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REPUBLIC OF POLAND

FINAL
COUNTRY PROCUREMENT
ASSESSMENT REPORT

VOLUME I

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EUROPE AND CENTRAL ASIA REGION
THE WORLD BANK

**POLAND
COUNTRY PROCUREMENT ASSESSMENT REPORT
VOLUME I**

FINDINGS AND RECOMMENDATIONS

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CURRENCY

Currency Unit = Polish Zloty (PLN)
US\$1 = PLN 3.95 (September 1999)

ACRONYMS

APP	Act on Public Procurement
CPAR	Country Procurement Assessment Report
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EU	European Union
FY	Financial Year
GCC	General Conditions of Contract
GEF	Global Environment Facility
GOP	Government of Poland
ICB	International Competitive Bidding
MOF	Ministry of Finance
NBP	National Bank of Poland
NCB	National Competitive Bidding
NRC	Negotiations with Retaining Competition
OPP	Office of Public Procurement
PCBC	Polish Testing and Certification Center
PLN	Polish New Zloty
PPB	Public Procurement Bulletin
SBD	Standard Bidding Documents
SCC	The Supreme Chamber of Control (NIK)
UNCITRAL	United Nations Commission for International Trade Law
USAID	United States Agency for International Development
WTO	World Trade Organization

**POLAND
COUNTRY PROCUREMENT ASSESSMENT REPORT
(CPAR)**

PREFACE

Date of the Report

This report was finalized in July 2000 after discussions in May 2000 with the Office of Public Procurement.

Basis of Report

This report, which updates the CPAR on Poland dated March 15, 1996, was prepared on the basis of the findings of a Bank mission to Poland from August 30 to September 9, 1999, and analysis of the materials and other information collected. The Bank's mission comprised of Messrs. Naushad Khan, Senior Procurement Specialist, (CPAR team leader); Shaun Moss, Senior Procurement Specialist, and Robert Kietlinski (Operations Officer, World Bank Office, Warsaw). The CPAR counterpart team appointed by the Government of Poland comprised, for the Ministry of Finance, Ms. Agnieszka Rudniak, Deputy Director of the International Department and Ms. Beata Nehrebecka, Head of Division in the International Department and, for the Office of Public Procurement Office (OPP), Dr. Marian Lemke, Chairman, and Mr. Piotr Nils Gorecki, Director of the Department of European Integration and International Relations. The Bank is grateful to the Polish Government's counterpart team for their full and proactive commitment to the CPAR mission, participation in key meetings and, in particular, for the comprehensive dialog, which they entered into with the Bank, to discuss the issues identified by the assessment and to develop the recommendations which this report presents.

Purpose of the Report

The World Bank undertakes assessments of the procurement environment, covering both public and private sectors in borrowing member countries on a systematic basis. The objective of the assessment is to determine the compatibility of national procurement law and practices with the principles of economy and efficiency and with international procurement practices. The findings and recommendations of this work not only helps the Bank ensure that sound procurement practices are followed in the projects that the Bank finances, but also enables it to provide valuable feedback to member countries regarding the strengths and weaknesses of their public procurement systems. This enables member countries to improve the transparency of the procurement process and enhance the efficiency of public spending.

Acknowledgements

The team acknowledges the extensive cooperation and assistance received from officials and staff of the public and private agencies visited. Ms. Ewelina Pusz and Magdalena Nowicka of the World

Bank Office in Warsaw assisted with logistics and the team is grateful to them for their patience and valuable support. The team is particularly grateful to Ms. Bola Surakat for processing the report.

FINDINGS AND RECOMMENDATIONS

A – SUMMARY OF FINDINGS STRENGTHS AND WEAKNESSES OF THE PRESENT PROCUREMENT SYSTEM

Public Sector

1. Legal and Regulatory Framework

1.1 The principal sources of law in Poland are its constitution and laws/acts passed by Sejm, decrees of the Council of Ministers, and those of government ministers. The general legal framework in Poland is comprehensive. This is the result of Poland's efforts that began in 1991 to adapt itself to the new system of market economy. The efforts are ongoing, both to refine the legal framework further as well as to achieve consistency among the laws.

1.2 The current legal framework for public sector procurement in Poland consists of the Act on Public Procurement (APP) of June 10, 1994, as amended on August 29, 1997, and the following Ordinances:

- (i) Ordinance of the Council of Ministers dated December 29, 1994 on domestic preferences in public procurements;
- (ii) Ordinance of the Minister of Physical Planning and Construction of December 30, 1994 on the methods and basis for preparing investor's cost estimates; and
- (iii) Ordinance of the Minister of Physical Planning and Construction of December 30, 1994 on establishing the threshold values of construction works for which security for performance of the contract is necessary and the forms of this security.

1.3 The APP is based on the UNCITRAL Model Law with substantial customization of the model to the Polish general legal framework. The Polish procurement legal framework is generally comprehensive, clear, and well-coordinated. The amendment made in August 1997 substantially improves upon the June 1994 law. It also reflects the feedback that the World Bank provided to the Polish government through the CPAR of March 15, 1996.

1.4 The other major procurement-related laws that complement and supplement the procurement legal framework are the Civil Code, Commercial Code, Labor Code, Customs Law, Foreign Exchange Act, Tax Laws, Insurance Law, Law of the Supreme Chamber of Control, and the Law on Public Finance which improves public servant accountability. These laws are comprehensive and are frequently amended not only to create a well coordinated general legal framework in Poland, but also to harmonize these with EU directives in light of the impending EU membership of Poland planned for 2003-2005.

1.5 Although the legislative environment for public procurement in Poland is already well-developed, there remain a number of deficiencies in the current law, which need to be remedied in order to promote transparency and competitiveness, as well as to increase the economic efficiency achieved through the expenditure of public funds on procurement. The current law does, nevertheless, have some notable strengths. For example, in 1998, the use of the Unlimited Tendering method – the primary open tendering procedure, the use of which is mandatory for contracts above €200,000, with the exception of certain waivers - yielded an average of 12% savings against cost estimates. In addition, there are deficiencies in the application of the law in implementation, which the Government needs to address. The key to much-needed improvement in implementation is more focused government support to procuring entities at all levels of government through the provision of better procurement guidelines, documentation, preparation and implementation of regular training programs, and accreditation by government of training programs conducted by private sector training providers.

1.6 It is worth mentioning here that the OPP provided the CPAR team with the new draft of the public procurement law. This draft further harmonizes the Polish procurement legislation with the EU directives on procurement. This law also deals with some of the shortcomings of the APP. For example, the draft Law requires that bids be opened immediately after submission. The Bank's Legal Department has reviewed the new draft law and their comments are attached at Attachment 2.

2. Procedures and Practices

2.1 The preferred method of conducting public procurement is Unlimited Tendering which allows all interested parties to participate in competition except that procuring entities may limit participation solely to domestic bidders, including foreign bidders who have a branch or representative office in Poland, for contracts estimated less than €30,000. The other procurement methods used are limited tendering; two-stage tendering; negotiation with retaining competition; request for quotations; and single source selection. A public procurement valued less than €30,000 does not require advertisement, written procedures, proceedings records, and tender security unless the procurement occurs in Unlimited Tendering, for which an advertisement in a public place and in the Public Procurement Bulletin is required. The use of a different method other than the Unlimited Tendering, if the value of the contract exceeds €200,000, is subject to a waiver by the OPP Chairman. The strengths and weaknesses of the procurement procedures and practices in Poland are as follows:

Strengths

- (i) A single Act governs procurement by both central and local governments. The main legislative provisions governing public procurement are contained in the Act, with specific provisions made in the secondary legislation or Ordinances which are more easily amended without recourse to voting in the Sejm.
- (ii) There is an autonomous Office for Public Procurement (OPP), whose Chairman reports directly to the Prime Minister, with clearly defined authority and obligations under the Act. The Chairman of the OPP has a legal obligation to submit an Annual

Report on the functioning of the public procurement system to the Council of Ministers.

- (iii) Procurement is substantially decentralized to the procuring entities. The role of the OPP is to provide oversight and support to procuring entities for effective and correct implementation of the Act.
- (iv) The Act forbids splitting of procurement needs in order to avoid the application of the Act.
- (v) The Act clearly establishes Unlimited Tendering as the ‘primary procedure for conducting public procurements.’ Contracts estimated to cost more than €30,000 are open equally to all bidders.
- (vi) For exceptional procurements >€200,000 as well as single source procurement, procuring entities must apply to the Chairman of the OPP for permission to use a procurement method other than Unlimited Tendering.
- (vii) The communications arrangements for advertising and notification of bidding opportunities, particularly the Public Procurement Bulletin (PPB) and OPP’s website, are exceptionally advanced and, at least national government level, generally work effectively.
- (viii) The Act makes specific/express provision for the consolidation of procurements of several entities in order to achieve economies of scale.

