgrade their public procurement legislation, and takes into account the provisions of the World Trade Organisation's Agreement on Government Procurement and those of the United Nations Convention Against Corruption. Following earlier cooperation, in 2010 the EBRD and UNCITRAL established a technical cooperation project – a joint EBRD UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS countries and Mongolia (the Initiative). The Initiative is intended to support strengthening public procurement regulation in the CIS region, while encouraging the upgrading of public procurement legislation to the current international standards.

ABOUT THE EBRD

The European Bank for Reconstruction and Development is an international financial institution promoting transition to a market economy. Part of its mission is to provide technical assistance to develop commercial laws and institutions that shape market based economies, create a sound investment climate and promote economic growth.

ABOUT UNCITRAL

The core legal body of the United Nations system in the field of international trade law with universal membership, specializing in commercial law reform worldwide for over 40 years. UNCITRAL's mission is the modernization and harmonization of rules on international business.

The Initiative's activities, dedicated to support legislative reform and institutional capacity building in the public procurement sector, cover:

- Armenia • Azerbaijan • Kyrgyz Republic
- Kazakhstan • Moldova • Mongolia
- Russian Federation • Tajikistan



CURRENT ACTIVITIES AND NEXT STEPS

A team of highly experienced international procurement experts has been working on the Initiative since September 2011.

Also, appointed by UNCITRAL, distinguished academic advisers have joined the project team. The team of experts is now conducting a detailed legal analysis of national legislation in the CIS and Mongolia region, based on the benchmarks provided by 2011 UNCITRAL

Model Law. Up till now, the experts have processed a legal diagnostic of the legislation in Armenia, Azerbaijan, Moldova, Mongolia and Russia. In the diagnostic reports, the efficacy of the primary and secondary public procurement legislation has been assessed, as have the manner of implementation of the legislation and local procurement practice. The diagnostic reports reflecting the findings for each country were discussed at policy workshops organised under the Initiative in Yerevan, Armenia on 10-11 October 2011,

and in Chisinau, Moldova on 13-14 December 2011. Key local experts and policy-makers also participated in these workshops. Based on the conclusions at the workshops, a reform work plan has been developed that will provide a basis for technical cooperation projects with the Armenian and Moldovan governments. Preparation for further policy workshops in the region is underway, with workshops in Azerbaijan, Kyrgyz Republic and Mongolia scheduled to take place in 2012.

THE INITIATIVE

The Initiative embraces a series of public procurement reform- related activities, selected based on their potential transition impact and their relevance to the specific problems which the countries in the region face, as identified in the EBRD 2010 Public Procurement Legal Framework Assessment and reported by the EBRD procurement specialists working in the countries in the region on the EBRD-financed projects. Presently, the Initiative's programme comprises (a) legal comparative diagnostics, (b) series of regional policy dialogue workshops and (c) country-specific technical cooperation projects to help reform public procurement laws and practice in compliance with the 2011 UNCITRAL Model Law.



1 LEGAL DIAGNOSTICS OF NATIONAL PUBLIC PROCUREMENT LEGISLATION



This detailed comparative gap analysis of the legislation and practice in selected CIS countries and Mongolia will provide specific public procurement reform suggestions for the countries, identifying any areas which are now inconsistent with the leading international practices based on the revised UNCITRAL Model Law. The aim of this component of the Initiative is to provide governments with current and impartial data on their reform needs in the public procurement sector, as well as with realistic reform objectives in order to specify the scope, timeline, and intensity of the necessary reforms – whether amendments to the existing legislation are needed, small or substantial, or a new comprehensive public procurement policy and legislation needs to be developed.

This assessment is also intended to identify which sector needs can be addressed by technical cooperation projects, carried out together with international stakeholders.



