

EBRD Legal Transition Programme Public Procurement Technical Cooperation



European Bank
for Reconstruction and Development

Who we are

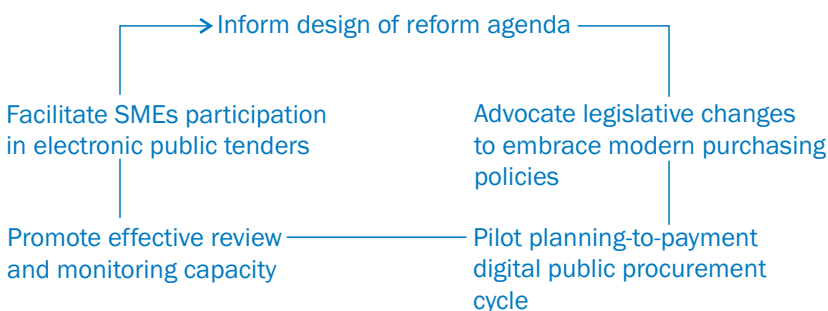
The EBRD Legal Transition Programme (LTP) is successfully providing technical assistance for commercial law reform and developed a unique approach to policy advice that combines specialised legal assessments and dedicated country-specific reform support projects with broader regional initiatives to increase the transition impact of reforms.

What we do:

- ▶ Identify market best practice and provide inputs to standard-setting
- ▶ Review and assess national regulatory frameworks to identify reform needs
- ▶ Facilitate political discussion and accepting reform agenda by governments
- ▶ Support governments during reform design as well as implementation to create modern national public procurement systems appropriate for diverse range of public contracts: from low value purchases to investment projects and aggregated strategic procurement

How we work

Working with governments interested in transformation, we specialise in developing technical cooperation packages that assist national reform leaders with designing and implementing public procurement reforms, from concept to results measurement.



What we advocate

- ▶ Keeping public procurement market efficient through competition
- ▶ Maintaining low barriers to entry, by promoting open procurement markets, with easy access for new entrants from local business, SMEs in particular, and inappropriate barriers for international trade
- ▶ Boosting transparency of procurement process
- ▶ Promoting digital planning-to-payment public procurement cycle
- ▶ Working with civil society to monitor procurement outcomes, not procurement process

Our strong points: expertise and experience

The LTP technical cooperation in the public procurement sector is presently active in 17 countries in the EBRD region and organised into the following pipelines/programmes:

1. EBRD GPA Technical Cooperation Facility
2. EBRD UNCITRAL Public Procurement Reform Initiative
3. Digital Public Procurement Cycle - Assistance in Designing and Implementing Electronic Public Procurement

4. Facilitating SMEs Participation in Electronic Public Tenders
5. Open Data Open Government in Public Procurement - Reporting, Monitoring, and Audit and Public Access to Procurement Information
6. Tribunal Skills for Public Procurement Review.



The EBRD GPA Technical Cooperation Facility is a programme assisting governments in the EBRD region committed to join the World Trade Organisation's Agreement on Government Procurement (WTO GPA). Building on the EBRD support, Armenia, Montenegro, Moldova and Ukraine have recently joined the revised 2012 WTO GPA. To date, Tajikistan completed negotiations, and the Kyrgyz Republic submitted GPA offer. To facilitate further GPA accessions, the LTP is presently working with Azerbaijan, Belarus, FYR Macedonia, Georgia, Jordan, Kazakhstan, and Turkey.

The EBRD UNCITRAL Public Procurement Reform Initiative (the "Initiative") is a support programme initiated by the EBRD Legal Transition Programme and the United Nations Commission for International Trade Law (UNCITRAL), in operation since 2011 and dedicated to promoting modern procurement practice. The Initiative works with governments in the EBRD region interested in updating their national public procurement legislation to the standards of the 2011 UNCITRAL Public Procurement Model Law.