Weaknesses

- (i) There is no governmental supervision of procurements <€3,000 per contract and no ceiling on the value of funds which can be spent by such uncompetitive methods. Contracts can be directly negotiated and there is no legal requirement for procuring entities to document the procurement process.
- (ii) The criteria for the OPP’s granting of waivers to procuring entities using a procurement method other than Unlimited Tendering for procurements >€200,000 although stated in the Act are flexibly interpreted to circumvent Unlimited Tendering. The OPP is not required to report on waivers granted, which seem to be of considerable numbers (almost 15,000 in 1999).
- (iii) The Negotiations with Retaining Competition (NRC) procurement method, which may be used even for purchases >€200,000, albeit with an OPP waiver, is particularly open to abuse. For example, for procurements >€200,000, whilst procuring entities are obliged to place an advertisement in the PPB, they need only invite two bidders to participate in negotiations. Not only is this procurement method uncompetitive and

untransparent, it also presents ample opportunity for corruption in negotiations between procuring entities and the invited bidders.

- (iv) The APP contains unnecessary limitations on the participation of foreign bidders in public tenders, including a provision that, if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring agency may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products.
- (v) The provisions of the Act for public bid openings are unclear and do not require opening of bids immediately after the bid submission deadline. The new draft law (see paragraph 1.6 above) requires that bids be opened immediately after submission.
- (vi) Compliance with the notification and advertising requirements of the procurement law is weak at sub-national levels of government, where abuses include restricted dissemination of information on bidding opportunities and short bidding periods, which favor local bidders.
- (vii) There are no standard bidding documents for the main types of procurement – goods, works and services – with the result that there is wide disparity in the type and quality of procurement and contract documentation used by various procuring entities. At the time of submitting their bids, bidders are often unsure of their contractual rights and obligations. Equally, the rights and obligations of the procuring entities (employer/purchaser/client) are often inadequately defined.
- (viii) Assessment of bidders' qualifications is invariably done as part of bid evaluation, with the result that the outcome of bid evaluations may be based on factors other than the content of the bidders' bids.
- (ix) The Two-Stage Tendering procedure, provided for in the Act, is often misused, with the first stage acting as a prequalification exercise.
- (x) Evaluation of bids is invariably done on subjective criteria, usually based on Merit Points. The result is that bid evaluation is often subjective, open to manipulation and has unpredictable results.
- (xi) There are no separate, dedicated selection methods for procurement of services. Methods designed for goods and works, but inappropriate for procurement of services, are used.
- (xii) The provision of training of public procurement officials is inadequate, with little or no participation by the Government and no standards set or recognizable qualifications provided.

- (xiii) Bid evaluation committees often lack evaluators with appropriate technical qualifications and expertise.
- (xiv) Planning of procurement, particularly works projects, is weak, especially at local government level, with the result that cost and time overruns are commonplace in works contracts.
- (xv) The provision for protests and appeals, as provided in the APP, is not adequate. A major weakness of the procedure is that, if the procuring entity fails to respond to a protest within seven days, the protest is deemed to have been dismissed. This does not offer aggrieved bidders adequate right of redress. Every complaint or protest within the specified period should be considered and suitably resolved in writing.
- (xvi) While most exceptions to the Act require the issue of waivers by the Chairman of the OPP, the criteria for such waivers are unclear and the OPP does not report on the bases or number of waivers granted. According to procuring entities, such waivers are easily obtained.
- (xvii) Whilst the Office for Public Procurement (OPP) is autonomous, the current arrangement whereby the Prime Minister directly appoints and may dismiss its Chairman may leave the holder of this crucial position open to political pressure. The independence and integrity of the OPP would be enhanced by the adoption of appointment and dismissal procedures which are less directly political and which include a greater element of due process, independent oversight and public scrutiny.
- (xviii) Whilst the APP has provisions which render ineligible for participation in public procurement natural persons who have been sentenced for a crime committed in connection with procurement proceedings and legal persons who employ an officer thus sentenced, the effectiveness of these provisions would be strengthened if the OPP were to instigate a practice of publishing the names of people and firms thus debarred in the PPB and on the OPP website.
- (xix) Procurement is not a recognized profession within the public service.

2.2 Limitations on Participation by Foreign Bidders: The APP establishes the principle that domestic and foreign bidders may participate in public tenders on an equal basis.

However, for tenders whose value is estimated at <€30,000, the APP provides that procuring entities may limit participation in bidding to domestic bidders and foreign bidders which have a branch or representative office in Poland.

Also, the APP provides that ‘if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring entity may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products.’ This limitation

is not linked to any financial threshold. Although its application in practice is unclear, it could have the effect of closing the Polish public procurement market to foreign consulting firms and works contractors and, as such, we believe that it is unnecessarily restrictive and should be removed.

2.3 Application of Domestic Preference: The Council of Minister's Ordinance of December 28, 1994 'On Applying Domestic Preferences in Conducting Public Procurements' makes it obligatory to apply a domestic preference in the evaluation of bids for all procurements. This applies to all procurement methods available under the APP, including those where bidders are invited directly. The margin of preference is 20% for goods, civil works and services and, in the comparison and evaluation of bids, this percentage is subtracted from the bid price of qualifying domestic bidders.

To qualify for domestic preference, a bidder must meet the following requirements:

- for goods contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;
- for services contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;
- for civil works contracts: use at least 50% of the value of domestic raw materials and products and by means of domestic companies taking part in at least 50% of the performance of the procurement.

We believe that this combination of, on the one hand, limitations on the participation of foreign bidders and exclusion of foreign works and services with, on the other hand, the obligatory application of domestic preference to all procurement methods, including restrictive methods, may have the effect of creating an over-protected and uncompetitive domestic market, which may deliver poor economic value for public-sector procuring entities.

We recommend, therefore, that the Government introduce more open and competitive provisions in this area, comprising:

- delete the provision that, for tenders <€30,000, procuring entities may limit participation in bidding to domestic bidders and foreign bidders which have a branch or representative office in Poland;
- delete the provision that if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products;
- allow foreign bidders and inputs to compete in public procurements - irrespective of the subject of the procurement (goods, works or services), the procurement method or value of the procurement – but continue the current practice of applying domestic preference, as described under 2.3 above. For procurements estimated at <€200,000, bidding documents would still be in the Polish language and foreign bidders would be required to bid in Polish;
- for procurements whose estimated value is >€200,000, domestic preference would still be applied to the Unlimited Tendering procurement method, but the bidding documents should be in an international language, to promote participation by foreign bidders.

3. Organization and Resources

3.1 The responsibility for conducting public procurement is decentralized to the individual ‘procuring entities’ e.g., ministries, municipalities etc. Each procuring entity has the right to initiate and conduct its own procurement financed with budgetary resources, and subject to the granting of waivers for certain applications. The financial aspects of the procuring entities’ conduct of public procurement are governed by the Public Finances Act, which includes provisions for auditing of procurement transactions and related expenditures by the Supreme Chamber of Control (NIK) or the regional clearing houses. The scope of the Act includes all public procurement financed fully or partially with public funds.

3.2 The identity of the public agencies covered by the Act is determined by the source of funds they receive. Agencies who spend funds raised from their trading activities are not covered by the provisions of the Act only in respect of those funds. The procuring entities subject to the Act are: state units and support services created by the state budgetary units; funds established by state earmarks; units of local self-government and self-government assemblies; cooperatives, foundations and associations to the extent that they dispose of public funds; public utility entities, defined as state organizational units, municipal organizational units and subsidiaries; state agencies within the scope not regulated by separate provisions of the law; and public radio and television broadcasting entities.

3.3 The Act gives the Council of Ministers the authority to designate, by ordinance, other entities which may be governed by the Act. The Council of Ministers may, also by ordinance, define specific principles for conducting public procurement related to: states of natural disaster; the protection of internal and external national security; and the protection of state secrets.

3.4 Role and Functions of the Office for Public Procurement (OPP): The Act defines the duties and obligations of the Chairman of the OPP, who is directly responsible to the Prime Minister and whose rank is equivalent to that of a Deputy Minister of Government. The Chairman is appointed and may be dismissed by the Prime Minister. The Chairman’s duties are: approving the use by a public procuring entity of a procurement method other than Unlimited Tendering for contracts estimated to cost more than €200,000 equivalent; establishing, maintaining and publishing a list of arbiters to review appeals; presenting an Annual Report on the functioning of the public procurement system to the Council of Ministers; preparing draft regulations and Acts on public procurement; disseminating general conditions, forms of contract, rules and standard procedures for conducting public procurement; collecting information about the planning and performance of public procurement; preparing training programs, conducting and encouraging training on public procurement; international cooperation on public procurement matters; publication of the Bulletin of Public Procurement; motioning the Council of Ministers to assign a particular procuring entity to conduct a joint procurement exercise on behalf of a number of administrative units which have a common procurement requirement; requiring procuring entities to provide and publish information about the conduct of public procurement; notifying breaches of the Act to the relevant jurisdiction, where there has been a violation of budgetary discipline.