2 REGIONAL SERIES OF POLICY WORKSHOPS

Public procurement policy workshops will be held in each of the participating countries interested in developing their national public procurement regulation, originally based on the 1994 Model Law

standard (Azerbaijan, Kazakhstan, Kyrgyz Republic, Mongolia, and Tajikistan) or adopting the revised 2011 UNCITRAL Model Law standards (Armenia, Moldova). This series of workshops is designed to present the 2011 UNCITRAL Model Law standards for modern public procurement policies, including eProcurement solutions and advanced procurement tools and techniques, and provide a comprehensive advice on how the 2011 UNCITRAL Model Law can be used to achieve the governments' objectives for their public procurement sector. As the 2011 UNCITRAL Model Law was developed with a "tool box" approach, it may provide a legislative template for governments seeking to upgrade their public procurement frameworks with different objectives in mind: the World Trade Organisation's accession process and the negotiations on WTO Government Procurement Agreement, the European Union accession process, or simply modernisation and improvement of public procurement processes and contracts.

At the policy workshops, each dedicated for key national regulatory officials responsible for economic development, public finance and infrastructure as well as key personnel of the public procurement authorities, a team of highly experienced international regulatory and procurement experts presents the key UNCITRAL public procurement policy standards as well as results of the legal diagnostics of national legislation based on the benchmarks of the 2011 UNCITRAL Model Law. Recommendations from the legal assessment are intended to provide inputs to the discussion on the best approach to reform the national framework and how the 2011 UNCITRAL Model Law can be translated into the national legislation in the country.

3 COUNTRY-SPECIFIC TECHNICAL COOPERATION PROJECTS



The objective of the Initiative's country specific technical cooperation projects is to support national governments in establishing or upgrading public procurement legislation and institutional framework compliant with the recommendations of the 2011 UNCITRAL Model Law. Based on the policy workshop discussions, a reform work plan can be developed and provide a basis for a technical cooperation project with the national authorities responsible for developing public procurement regulatory framework.

Depending on the actual reform needs in the country, the country project, based on the 2011 UNCITRAL Model Law policy recommendations may support:

- legislative reform,
- institutional capacity building,
- public procurement review and capacity building of the remedial system,
- procurement function development activities.

WHY REFORM PUBLIC PROCUREMENT?



STRATEGIC GOVERNMENT ACTIVITY INVOLVED

- Public contracts are a basis for major & expensive public sector projects (infrastructure, education, health)
- Public procurement has significant impact on economic performance and national development
- Public contracts are a basis for provision of essential everyday services to the public (electricity, transport, communication)

AMOUNTS INVOLVED IN PUBLIC PROCUREMENT

- 10-20% of GDP, 45% government spending (World Bank, OECD)
- Systemic corruption: 20-30% of budget for public contract is wasted (World Bank)
- Capacity problems: 80% of waste is inefficiency, not corruption (research on the Italian public procurement system)
- Procurement reform could yield 10% efficiency benefits – i.e. 1-2% of GDP

WHY USE 2011 UNCITRAL MODEL LAW?

IT REPRESENTS LEADING INTERNATIONAL PRACTICES

- Negotiated through intergovernmental meetings
- All regions/countries of the world shared their experience
- Reflecting leading practices in international procurement

- Policy recommendations are suitable for all countries
- Consistent with international obligations and adaptable to national regulatory framework

It is a modern procurement policy, based on leading international practices, built as a template for national procurement legislation

- The Model Law provisions have sufficient detail for national law development
- The Model Law is adaptable to allow for different international obligations and policy goals (WTO, EU, IFIs)
- Accompanied by a Guide to Enactment that explains the Model Law's provisions and recommends an appropriate implementation approach

SUSTAINABLE PROCUREMENT

Sustainable public procurement is defined as a process whereby organisations meet their needs for goods, services, works, and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisations, but also to society and the economy, whilst minimising damage to the environment. Sustainable procurement seeks to achieve the appropriate balance between the three pillars of sustainable development i.e. economic, social, and environmental. The 2011 UNCITRAL Model Law recommends an appropriate legal framework which enables governments to pursue these policy goals through procurement process.

INTEGRITY, FAIRNESS, AND EFFICIENCY

The EBRD and UNCITRAL share their understanding of public procurement core principles.