By 2013, the Initiative completed legal diagnostic and policy workshops in Armenia, Azerbaijan, the Kyrgyz Republic, Moldova, Mongolia and Tajikistan. Results of the policy discussions provided inputs to reform agenda in Armenia, the Kyrgyz Republic and Tajikistan and, in 2014, in Mongolia. In 2016 initial work started in Egypt and there are three country projects under development: Azerbaijan, Jordan and Kazakhstan. Information on all EBRD UNCITRAL Initiative activities can be found at: www.ppi-ebd-uncitral.com

In 2015, the LTP assisted Bulgarian government with designing eProcurement strategy and reform implementation plan. Lessons learned paved the way for **Digital Public Procurement Cycle** and **Open Data Open Government in Public Procurement** concepts and were since utilised in Ukraine (Prozorro Project), Tunisia (TUNEPS Plus), Moldova (MTender) and the Kyrgyz Republic (Online Market). Presently, the LTP is working with Transparency International Ukraine on pilot projects developed in cooperation with the Open Contracting Partnership (www.open-contracting.org). The objective is to develop new reporting, monitoring and audit concepts for fully digital public procurement cycle (incorporating Open Data standards), promoting Open Government and effectively engaging civil society in active dialogue with authorities about public procurement outcomes.

The LTP work with national public procurement review bodies is focused on creating independent and fair review and remedies instruments to protect private sector against discretionary procurement decisions of government agencies. **Tribunal Skills for Public Procurement Review** is a procedural fairness guidebook for members of national public procurement review bodies, responsible for hearing complaints and remedies decisions. Developed in English, French and Russian to suit jurisdictions worldwide, its national localised versions: Georgian, Romanian, Ukrainian are forthcoming.

In cooperation with the EBRD Small Business Advisory, the LTP is working on identifying global best practice for improving market access and business-to-government opportunities for small business. **Facilitating SMEs Participation in Electronic Public Tenders** is advocating procurement laws with business-friendly procedures and online tools, in particular for low value municipal procurement, to encourage participation of local SMEs in public tenders. Successfully implemented in Tunisia and Ukraine, similar projects are launched for the Kyrgyz Republic, Moldova and Tajikistan.

Scope for working together

Within most sought-after Digital Public Procurement Cycle and Open Government agenda, technical cooperation activities of potential interest to the EU Member States, fall into four categories of technical cooperation projects:

- ▶ Policy advice for establishing national electronic public procurement schemes
- ▶ Open Data Open Government in Public Procurement – reporting, monitoring and auditing electronic public procurement
- ▶ Facilitating local SMEs participation in electronic tenders for small value public contracts
- ▶ Assistance in designing and piloting electronic framework agreements for aggregated procurement for central purchasing bodies.

Policy advice for establishing national electronic public procurement schemes

Successful electronic procurement implementation requires practical knowledge of global best practice, accurate local market evaluation and experience in public procurement policy making and change management. We promote Open Data Open Source Open Government approach to eProcurement reforms and the technical cooperation starts from developing a reform concept, covering alternative eProcurement models/scenarios suitable for local market. Upon the decision of the government as to which model is to be implemented, policy advice is provided regarding developing an implementation plan, acquisition and/or development of the eProcurement tools and piloting new tools and policies in practice.

TC Project Scope: The technical cooperation projects normally consist of five key components:

Component 1: Preparation of the reform concept, presenting alternative reform models suitable for local market;

Component 2: Preparation of the Reform Implementation Plan, discussing legal, business and technology decisions necessary to implement the selected eProcurement model in practice;

Component 3: Preparation of a new legislation that would underpin the implementation of eProcurement in the national legal framework;

Component 4: Preparation and delivery of training for reform implementation team;

Component 5: Provision of on-going policy, regulatory and business advice on eProcurement reform preparation and implementation, including piloting of new regime in practice.

Budget: Depending on the scale and complexity of implementation, total budget of completed projects ranked from 410,000 euros (Bulgaria) to 550,000 euros (Ukraine, Moldova), excluding costs of acquisition or development of eProcurement systems. Typical cost of development or acquisition of an open source complete digital cycle single platform eProcurement system is estimated at 2,500,000 euros (Bulgaria) and an open source networking multi-platform eProcurement system is estimated at 950,000 euros (Ukraine, Moldova, the Kyrgyz Republic, Tajikistan). Lower cost of networking multi-platform systems is resulting from cost-sharing with networking platforms operators (self-funded eProcurement operations) and utilizing the OCDS open source prototype developed by the Bank.

TC Project Outcomes: deliverables under the above described technical cooperation normally include:

1. Procurement reform concept for national policy makers
2. Public procurement business model for digital procurement cycle
3. New public procurement secondary and tertiary legislation incorporating electronic procurement procedures, as selected for implementation
4. eProcurement implementation plan, covering IT tools acquisition for digital public procurement cycle, piloting and roll-out of eProcurement tools
5. 12 months on-going advice during acquisition, piloting and deployment of new electronic procurement procedures
6. Training program for national eProcurement implementation team
7. eProcurement reform awareness raising campaign for contracting entities and suppliers, online campaign combined with two large scale public outreach events.