3.6 Granting of Waivers by the OPP: The Act authorizes the Chairman of the OPP to grant waivers in cases where procuring entities wish to: use a procurement method other than Unlimited Tendering for contracts estimated to cost more than €200,000 equivalent; use the Single-Source procurement method for contracts estimated to cost more than €20,000 equivalent. This system is adhered to and appears to work reasonably well. However, its weakness is the absence in the Act or secondary legislation of any criteria to judge each waiver application. This may be contrary to the interests of transparency and competitiveness. There is no hard evidence in this regard, as the OPP does not report on the number of waivers granted. It may, however, be noted that the procuring entities report that they have no difficulty in obtaining waivers from the OPP.

3.7 Monitoring of Low-Value Purchases: Another weakness in the current system is that the Act does not provide for any particular method of procurement for purchases <€3,000 made by procuring entities, and the OPP does not monitor such purchases. There is ample evidence of abuse of this flexible procedure, including high volumes of low-value purchases made through the Single-Source procurement method and procurement being conducted without any written record. Such procedures are clearly open to abuse and there is much evidence that such abuse occurs, particularly at local government level. For example, one major city authority reported that it organizes its procurement staff by value of contracts placed, with the same small group of procurement officers dealing repeatedly with undocumented, Single-Source procurements under €3,000. Such procurement and staffing arrangements are clearly open to abuse.

3.8 Budgetary Allocations to Fund Public Procurement: The Government's annual budgeting cycle adversely affects the procuring entities' efficient conduct of procurement because they usually learn about their budgetary allocation only in April or May each year for funds to be spent by December 31. As a result, they find it difficult to plan their procurement effectively and often have to cram their annual expenditures on procurement into an unrealistically short time period of perhaps as little as seven or eight months. There is evidence that this also affects the procuring entities' selection of procurement methods in that, faced with shorter time frames to implement procurement, ministries apply frequently to the OPP for waivers to use methods other than Unlimited Tendering, which takes more time.

3.9 It is recommended that the Ministry of Finance and other stakeholders develop a method to inform entities of the approval of their budgetary allocation as early as possible, as well as to ensure financing beyond the one-year budgetary cycle.

3.10 Organization of Procurement Operations within Procuring Entities: Most procuring entities form bidding committees to undertake procurement exercises. Although their membership varies depending on the value and complexity of the procurement, they have some permanent members who participate in all procurement activities, from planning to bid evaluation and contract administration. The permanent involvement of a small number of procuring entity staff in all procurements and all bid evaluations may create conflicts of interest and increase the opportunity for corruption.

3.11 We recommend that the OPP should promote the creation by procuring entities of a two-tier approach to the management of procurements >€200,000. This structure would comprise:

- a permanent **Procurement Committee**, comprising three members of the senior management team of the procuring entity, for example at Director General or Head of Department level. The functions of this Procurement Committee would be to:
 - approve annual procurement expenditure programs and ensure adequate planning of all tenders >€200,000;
 - oversee the entire procurement procedure of each tender, to ensure its probity and compliance with the Act on Public Procurement;
 - ensure that the most appropriate and competitive procurement method is used;
 - critically appraise any proposal to use a procurement method other than Unlimited Tendering for purchases >€200,000 before the submission of such an application to the OPP;
 - appoint the members of the Bidding Committee for each procurement and nominate its Chairman;
 - approve the bidding documents before their issue to the bidders;
 - approve the bid evaluation report and recommendation for award of contract, made by the Bidding Committee.
- for each procurement >€200,000, an ad hoc **Bidding Committee**, comprising up to five staff, including Procurement Officers, Technical Specialists/Engineers in the discipline relevant to the subject matter of the procurement, and Finance/Economics/Accounting Specialists. For each procurement, the end user department of the procuring entity should be represented in the Bidding Committee. The members of each Bidding Committee would vary from one procurement exercise to another, depending on the subject matter of the procurement. The functions of the Bidding Committee would be to:
 - prepare a procurement plan and cost estimate for each procurement;
 - implement the procurement procedure in accordance with the Act on Public Procurement;
 - draw up the bidding documents, including the technical specifications, to be approved by the Procurement Committee;
 - evaluate bids and prepare the bid evaluation report and recommendation for award of contract, to be approved by the Procurement Committee.
 - after approval of the recommendation for award by the Procurement Committee, place the contract with the winning bidder.
- We believe that this separation of functions would deliver the following benefits:
 - increase the control of procuring entities' senior management over the planning and execution of annual procurement programs and individual tenders >€200,000;
 - reduce the opportunity for political interference in contract award decisions;
 - reduce the opportunity for individual employees of procuring entities to exercise discretion in the award of contracts or to forge corrupt relationships with bidders;
 - increase the accountability of procuring entity staff involved in procurement.

For procurements <€200,000, where the regular involvement of the procuring entity's senior management is not warranted, procuring entities should put in place appropriate organizational arrangements which balance decision-making authority with accountability for probity and compliance with the APP. Senior management should require a periodic (e.g. quarterly) report on all procurements <€200,000 and should also ensure that the conduct of such procurements is subject to regular audits by the procuring entity's Internal Audit function, in addition to the routine scrutiny exercised by external audit bodies, such as NIK and the Regional Clearing Houses.

3.12 Training of Public-Sector Officials in Public Procurement: While the OPP prepares and disseminates materials on procurement and related topics, for the use of procuring entities' staff for self-training purposes, it takes no direct role in the provision or management of such training. With the exception of the initial training programs arranged and funded by external sources, such as the EU Phare Program, the private sector is assuming this role increasingly. We believe that the OPP should play a proactive role in fulfilling its obligation of managing the preparation and provision of training to the staff of the procuring entities, both by the public and the private sectors. The need for the OPP to play this role is particularly acute, given that, throughout the public sector, there is a marked shortage of trained procurement personnel. Specific areas of weakness, which need to be addressed by training, include: procurement planning, and scheduling; cost estimating, particularly for civil works contracts; drafting of comprehensive, appropriate bidding documents; bid evaluation; and contract administration.

3.13 The OPP should adopt a more proactive role in providing training for public procurement officials from its own resources and in promoting the growth of other sources of provision, such as universities, technical universities and business schools. The OPP should also promote the development in Poland of an accreditation function, whereby training courses can be independently accredited to a defined quality standard, leading to the award of a recognized professional procurement qualification.

3.14 Status of the Procurement Profession: Procurement is not yet recognized as a profession in its own right in Poland and, as a result, procurement positions in government service are often occupied by non-specialists who have no career progression path ahead of them. Staff working in the procurement function are employed and paid on the same terms as other public-sector employees. It is clearly in the interests of all concerned – national Government, local government and the individual public employees - that Poland should grow a cadre of professional public procurement officers, adequately trained, professionally qualified and appropriately remunerated. Such a strategy is one key to improving the quality and probity of the public procurement function and to attracting and retaining high-caliber staff to the profession.

3.15 We recommend that the OPP initiate a dialogue within the Government, the objective of which should be to have procurement established as a separate career stream in the Polish civil service, both at national and local government levels. This action should be supported with separate job descriptions, qualifications requirements, career structures and salary scales for procurement officers, as well as an appropriate accreditation system.

3.16 Conduct and Ethics: There is currently no published Code of Ethics for procurement and other officers working in the public sector in Poland. The result is that procurement staff lack any clear guidance on the norms and values to which they are expected to adhere in the way they do their jobs. We recommend that the OPP drafts and publishes a clear and appropriate Code of Professional Ethics for Public-Sector Procurement Officers and that it communicates and promotes this Code throughout all procuring entities. This initiative may have to be coordinated with or implemented through the appropriate civil service administration.

4. Audit and Anti-Corruption Measures

4.1 Auditing of public procurement is exercised by different government agencies at two levels: at national level, the Supreme Chamber of Control (NIK) audits procurement conducted by national government agencies, whilst the Regional Clearing Houses, at regional level, control local government procurement. Both have the authority to refer breaches of the Act to the Committee for Budgetary Discipline in the Ministry of Finance for legal redress, which may be taken against the individual procurement officer or the organization. However, it is widely recognized that both these auditing bodies are severely under-resourced, with the result that auditing of public procurement is less comprehensive than may be necessary to ensure a high degree of compliance with the Act and to combat corruption effectively.

4.2 In order to conduct adequate compliance auditing, it is essential that efforts by NIK and the Regional Clearing Houses be strengthened. The task of this auditing is enormous and will increase as a result of the decentralization of administrative processes to regional and local self governments. Therefore, the need to strengthen audit capacity requires the urgent attention of the Government. It is also important that the frequency of audits by NIK and other auditing bodies be increased and their scope widened. Ministries and other government agencies also need to strengthen their own internal controls and audit functions.

4.3. During 1999, in the wake of the stories of corruption in public administration at both national and local levels, the government made an assessment of the extent of corruption in public administration, as well as that of the effectiveness of the anti-corruption laws and policies. In its efforts to fight corruption, Poland has taken several budgetary control measures, e.g. establishment of a system of budgetary control committees at different administrative levels. It has signed the European anti-corruption convention (January 27, 1999) and is adjusting the Polish penal law, the penal procedure and administrative law to the European standards in force. In addition, at the request of the Polish Government, the World Bank prepared, in October 1999, a report on corruption in Poland. The report contains a review of the priority areas and proposals for action and is under government consideration.