- 1. Accountability of public sector spending.**
- 2. Integrity of the procurement process.** The legal framework should promote integrity among the procurement function, transparency in delivering government policy and value for money.
- 3. Adequate level of transparency.** For public procurement to be acceptable by all stakeholders it should be regarded as public, transparent, and objective. Any suggestion of an un-disclosed resolution must be avoided.
- 4. Enabled competition.** As a general rule, tenders and tenderers should be given equal treatment, without regard to nationality, residency, or political affiliation.
- 5. Economy in the procurement process.** The law should enable public procurement to be accomplished professionally in a reasonable time.
- 6. Promote efficiency of the public contract.** Sound programming and planning of procurement is crucial to conclude a cost effective and accurate public contract. Legal framework should ensure that value for money is achieved, and promote methods of tender evaluation with regard to both the quality and cost of purchase.
- 7. Value of proportionality.** The contracting entity should align the value and scope of the contract with choice of the contract type and formal tendering procedure.
- 8. Uniformity.** For public procurement to be efficient, the laws should be unitary, comprehensive, and should cover all public contracts. State or municipal contracting authorities and the public utility entities may have very different requirements in terms of function and commitments. An effective PP framework should be clear in determining the requirements of contracting entities with different status.
- 9. Stable, but flexible.** To make the process efficient, stakeholders must learn their roles, rights and obligations within a stable legislative framework. No market with a public procurement sector can operate smoothly if there are frequent changes to the law. At the same time, the framework should be capable of flexibility in order to accommodate the changing market.
- 10. Enforceability.** Public procurement law should be easy to enforce. Regulatory mechanisms should be able to assess the compliance of the contracting entities and employ remedial measures when necessary.

THE 2011 UNCITRAL MODEL LAW, MODERN PROCUREMENT TOOLS & TECHNIQUES



1 ePROCUREMENT FOR THE PUBLIC SECTOR

Electronic procurement (eProcurement) in the public procurement sector is the business-to-government tendering and sale of goods, services and works through online platforms as well as other networking systems, such as electronic data interchange and procurement planning facilities. In a complete eProcurement system business-to-government transactions can be initiated, advertised, and completed online, with real time monitoring and audit, while bureaucracy and formalities are limited to absolute fundamentals. In short, eProcurement replaces paper-based public procurement procedures with ICT-based interactive online processes - online e-tendering procedures. With online e-tendering procedures in place, new electronic procurement tools can be employed: e-auctions, e-purchasing based on framework agreements or e-catalogues.

What can be achieved by a public procurement reform including eProcurement solutions?

- Greater transparency at lower cost
- Better accountability by improving procurement process and decision-making
- Standardization and uniformity of local procurement practice
- Better monitoring with easy direct access to procurement records and data on public contracts performance.

Under the Model Law there is no distinction between paper-based or electronically conducted procurement. If eProcurement solutions are implemented in national legislation, the Model Law highlights the need to ensure effective market access for suppliers. It allows for electronic submission of tenders in an environment that reflects traditionally high transparency safeguards.

The Model Law proposes a ready-to-adopt template legal framework for eProcurement solution in the public procurement: **e-communication, e-notices, e-tenders, e-auctions, and e-records.**

2 MODERN PURCHASING FRAMEWORK AGREEMENTS AND E-CATALOGUES

The 2011 UNCITRAL Model Law follows a modern, 'guided toolbox' approach to public procurement rules recommending procedures suitable for different types of public contracts and enabling procurement officials to select the most competitive and appropriate method to procure the goods, construction or services needed. Framework agreement is a modern procurement technique enabling the online awarding of recurring or indefinite public contracts for the delivery of goods or services online, on the basis of a framework agreement, concluded in a public tender. The main benefits are to improve efficiency, and the tool may also enhance competition and transparency in low-value procurement, which might otherwise be exempted from transparency safeguards.

The Model Law proposes a ready-to-adopt template regulation of framework agreements in the public procurement:

- Efficient purchasing technique
- Often suitable for standardised goods and services
- "Closed" and "open" framework agreements to select from
- Online e-catalogues to increase efficiency and speed up procurement process.

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