Open Data Open Government in Public Procurement – online access, reporting, monitoring and auditing of electronic public procurements

Developed in cooperation with Transparency International and Open Contracting Partnership, the TC Project is designed to deliver:

(a) an open access to national public procurement information for the general public and civil society organisations (Open Government), based on Open Data and Open Contracting Data Standard concepts

(b) to produce an evidence-based public procurement reporting, monitoring and auditing online tools, integrated in the local electronic procurement systems, for governmental enforcement agencies, and

(c) to pilot new Open Data online tools in practice with a selected enforcement agency and local watchdog organisation.

This technical cooperation is of particular interest for (a) countries newly introducing national eProcurement schemes and (b) countries operating comprehensive but closed SAP or Oracle-based electronic public procurement systems which do not offer Open Data functionalities.

Benefiting from technical cooperation with EBRD, governments may be able to efficiently and quickly implement a set of innovative Open Data tools for open access to public procurement information for civil society that – at the same time- enable very modern public procurement process enforcement for governmental agencies.

TC Project Scope: The objective is to deliver the methodology, consultancy services and development works, which are intended to build, test, train and launch a comprehensive Open Data Open Government solution delivering critical governance functions for public procurement.

Component 1: Support the national public procurement regulatory body with the development of Public Procurement Open Data Concept suitable for national jurisdiction and building on Open Government principles

Component 2: Preparation of a localised comprehensive public procurement data set for Open Data, based on the Open Contracting Partnership case studies, to

enable open access to new and historical public procurement information for the general public, business community and civil society organisations

Component 3: Undertake an implementation of the Advanced Open Contracting Data Standards (Advanced OCDS) in the national electronic procurement system, through the mapping of public procurement data collected by the national public procurement system(s) to a new flexible Open Data database that can be used for reporting, monitoring and auditing by national enforcement agencies

Component 4: Develop flexible multi-purpose Open Data database for the automatic extraction of new procurement information from the national electronic procurement system in real time that ensures data integrity and prevents data manipulation, thus enabling unaltered public procurement information to be made available easily and free of charge to the general public

Component 5: Assist with implementing the Open Data Observer (a prototype of specialised data access and reporting tool for public procurement information) to suit local electronic public procurement system and local needs

Component 6: Assist with implementing the Open Data Explorer (a prototype of specialised monitoring tool for electronically-conducted public procurement) to suit local regulatory requirements and to operate based on historical and new data automatically collected by national electronic public procurement system(s)

Component 7: Assist with implementing Open Data Red Flag (a prototype of auditing tool for electronically-conducted public procurement) to suit local regulatory requirements and to operate based on historical and new data automatically collected by national electronic public procurement system(s).

Budget: Depending on the scale and complexity of implementation, total budget of previous projects ranked from 90,000 euros (Armenia) to 155,000 euros (Cyprus), including costs of development of Open Data tools.

TC Project Outcomes:

The expected outcome is as follows:

1. Public Procurement Open Data Concept, suitable for local jurisdiction

2. Implementation of the Advanced Open Contracting Data Standard for electronically conducted public procurement in the national electronic procurement system/systems
3. Ready-to-use comprehensive and flexible Advanced OCDS database, integrated into the national electronic procurement system
4. Ready-to-use Open Data Observer application, integrated with local electronic procurement data sources and the national public procurement web-portal
5. Ready-to-use Open Data Explorer application, integrated with local electronic procurement data sources and the national public procurement web-portal
6. Ready-to-use Open Data Red Flags for Audit application, integrated with local electronic procurement data sources and the national public procurement web-portal
7. Online training materials for the redeveloped applications
8. Face-to-face training programme for national eProcurement systems administrators and key users in the national procurement monitoring, financial control and audit office.

Facilitating SMEs participation in electronic tenders for small value public contracts

The objective of assistance related to small value public procurement aims at advocating modern policies increasing capacity of SMEs in utilising business opportunities arising from decentralised public procurement system and availability of electronic public procurement tools.