4.4 The World Bank study, to which the CPAR team contributed, also found that public procurement, among others, is a major area of corruption. The study found ample evidence of high-level corruption affecting public procurement, violations of the APP and waste of public money through malpractice at both national and sub-national levels of the administration. NIK has recently exposed several high-profile cases of malpractice, for example involving Polish Railways (PKP),

Social Insurance Board (ZUS), where the APP was breached, large amounts of public funds wasted and expensive contracts mishandled. Areas which have proven particularly susceptible to corruption include high-value IT contracts, railway equipment, road building and other construction projects. Reported malpractices include: bribe rates set as percentage of the price of the winning bid; contracts given to companies belonging to the family of council members; bidding companies have the same owner or the same address, or fictitious addresses. Construction contracts for bridges and office buildings, as reported in the study, appear to be particularly vulnerable to corrupt practices, both during bidding and contract performance stages.

4.5 Instances of the same kinds of abuses were found at sub-national level. Indeed, the problem appears to be growing relatively more quickly at sub-national level, in part due to the creation in 1999 of two new tiers of sub-national government, with the attendant lack of established procurement procedures and of staff trained and experienced in good procurement practice. Also at sub-national government level, the situation is exacerbated by the absence of arm's length relationships in smaller localities and by inadequate separation of functions: for example, elected local officials regularly involve themselves in the evaluation of bids for local government contracts, a practice which greatly increases the risk of corruption.

4.6 The initial proposals for a program to prevent and reduce corruption include a recommendation to introduce technical improvements in various laws and administrative and financial mechanisms to be set in motion immediately. Concerning public procurement, the report recommends accelerated and effective implementation of an improved procurement system. The proposed action plan in this report covers this recommendation.

4.7 The APP has provisions, in Articles 19.4 and 19.5, which render ineligible for participation in public procurement natural persons who have been sentenced for a crime committed in connection with procurement proceedings and legal persons who employ an officer thus sentenced. In addition to these provisions, the impact of the legislation would be significantly strengthened if a mechanism were to be introduced whereby the identities of bidders or suppliers thus debarred could be published. Publication would not only make the process more transparent but also act as a powerful deterrent to others from participating in fraudulent or corrupt activity in relation to public procurement. The OPP could take this step, as an administrative procedure, by publishing the names of debarred firms in the PPB and on its website.

5. Public Sector Management Performance

5.1 The performance by procuring entities of public procurement is governed by the provisions of the Act, plus the various Ordinances, as enacted from time to time.

5.2 Application of Procurement Methods: The procurement methods which procuring entities may use are described under the Act. However, whilst the methods described are quite wide-ranging, there are a number of gaps in the Act which have not been plugged by the secondary legislation and which are giving rise to inconsistency of performance of public procurement by the procuring entities. The most serious of these are:

- (i) Because there is no separate set of procurement methods prescribed for services, these are procured using procurement methods applicable to goods. This leads to several undesirable practices. For example, it is common practice for procuring entities to require consulting firms to submit technical and financial proposals simultaneously and hold public bid openings, at which the firms' prices are read out. Evaluation of the technical and financial proposals then proceeds concurrently, with the result that consulting firms frequently complain that procuring entities manipulate the evaluations to get the result they prefer.
- (ii) The Act provides that bids should be opened at the time and in the place which are specified in the bidding documents, without setting any requirement that bids should be opened promptly after their submission. In practice, it appears that most ministries of the national government follow best practice and open bids on the same day as their receipt. However, several procuring entities, including parastatals and local government bodies, open bids 1 or 2 days after receipt. Even if there is no interference with bids in these instances, transparency is compromised.

5.3 Value of Public Procurement: The total value of Unlimited Tendering procedures announced in Poland in 1999 was 17.7 billion PLN (US\$4.5 billion equivalent), up 1% from 1998. It is not possible to put a figure on total value of public funds spent by public procurement, as the OPP does not collect and publish data on purchases <€3,000 per contract made by procuring entities. Of the PLN 17.7 billion worth of unlimited tenders announced in 1999, 70% were for civil works, 18% for goods and 12% for services.

5.4 The OPP reports that, in 1999, procuring entities awarded the contract to the lowest-priced bid in 65% of the Unlimited Tenders advertised in the Bulletin. Whilst the practice of awarding to the lowest-priced bid may not follow internationally-accepted best practice - in that relevant non-price factors may not be considered during evaluation – this high percentage does, at least, demonstrate that economy is accorded significant importance under the Polish system. The OPP also reports that, based on a sample of procurements conducted by the Unlimited Tendering method during 1999, the total value of contracts awarded was 12 % lower than the total value of cost estimates for the same procurement exercises, which would appear to indicate that the use of Unlimited Tendering is having a positive economic effect.

5.5 Advertising: Poland has a relatively sophisticated system for the collection and dissemination of information on public bidding opportunities. The main features of the system are the PPB, published by the OPP, and a frequently-visited Internet website, on which bidding opportunities are published. The level of compliance with the advertising requirements of the law is generally high at national government level. However, at sub-national levels of the public sector, there are many instances of poor compliance, including restricted dissemination of information on bidding opportunities, exacerbated by bidding periods which are kept unnecessarily short, to favor preferred, usually local, bidders.

5.6 Bidders' Participation in Public Procurement: Whilst the data here are fairly crude, the OPP 1999 annual report states that the average number of bids submitted for each tender advertised was 5.4, up from 4.7 bids per advertised tender in 1998. This measure indicates that the advertising provisions appear to be working effectively and that the bidding community is participating more fully in public tenders.

5.7 Timeliness of Procurement Performance: The procurement of goods and consultants' services generally occurs on time. Delays in award of civil works contracts are commonplace, as are delays in their performance. Cost and time overruns are also commonplace on works contracts, particularly at local government level, where project management and contract administration skills are weak.

5.8 Appeals: In 1999, the OPP received 1,327 appeals from bidders about various aspects of the operation of the public procurement system. This number was up by 11% from the appeals 1,195 lodged during 1997. It should be kept in mind, however, that the public procurement market in Poland grew also by 30% (for Unlimited Tenders). Of the 1,327 appeals, 283 were withdrawn before the decision date; 657 were dismissed; and 387 were found justified.

5.9 It is recommended that a full record is kept of all the complaints and the action taken thereupon. It is further recommended that a copy of all correspondence relating to bid protests and bidder complaints also be provided to NIK, for them to consider during their scheduled audits.

6 Performance on Bank-assisted Projects

6.1 Since 1990, the Bank has approved 56 loans to finance 33 operations, amounting to a total of close to US\$5.0 billion (US\$4.0 billion net of cancellations), of which US\$3.1 billion has been disbursed. Among the approved loans, 25 are still disbursing, providing funding for the 16 projects under implementation. With the exception of 5 projects, all of the operations approved during the first four years of lending have been completed. Among these 5 older loans, only Health Services Development Loan (approved in 1992) has been disbursing very slowly. However, the loan has recently been restructured and action taken to strengthen its project management and improve its performance.

6.2 A further 2 loans are expected to be approved during the remainder of FY2000, amounting to US\$158 million. Five operations are tentatively scheduled for FY2001, amounting to US\$620 million.

6.3 Procurement under Bank-financed projects is usually handled by Project Implementation Units (PIUs), set up by the Borrower for each Project, and in consultation with the Bank. PIU staff are government employees from sector ministries, local governments, etc. The performance of PIUs has been in general satisfactory. Procurement staff employed in the implementing agencies are continuously trained by the Bank and are gaining experience in application of the Bank procedures.

6.4 Implemented projects are generally rated satisfactory. No misprocurement has been noted. The portfolio's quality is good and there are no projects in which there is a risk of not meeting their development objectives. One of the major issues affecting Bank lending to Poland is that the pace of loan disbursements is sometimes slow, especially just after the loan effectiveness. The disbursement rate is higher than the average rate achieved in all member countries.

6.5 There are a few problems which relate to weak project management rather than procurement, more specifically, there are: (i) delay in project/contract implementation specially at the start up of infrastructure projects (e.g. lack of preceding administrative actions like land acquisition, construction permit application, etc.); (ii) lack of previous experience in implementing Bank procurement procedures (iii) poor technical specifications; (iv) lack of timely decisions and inadequate procurement planning and (v) implementing agencies designing procurement packages in a way which might favor domestic bidders.

7. General Risk Assessment

7.1 Since 1990, several laws and regulations have been introduced in Poland to support the market economy system. The passage by the Sejm of the Act on Public Procurement on June 10, 1994, (and amended several times since then) made Poland a pioneer in central and eastern Europe in setting up a sound public procurement system. Poland has a procurement system which is to a large extent based on transparent procurement procedures adapted from the UNCITRAL model public procurement law. While procurement is the responsibility of government agencies, an independent Office of Public Procurement supports them in this function and provides oversight for effective implementation of the Act on Public Procurement. However, experience in procurement in other countries in the region shows that it takes considerable time before procurement policies and procedures are fully translated into practice. While this translation of policies into practice has been successful to a certain degree in Poland, it has not been able to keep pace with the demands of a very active Polish economy and the ongoing economic and administrative reforms, such as decentralization of public functions to local levels.

7.2 While the public procurement laws and regulations provide for an economic, efficient and broadly transparent public procurement system, procurement practices have been found to be at variance with the stipulations of the law. Shorter (than stipulated by the Act) bid preparation time allowed to bidders, unclear bidding documents, ambiguous technical specifications, lack of transparency in public bid opening, systematic use of a point system of evaluation (not provided for by the law) where qualifications of bidders are evaluated at the same level as their prices and bids rejected for trivial reasons, procuring entities do not conduct procurement in accordance with the law because of lack of experience and training (especially at local levels), small value contracts become large value contracts because of unjustified and discretionary extensions during contract performance and as a result of unclear technical specifications, are evidence of this variation. Of course, certain undesirable practices, such as procuring consultant services using the procedures more applicable to the procurement of goods and works, are encouraged by the silence of the law itself on that subject.

7.3 Despite the fact that Poland is in the process of introducing a revised Act on Public Procurement, both to improve the transparency of the current law and to align its procurement procedures and practices with that of the European Union with a view to its impending accession, and in light of the findings both of the Country Procurement Assessment mission and the recommendations of the Bank report on corruption in the country, it can be concluded that Poland, from the procurement point of view, is an average risk country. This rating recognizes the impressive progress which Poland has made to date in reforming its public procurement system and places Poland in the vanguard of those Eastern European countries which have relatively well-developed public procurement systems, including such countries as Hungary and Croatia. However, a comparison between Poland's public procurement system and those of the EU member countries reveals that further reform is necessary before Poland can attain that standard.

To that end, if the Government agrees to the recommendations in this report and acts promptly to implement the Action Plan (see Attachment 1), the next 1-2 years should deliver further improvement in the procurement system. It should be Poland's objective and one of the OPP's top priorities to implement the recommended reforms, in order to move Poland towards a low-risk rating as soon as possible and, preferably, before EU accession.

8. Private Sector Commercial Regulations

8.1 Private sector commercial entities have their own purchasing rules. Large firms have written purchasing rules prescribing purchasing procedures. They also have necessary procurement committees to make procurement decisions. The private sector commercial activities are generally governed by the Commercial and Civil Codes, tax laws, labor code, foreign exchange, etc. Regulations related to customs, licensing, quotas, quality certifications and inspection have been (or are being) aligned to international standards both in compliance with WTO requirements and also with a view to Poland's accession to EU.

8.2. The private sector view of the public procurement system is generally positive, despite some undesirable practices being followed by procuring entities, such as the use of poor-quality bidding documents and a system of bid evaluation based on merit points. The public procurement system is considered to be a valuable source of business and the transparency assured by public advertising of bids and public bid opening is particularly appreciated.

9. Commercial Practices

9.1 The private sector in Poland has grown rapidly. There is a large number of private enterprises of all types and sizes. These are both purely Polish or having mixed Polish and foreign ownership. These enterprises use various sources of supplies (equipment and materials) both at home and abroad. Their purchasing practices, including contracting arrangements, vary according to the nature and size of their business. A small firm may not have an organization for conducting its purchases and the owner himself or herself may conduct procurement through telephone (and these days through Internet as well) while a large firm generally has a well organized purchasing

department staffed with competent purchasing staff. These departments draw heavily on the firm's technical and legal department for dealing with different aspects of procurement. In both cases, the purchasing practices are based on the selection of sources of supplies through competition. Selection is usually made as a result of comparison of prices and delivery. Price negotiations are also a common practice.

9.2 There is evidence of under-invoicing especially among small companies. There are also reports of "facilitation" payments for expediting customs clearance. Goods are also frequently described incorrectly on the invoices. This is attributed to the introduction of the Single Administrative Document (SAD) where the coding system is often not relevant to reality. Tariffication language is specific and often fails to describe goods properly (especially for customs valuation purposes). This creates discretion and results in different tariffication at different border crossings. Except in case of large contracts, involving manufacturing, pre-shipment inspection is rarely conducted. The general practice is to conduct inspection either at the time of customs clearance or upon receipt of goods. Barter or counter-trade have become things of the past.

9.3 The INCOTERMS are understood well in Poland and used in commercial contracts. CIF, CIP and EXW are the most commonly used INCOTERMS.

B - RECOMMENDED ACTION PLAN

10. Strategic Approach

10.1 From the legislative point of view, Poland has a relatively developed public procurement system, though, as recorded above, further improvements remain necessary. Since June 1994, when the Sejm passed the first public procurement law, the law has gone through several amendments with a view to incorporating the lessons learned by the OPP and procuring entities. The law has been revised again in order to make it compatible with the EU procurement directives. It is expected that this revision will further improve the transparency and competitiveness provided by the current law. Furthermore, during the last five years, procuring entities in Poland, especially at the national level, have acquired experience in implementing procurement according to the requirements of the public procurement law, and the Office of Public Procurement in supporting these entities in their responsibility of conducting public procurement and in supervising the system. However, it has been determined that in most cases the shortcomings relate to practice and only in a few cases to the deficiency of the procedures. Therefore, while it is important to make the law more transparent and competitive, to realize savings in public spending, improvement in procurement practices need an even sharper focus. The areas to be addressed are:

- Provide good quality standard bidding documents;
- Introduce unambiguous and neutral technical specifications;
- Introduce objective evaluation criteria;
- Separate evaluation of bidder's qualification from the bid evaluation;
- Require bid opening the same day as the deadline for bid submission;

- Allow adequate bid preparation time to bidders;
- Remove barriers to participation by foreign bidders;
- Require mandatory post-qualification in the absence of pre-qualification;
- Allow adequate time to procuring entities to spend budget allocations;
- Build procurement as a distinct profession;
- Introduce two-tier procurement decision making system;
- Introduce code of ethics for procurement professionals;
- Include provisions in the law suitable for procurement of consultant services;
- Prepare a training strategy and implement it;
- Improve bid dispute arbitration procedures;
- Introduce procedures for procurement under Euros 3,000 to minimize the use of Sole Sourcing;
- Introduce best practices to procuring entities through the Public Procurement Bulletin;

11. Measures to be Taken by the Government

11.1 The action proposed to be implemented by the Government to address the issues listed in paragraph 10.1 is at Attachment 1. These actions can be grouped as follows:

- Bidding Process
- Planning
- Procurement Organization, Profession, Accountability and Training
- Best Practices

11.2 The EU Perspective: With Poland's candidacy for accession to the European Union now well advanced and accession expected between 2003 and 2005, it is clear that future changes in the public procurement legislation will be heavily oriented towards achieving the necessary compliance with the relevant EU Directives on Supplies, Services and Works. The recommendations for legislative reform made in this report are broadly compatible with current EU public procurement legislation. The one major exception is in the application of Domestic Preference. This report (see 2.3 above) does not argue for the abolition of the current Ordinance 'On Applying Domestic Preferences in Conducting Public Procurements,' preferring instead to recommend the loosening of current restrictions on the participation of foreign bidders. It is clear, however, that both the domestic preference application and the restrictions on foreign bidders – at least, as they apply to bidders from EU member states – will have to be abolished upon Poland's accession to the EU.

A second noteworthy point is that, whilst the EU Directives allow for Negotiated Procurement, this report recommends that Poland discontinues its Negotiations with Retaining Competition procurement method. Nevertheless, this need not be incompatible with the EU Directives, as Polish law may retain the Two-Stage Tendering method, under which bidders submit unpriced technical bids in the first stage, the procuring entity may negotiate with each bidder with regard to the technical content of its bid only, then bidders who complied with the first-stage specification are

invited to submit their revised technical bids with price in the second stage. This two-stage procedure accords with the EU Negotiated Procurement procedure.

12. Measures to be Taken by the Bank

12.1 It is recommended that the Bank continue its procurement dialogue with the Government on the weaknesses of the existing system. The Bank's technical assistance to the OPP may be needed in implementing the proposed action plan, especially to support the OPP efforts to prepare suitable standard bidding documents, training strategy, training programs and their implementation, and provision of best procurement practices.

12.2 The Bank should continue accepting the Unlimited Tendering procedure of the Polish procurement law as National Competitive Bidding (NCB) in Bank-financed projects, subject to the conditions that the NCB draft documents will be satisfactory to the Bank prior to their use, no domestic preference will be applied in NCB; and there will be no restriction on the participation of bidders in NCB from Bank member countries. This procedure was accepted previously as a result of the March 1996 Country Procurement Assessment and has already been used successfully on the Municipal Finance Project and the Emergency Flood Recovery Project.

12.3 The Bank should continue holding procurement seminars and workshops for the staff of implementation agencies responsible for Bank-financed projects. These seminars have been successful in making public officials aware of the benefits of a transparent and competitive procurement system and in introducing international procurement practices to public officials.

13. Technical Assistance

13.1 The Government will need substantial resources in order to implement the proposed action plan. Resources will be needed for training a large number of public officials throughout the country; starting up training courses in educational institutions; and initiating an accreditation system for procurement professionals. It is recommended that it identify funds from its own budgetary resources, in addition to exploring the possibility of seeking technical assistance from international organizations, such as the European Union, OECD, EBRD, World Bank and bilateral donors.