Typically, to improve SMEs access to electronic public tenders new secondary and tertiary legislation and new electronic tools are required that should include (a) simplified procurement procedures for small value contracts (below international bidding thresholds), to decrease bureaucratic burden for small business in submitting offers for public tenders; (b) free of charge access to procurement opportunities

through online publication of notifications and tender documents; and (c) free of charge online submission mechanisms which enable small business to compete better for regional and local contracts while decreasing the scope for manipulation of tender results.

TC Project Scope: Based on example of the relevant country projects in Tunisia, Moldova, and the Kyrgyz Republic the technical cooperation project assisting government with introducing online small value public procurement procedures shall include the following components:

Component 1: Review of the national SMEs strategy to develop an implementation plan for supporting SMEs access to public procurement

Component 2: Development of electronic procedure for public small value contracts: benchmarking and procedure development (legislative drafting)

Component 3: Design of the online tool for small value procedure for public contracts to achieve a best fit with national electronic public procurement system, presently under development and the e-government services relevant for public bidding (tool development)

Component 4: Assistance with the implementation of the new SMEs friendly procedure in practice

Component 5: Support during the pilot stage of the new procedure: capacity building for local SMEs who previously did not participate in public contracts

Component 6: Assistance with promoting the new electronic procedures to contracting entities in public sector, in central government and on the regional level.

Budget: Depending on the scale of engagement with local SMEs (from 400 to 1000 SMEs provided with hands-on training how to bid electronically), total TC budget ranked from 350,000 euros (Kyrgyz Republic) to 750,000 euros (Tunisia), excluding acquisition or development of eProcurement systems.

Typical cost of development or acquisition of open source eProcurement tools is estimated between 155,000 euros (eProcurement tools built of the EBRD open source prototype) and 300,000 euros (dedicated new eProcurement solution).

TC Project Outcomes: Expected outcomes of the above technical cooperation shall include:

1. Capacity building for national trade and public procurement authorities to identify best approach to local SMEs development while respecting needs of public sector contracting entities
2. Small value procedures implementation concept, covering simplified procurement procedure for small value contracts (below international bidding thresholds) to decrease bureaucratic burden for small business and including free of charge access to procurement opportunities through online publication of notifications and tender documents
3. Relevant drafts of secondary legislation, if required
4. Draft Bidding Manual for local SMEs participating in piloting new small value electronic procedures for goods and services
5. Training curriculum on small value procedures for local users: suppliers and contracting entities



Assistance in designing and piloting electronic framework agreements for aggregated procurement by central purchasing bodies

Successful implementation of electronic framework agreements involves designing framework scheme suitable for local market, developing secondary legislation and standard bidding documents for centralised framework agreements as well as piloting of the new purchasing system in practice.

TC Project Scope: The technical cooperation project supporting implementation of electronic framework agreements shall normally consist of four key components:

Component 1: Preparation of the framework agreement implementation concept and methodology, including functional specification for dedicated electronic procurement tools, for local central purchasing bodies

Component 2: Draft secondary legislation on implementation of framework agreements

Component 3: Assistance with implementation of electronic framework agreements, by:

1. designing methodology for operation of centralized framework agreements
2. supporting market research for selected categories of goods to be purchased in the pilot of framework agreements
3. supporting preparation of the standard technical specifications for goods categories selected for piloting framework agreements
4. developing new Standard Bidding Documents for framework agreements and purchasing from framework agreements

Component 4: Providing ongoing coaching to implementation team while piloting framework agreements;

Budget: Depending on number of frameworks in pilot (from 5 to 60 standardized products), previous TC projects ranked from 250,000 euros (Moldova, Ukraine), 350,000 (Tunisia) to 450,000 euros (Mongolia).

TC Project Outcomes: Expected outcomes of the above technical cooperation shall include:

1. Capacity building on best practice for electronic framework agreements to identify suitable model for local market
2. Framework agreements implementation concept and methodology for central purchasing bodies
3. Relevant drafts of secondary legislation on electronic framework agreements
4. Report from market research presenting draft standard technical specifications for goods selected for pilot of framework agreements
5. Draft Standard Bidding Documents for piloting electronic framework agreements for goods and services
6. Comprehensive training programme and coaching for national implementation team provided during piloting framework agreements
7. Training curriculum on electronic framework agreements for local users: central purchasing bodies, contracting entities and suppliers
8. On-going advice during piloting first framework agreements.