14. Timetable

14.1 In order to ensure that public procurement is conducted efficiently, economically and without creating situations of discretion for public officials, it is recommended that the following actions be implemented without delay:

- Provide good quality standard bidding documents and prequalification documents;
- Introduce unambiguous and neutral technical specifications;

- Introduce objective evaluation criteria;
- Separate evaluation of bidders' qualifications from bid evaluation;
- Require bid opening the same day as the deadline for bid submission;
- Allow adequate bid preparation time to bidders;
- Abolish the untransparent Negotiations with Retaining Competition procurement method;
- Allow adequate time to procuring entities to spend budget allocations.

The following actions can be considered to be medium-term priorities, to be implemented within 6 – 12 months:

- Abolish limitations on the participation of foreign bidders in public tenders;
- Introduce two-tier procurement decision making system;
- Raise procuring entities' awareness of good procurement planning;
- Require mandatory post-qualification in the absence of pre-qualification;
- Introduce code of ethics for procurement professionals;
- Include provisions in the law suitable for procurement of consultant services;
- Improve protest and appeals procedures;

Finally, there a number of other recommendations whose implementation may take place in more than twelve months' time:

- Establish procurement as a distinct profession within the civil service;
- Introduce an accreditation system for procurement professionals;
- Prepare and implement a training strategy for public procurement officers;
- Appoint technically-qualified arbitrators.

For details, see the Action Plan (Attachment 1) and Paragraph 11.1 above.

15. Recommended Bank Approach for Supervision

15.1 In case of acceptance of the Unlimited Tendering procurement method according to the Act on Public Procurement (as amended) as NCB in Bank-financed projects, it is recommended that Bank should pay special attention to the supervision of this procurement method especially in the early stages of project implementation. Ex-post reviews should also be conducted regularly. Project launch workshops for every new project are proving to be useful both to implementation agency staff as these create a better understanding of the Bank procurement requirements and to the Bank as this better understanding results in less staff time spent on project procurement issues.

POLAND

Country Procurement Assessment Report

Action Plan

High = < 6 months

Medium = 6 – 12 months

Low => 12 months

Specific Issue(s)	Recommended Action(s)	Priority	Responsible Agency	Specific Steps	Comments
		High	Medium	Low	
A. BIDDING PROCESSES 1. Lack of good quality standard bidding documents	<ul style="list-style-type: none"> Draft standard bidding and pre-qualification documents for goods, works, and consultant services 	✓		<ul style="list-style-type: none"> Office of Public Procurement 	<ul style="list-style-type: none"> Set up the drafting committees, one each for goods, works, and services Seek technical and financial assistance from other sources, such as EU, OECD, WB, as needed. Finalize draft standards Disseminate to procuring entities. Collect samples (other countries in the region, European Union, World Bank, etc.) and decide on suitable model Organize training in the use of standard bidding documents
2. Poor quality of technical specifications/terms of reference, designs and drawings	<ul style="list-style-type: none"> Prepare model technical specifications/terms of reference Draft guidelines on the preparation of clear, unambiguous and unrestrictive technical specifications and terms of reference Establish technical task force including consultants for contracts 	✓	✓	<ul style="list-style-type: none"> Office of Public Procurement Implementing agencies 	<ul style="list-style-type: none"> Draft models and disseminate them to procuring entities Draft guidelines on the preparation of precise and un-restrictive technical specifications Include preparation of technical specifications as a separate topic in procurement training. In the short term, disseminate the best practices to procuring entities.

Attachment 1
Page 2 of 5

Specific Issue(s)	Recommended Action(s)	Priority	Responsible Agency	Specific Steps	Comments
		High	Medium	Low	
3. Combined evaluation of bidders and that of bids	<ul style="list-style-type: none"> Separate evaluation of bidders' qualifications from the evaluation of bids to ensure objectivity Evaluation Committees and to separate the evaluation of the qualification of bidders from the evaluation of bids Develop good quality prequalification documents 	✓			<ul style="list-style-type: none"> Office of Public Procurement In the long run, amend the law to provide for a well structured evaluation methodology, i.e., requiring preliminary examination during which substantial responsiveness of bids, including examination of qualification requirements, is established and comparison of prices and other factors of substantively responsive bids plus post-qualification in the absence of pre-qualification
4. Widespread use of a point system of evaluation combining price and qualification criteria, leading to subjectivity and discretion	<ul style="list-style-type: none"> Discourage procuring entities from using a point system of evaluation for goods and works Provide for objective evaluation systems for goods and works 	✓			<ul style="list-style-type: none"> Office of Public Procurement OPP to ask procuring entities to discontinue the use of a point system of evaluation Amend the legislation e.g. new ordinance to include clear and objective evaluation methodologies Disseminate guidance on the use of objective systems of evaluation through directive of OPP and the Public Procurement Bulletin OPP to publish examples in the Bulletin
5. Bid opening is not required immediately after the deadline for bid submission	<ul style="list-style-type: none"> Require procuring entities to open bids the same day as the deadline for bid submission 	✓			<ul style="list-style-type: none"> Office of Public Procurement OPP to initiate amendment to the law or issue directive
6. Short bid preparation time	<ul style="list-style-type: none"> Adequate time should be allowed to bidders to prepare their bids 	✓			<ul style="list-style-type: none"> Office of Public Procurement OPP to strengthen the law to provide at least 4 weeks for bid preparation and issue directive
7. Limitations on participation of foreign bidders in public tenders	<ul style="list-style-type: none"> Remove limitations <€30,000 and on services and works performed in Poland 		✓		<ul style="list-style-type: none"> Office of Public Procurement OPP to amend the legislation
8. Lack of Post-qualification requirements in bidding	<ul style="list-style-type: none"> Lack of Post-qualification requirements in bidding. Introduce a provision that postqualification should be applied in cases where prequalification is not 		✓		<ul style="list-style-type: none"> Office of Public Procurement OPP to amend the legislation

Attachment 1
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Specific Issues	Recommended Action(s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
B. PLANNING 1. Lack of good procurement planning resulting in inefficient and uneconomic procurement	<ul style="list-style-type: none"> • Improve procuring entities' awareness of good procurement planning, especially when allocated budgetary funds have to be spent within one year 		✓		Office of Public Procurement/ MOF and procuring entities	<ul style="list-style-type: none"> • In consultation with the Ministry of Finance and other major procuring entities establish rules that procurement plans are prepared and procurement work is initiated by all procuring entities as soon as information about approval of annual budgetary allocations is available to them • Disseminate information to procuring entities on the need for good planning, and guidance on how to prepare good procurement plans 	
C. PROCUREMENT, ORGANIZATION, PROFESSION, ACCOUNTABILITY, AND TRAINING 1. Procurement not yet a career stream in Poland	<ul style="list-style-type: none"> • Include procurement profession in civil service as a distinct profession • Introduce accreditation for procurement professionals 			✓	Office of Public Procurement and relevant government administrative units	<ul style="list-style-type: none"> • OPP to work with relevant government administrative units to prepare a strategy for including procurement profession as a separate career stream in the Polish civil service. • OPP to initiate introduction of an accreditation system 	
2. Lack of appropriate procurement organization at the level of procuring entities	<ul style="list-style-type: none"> • Each procuring entity to establish a procurement selection committee and evaluation committees only as needed 		✓	✓	OPP to issue instructions to procuring entities for action	<ul style="list-style-type: none"> • OPP to create basis for procuring entities to establish a permanent procurement selection committee to serve as a decision making body • OPP to draft detailed rules about the composition, competence, and obligation of selection committees • Evaluation committee to include qualified technical experts 	

Attachment 1
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Specific Issues	Recommended Action(s)	Priority	Responsible Agency	Specific Steps	Comments
		High	Medium	Low	
3. Absence of a code of ethics for public procurement staff	<ul style="list-style-type: none"> Introduce a code of ethics for public servants 	√		Office of Public Procurement	<ul style="list-style-type: none"> OPP to draft a code of ethics for procuring entities employees dealing with procurement matters Also Part of anti - corruption measures
4. Removal of non-transparent and uncompetitive procurement method from the law	<ul style="list-style-type: none"> Abolish the Negotiations with Retaining Competition procurement method 	√		Office of Public Procurement	<ul style="list-style-type: none"> Initiate amendment to the Law
5. Absence of provisions in the PPL specific to the procurement of consultant services. As a result the provisions applicable to goods and works are used for the selection of consultants resulting in undesirable practices	<ul style="list-style-type: none"> Include separate provisions in future amendments of the APP, distinctly applicable to the procurement of consultant services 	√		Office of Public Procurement	<ul style="list-style-type: none"> Include separate provisions in future amendments of the APP, distinctly applicable to the procurement of consultant services
6. Training strategy for the training of procurement staff of procuring entities	<ul style="list-style-type: none"> Prepare a training strategy to fulfill the procurement training needs in general and the needs of the recently decentralized administration in Poland, in particular 	√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to prepare a strategy in consultation with procuring entities, especially regional and local bodies The procurement training strategy to promote the private sector to undertake this training, as well as steps to create procurement training capacity at local and regional levels Prepare a set of nationally recognized professional qualifications procurement, together with accreditation of educational institutions to deliver training curricula to meet the training needs Consider the establishment of a professional institute for procurement profession, or expand an existing one to include procurement profession 	

Attachment 1
Page 5 of 5

Specific Issue (s)	Recommended Action (s)	Priority	Responsible Agency	Specific Steps	Comments
		High	Medium	Low	
7. “Arbitrators” who are responsible for resolutions of bid protests lack technical qualifications”	<ul style="list-style-type: none"> Either appoint technically qualified arbitrators or provide them easy access to technical expertise 			✓	Office of Public Procurement <ul style="list-style-type: none"> OPP to decide on feasibility of the two options and to implement it.
8. Protests and Complaints	<ul style="list-style-type: none"> All protests to be formally responded to 	✓			Office of Public Procurement <ul style="list-style-type: none"> Amend law to provide for formal response
9. OPP Chairman directly appointed and dismissed by Prime Minister.	<ul style="list-style-type: none"> Adopt more transparent appointment and dismissal procedures for the position of OPP Chairman 				Cabinet of Ministers <ul style="list-style-type: none"> Change appointment and dismissal procedures
10. Lack of administrative procedure for publishing the identities of firms debarred for having engaged in procurement-related fraud or corruption	<ul style="list-style-type: none"> Make administrative provision for publishing the identities of firms found to have engaged in fraud or corruption Begin publishing the identities of debarred firms in PPB and OPP website 	✓			Office of Public Procurement <ul style="list-style-type: none"> Initiate administrative procedure for publishing the names of firms debarred for having engaged in fraudulent or corrupt practices. Publish the names of debarred firms in PPB and OPP website.
D. BEST PRACTICES	<ul style="list-style-type: none"> All best practices should be collected from procuring entities and disseminated to encourage their application 			✓	Office of Public Procurement <ul style="list-style-type: none"> OPP to collect best practices Disseminate them through the Public Procurement Bulletin Follow-up to assess their application and regularize them OPP to monitor low value procurements Amend law to require procuring entities to document small value purchases

**The World Bank's comments
On Draft Public Procurement Law**

General

Art. 2(1): The Act should provide a clearer definition of "construction works".

The language in Article 35 (1)(1) is rather expansive and may lead to disqualification of potential bidders on frivolous grounds (failure to provide due care and diligence...)

In Article 37.2: it is not clear what is meant by that "the bid evaluation shall not include the characteristics of the bidder". This appears to separate assessment of the bidders' qualifications from bid evaluation

Article 42 (2): states that the procuring entity shall provide the legal and factual justification for declaring a certain procurement process "null and void". Article 95(2) does not list the decision to reject all bids as one of those decisions on which no appeal can be made. These two articles thus expose the procuring entities to demands for recourse for taking the decision to reject all bids.

In Article 58: on limited tendering, a mechanism similar to prequalification has been introduced. The difference here is that the decision on the number of bidders to invite to submit bids is essentially arbitrary. While the genesis for this provision is the method by same name in the EU Directives, it is necessary to clarify this point by providing a pre-disclosed basis on which to limit participation.

Article 68: All bidders who had submitted first stage bids and who meet the predisclosed qualifications for the specific bidding process should be invited to submit second stage bids on the basis of the single set of technical specifications.

Serious consideration be given to doing away with competitive negotiations not only because it is a method that is prone to abuse but also because all the circumstances under which it can be implemented should be subject to other methods.

REPUBLIC OF POLAND

FINAL
COUNTRY PROCUREMENT
ASSESSMENT REPORT

VOLUME II

JULY, 2000



EUROPE AND CENTRAL ASIA REGION
THE WORLD BANK

**POLAND
COUNTRY PROCUREMENT ASSESSMENT REPORT
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FINDINGS AND RECOMMENDATIONS

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CURRENCY

Currency Unit = Polish Zloty (PLN)
US\$1 = PLN 3.95 (September 1999)

ACRONYMS

APP	Act on Public Procurement
CPAR	Country Procurement Assessment Report
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EU	European Union
FY	Financial Year
GCC	General Conditions of Contract
GEF	Global Environment Facility
GOP	Government of Poland
ICB	International Competitive Bidding
MOF	Ministry of Finance
NBP	National Bank of Poland
NCB	National Competitive Bidding
NRC	Negotiations with Retaining Competition
OPP	Office of Public Procurement
PCBC	Polish Testing and Certification Center
PLN	Polish New Zloty
PPB	Public Procurement Bulletin
SBD	Standard Bidding Documents
SCC	The Supreme Chamber of Control (NIK)
UNCITRAL	United Nations Commission for International Trade Law
USAID	United States Agency for International Development
WTO	World Trade Organization

POLAND
COUNTRY PROCUREMENT ASSESSMENT REPORT
(CPAR)

PREFACE

Date of the Report

This report was finalized in July, 2000 after discussions in May, 2000 with the Office of Public Procurement.

Basis of Report

This report, which updates the CPAR on Poland dated March 15, 1996, was prepared on the basis of the findings of a Bank mission to Poland from August 30 to September 9, 1999, and analysis of the materials and other information collected. The Bank's mission comprised of Messrs. Naushad Khan, Senior Procurement Specialist, (CPAR team leader); Shaun Moss, Senior Procurement Specialist, and Robert Kietlinski (Operations Officer, World Bank Office, Warsaw).

The CPAR counterpart team appointed by the Government of Poland comprised, for the Ministry of Finance, Ms. Agnieszka Rudniak, Deputy Director of the International Department and Ms. Beata Nehrebecka, Head of Division in the International Department and, for the Office of Public Procurement Office (OPP), Dr. Marian Lemke, Chairman, and Mr. Piotr Nils Gorecki, Director of the Department of European Integration and International Relations. The Bank is grateful to the Polish Government's counterpart team for their full and proactive commitment to the CPAR mission, participation in key meetings and, in particular, for the comprehensive dialog, which they entered into with the Bank, to discuss the issues identified by the assessment and to develop the recommendations which this report presents.

Purpose of the Report

The World Bank undertakes assessments of the procurement environment, covering both public and private sectors in borrowing member countries on a systematic basis. The objective of the assessment is to determine the compatibility of national procurement practices with the principles of economy and efficiency and with international procurement law and practices. The findings and recommendations of this work not only help the Bank ensure that sound procurement practices are followed in the projects that the Bank finances, but also enables it to provide valuable feedback to member countries regarding the strengths and weaknesses of their public procurement systems. This enables member countries to improve the transparency of the procurement process and enhance the efficiency of public spending.

Acknowledgements

The team acknowledges the extensive cooperation and assistance received from officials and staff of the public and private agencies visited. Ms. Ewelina Pusz and Magdalena Nowicka of the World Bank Office in Warsaw assisted with logistics and the team is grateful to them for their patience and valuable support. The team is particularly grateful to Ms. Bola Surakat for processing the report.

FINDINGS AND RECOMMENDATIONS

A – SUMMARY OF FINDINGS STRENGTHS AND WEAKNESSES OF THE PRESENT PROCUREMENT SYSTEM

Public Sector

1. Legal and Regulatory Framework

1.1 Poland is a civil law country. The Constitution of the Republic of Poland was adopted on April 2, 1997. The principal sources of law are the constitution and laws/acts passed by the Sejm, decrees of the Council of Ministers, and those of government ministers. The general legal framework in Poland is comprehensive. This is the result of Poland's efforts that began in 1991 to adapt itself to the new system of market economy. The efforts are ongoing, both to refine the legal framework further as well as to enhance consistency among the laws.

1.2 The current legal framework for public sector procurement in Poland consists of the Act on Public Procurement (APP) of June 10, 1994, as amended on August 29, 1997, and the following Ordinances:

- (i) Ordinance of the Council of Ministers dated December 29, 1994 on domestic preferences in public procurements;
- (ii) Ordinance of the Minister of Physical Planning and Construction of December 30, 1994 on the methods and basis for preparing investor's cost estimates; and
- (iii) Ordinance of the Minister of Physical Planning and Construction of December 30, 1994 on establishing the threshold values of construction works for which security for performance of the contract is necessary and the forms of this security.

1.3 The APP is based on the UNCITRAL Model Law with substantial customization of the model to the Polish general legal framework. The Polish procurement legal framework is generally comprehensive, clear, and well-coordinated. The amendment made in August 1997 substantially improves upon the June 1994 law. It also reflects the feedback that the World Bank provided to the Polish government through the CPAR of March 15, 1996.

1.4 The other major procurement-related laws that complement and supplement the procurement legal framework are the Civil Code, Commercial Code, Labor Code, Customs Law, Foreign Exchange Act, Tax Laws, Insurance Law, Law of the Supreme Chamber of Control, and the Law on Public Finance which improves public servant accountability. These laws are comprehensive and are frequently amended not only to create a well coordinated general legal framework in Poland, but also to harmonize these with EU directives in light of the impending EU membership of Poland planned for 2003-2005.

1.5 Although the legislative environment for public procurement in Poland is already well-developed, there remain a number of deficiencies in the current law, which need to be remedied in order to promote transparency and competitiveness, as well as to increase the economic efficiency achieved through the expenditure of public funds on procurement. The current law does, nevertheless, have some notable strengths. For example, in 1998, the use of the Unlimited Tendering method – the primary open tendering procedure, the use of which is mandatory for contracts above €200,000 with the exception of certain waivers - yielded an average of 12% savings against cost estimates. In addition, there are deficiencies in the application of the law in implementation, which the Government needs to address. The key to much-needed improvement in implementation is more focused government support to procuring entities at all levels of

government through the provision of better procurement guidelines, documentation, preparation and implementation of regular training programs, and accreditation by government training programs conducted by private sector training providers.

1.6 It is worth mentioning here that the OPP provided the CPAR team with the new draft of the public procurement law. This draft harmonizes the Polish procurement legislative with the EU directives on procurement. This law also deals with some of the shortcomings of the APP. For example, the draft Law requires that bids be opened immediately after submission. The Bank's Legal Department has reviewed the law and their comments and suggestions are included in Attachment 2.

2. Procedures and Practices

2.1 Applicable Legislation: The current legislation directly governing the conduct of public procurement in Poland is listed in paragraph 1.2 above.

2.2 Applicable Procurement Methods: The Act on Public Procurement provides for the following procurement methods:

Unlimited Tendering: Article 14.1 of the Act establishes Unlimited Tendering as ‘the primary procedure for conducting public procurements’ and it is mandatory for all contracts estimated to cost more than €200,000. Application of a procurement method other than Unlimited Tendering for a contract whose estimated value exceeds €200,000 must be the subject of a waiver granted by the Chairman of the OPP. The principal features of the Unlimited Tendering procedure are as follows:

- bidding is open to all bidders;
- required announcement of the tender in the Bulletin of Public Procurement, published by the OPP;
- optional advertising of the tender in another printed news publication;
- formal, written bidding documents are issued to the bidders;
- public bid openings are conducted, though not necessarily on the same day as submission of bids;
- price negotiation is not permitted by the Act.
- award of contract is to the ‘best offer.’

Limited Tendering: The main features of the Limited Tendering procedure are:

- applicable when:
 - ✓ the specialized character of the procurement limits the number of suppliers who can perform the contract;

- ✓ the costs of Unlimited Tendering are substantially out of proportion to the value of the procurement;
- tenders may be submitted only by those bidders invited by the procuring entity;
- in the case where the subject of the procurement is of a specialized nature, the procuring entity is required to invite all known suppliers and contractors to express their interest in bidding;
- in the case where Limited Tendering is used because the cost of Unlimited Tendering would be disproportionately high, the procuring entity is required to invite at least four bidders to express their interest in bidding.

Two-Stage Tendering: The main characteristics are:

- applicable when:
 - ✓ the specific technical characteristics and quality features of the goods, services or construction works to be procured cannot be determined in advance;
 - ✓ the specialized nature of the goods, services or construction works require negotiation between the procuring entity and the bidders;
 - ✓ the procurement is for research, experiment, preparation of a scientific opinion or other specialized services;
 - ✓ the procurement is for construction design and works.
- pre-bid meetings are allowed, with a requirement on the procuring entity to prepare and circulate to all bidders an official record of the proceedings;
- advertising is required, in accordance with the usual provisions of the Act;
- unless a waiver is obtained from the Chairman of the OPP, the deadline for submission of first-stage bids must be not less than six weeks from date of publication of the advertisement;
- bidders submit unpriced initial offers in the first stage;
- after submission of the first-stage bids, the procuring entity may negotiate with each bidder with regard to the content of its bid (the Act does not specify that such negotiations should be limited to the technical characteristics of the bids) and there is a requirement on the procuring entity to keep such negotiation confidential;
- the second stage is limited to bidders whose first-stage offers complied with the requirements of the first-stage specification;
- after submission of first-stage bids, the procuring entity may modify the technical and quality requirements of the procurement, as well as the criteria for evaluating bids;

- second-stage bidders submit their revised technical bids with price. The place, time and deadline for submission of second-stage bids is specified in the bidding documents;
- bidders are required to submit a bid security only at the second stage of bidding.

2.3 Negotiations with Retaining Competition (NRC): The main characteristics are:

- applicable when:
 - ✓ the goods, works or services to be procured are needed urgently and the urgency is not the fault of the procuring entity, nor could it have been foreseen;
 - ✓ where a previous tender (it is assumed, by a competitive procurement method) has failed to produce the minimum required number of bids, or all bids submitted were rejected and there is cause for the procuring entity to believe that a re-bid will not result in the award of a contract;
- the procuring entity negotiates the provisions of a procurement contract with a sufficient number of bidders to ensure competition, in any case not less than two bidders;
- if the value of the procurement exceeds €200,000, an advertisement in the Bulletin of Public Procurement is required;
- An NRC procurement exercise may be preceded by an invitation to submit initial offers;
- The procuring entity is required to provide all invited bidders equally with invitations to bid, clarifications and other information relevant to the procurement;
- Negotiations between the procuring entity and each bidder must be confidential;
- The procuring entity has the right to change the bid evaluation criteria after the initial bids have been submitted and evaluated;
- After negotiations with each bidder in turn have been completed, the procuring entity invites all the bidders to submit their final offers, including price (this is similar to the concept of ‘Best And Final Offers (‘BAFO’), as provided for under the EU Directives);
- The procuring entity should award the contract to the ‘best offer.’

Request for Quotations: The main characteristics of this procurement method are:

- Applicable when:
 - ✓ The goods to be procured are readily available or the services to be procured have established quality standards;
- The procuring entity must invite a minimum of four bidders to submit quotations;

- Where the estimated value of the procurement exceeds €200,000, an advertisement in the Bulletin of Public Procurement is required;
- Each bidder is permitted to submit only one price, which may not be changed;
- Price negotiation is not permitted;
- The contract should be awarded to the bidder offering the lowest price (rather than the best offer);
- Where the contract value exceeds €20,000, the procuring entity is required to inform all bidders of the identity and price of the winning bid.

Single Source

- Applicable when:
 - ✓ Additional quantities, not exceeding 20% of the original order, are being added to existing contract, and it is necessary to maintain the same ‘norms, parameters and standards’;
 - ✓ The contract is for research, experiment or preparation of a scientific opinion;
 - ✓ The procurement is for creative project works or in the area of arts and culture;
 - ✓ The goods, construction works or services are available from only one supplier or contractor;
 - ✓ Only one supplier or contractor may be used because a legally enforced national preference applies;
 - ✓ The immediate performance of the procurement is required by particular economic or social circumstances, which the procuring entity could not have foreseen;
 - ✓ The estimated value of the procurement or the share of public financing of the procurement does not exceed €3,000.
- The Single Source procurement method may be used for contracts estimated to cost more than €20,000 with the permission of the Chairman of OPP.

2.4 Selection of Consultants: One of the major weaknesses of the current legislation is that no separate selection methods are provided for the selection of consultants. Instead, procuring entities are required to employ the various procurement methods described above, which have been developed mainly for the procurement of goods and works.

2.5 Limitations on Participation by Foreign Bidders: The APP establishes the principle that domestic and foreign bidders may participate in public tenders on an equal basis.

However, for tenders whose value is estimated at <€30,000, the APP provides that procuring entities may limit participation in bidding to domestic bidders and foreign bidders which have a branch or representative office in Poland.

Also, the APP provides that ‘if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products.’ This limitation is not linked to any financial threshold. Although its application in practice is unclear, this limitation could have the effect of closing the Polish public procurement market to foreign consulting firms and works contractors and, as such, we believe that it is unnecessarily restrictive and should be removed.

2.6 Application of Domestic Preference: The Council of Minister’s Ordinance of December 28, 1994 ‘On Applying Domestic Preferences in Conducting Public Procurements’ makes it obligatory to apply a domestic preference in the evaluation of bids for all procurements above €3,000. This applies to all procurement methods available under the APP, including those where bidders are invited directly. The margin of preference is 20% for goods, civil works and services and, in the comparison and evaluation of bids, this percentage is subtracted from the bid price of qualifying domestic bidders.

To qualify for domestic preference, a bidder must meet the following requirements:

- for goods contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;
- for services contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;
- for civil works contracts: use at least 50% of the value of domestic raw materials and products and by means of domestic companies taking part in at least 50% of the performance of the procurement.

We believe that this combination of, on the one hand, limitations on the participation of foreign bidders and exclusion of foreign works and services with, on the other hand, the obligatory application of domestic preference to all procurement methods, including restrictive methods, may have the effect of creating an over-protected and uncompetitive domestic market, which may deliver poor economic value for public-sector procuring entities.

We recommend, therefore, that the Government introduce more open and competitive provisions in this area, comprising:

- delete the provision that, for tenders <€30,000, procuring entities may limit participation in bidding to domestic bidders and foreign bidders which have a branch or representative office in Poland;
- delete the provision that if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products;
- allow foreign bidders and inputs to compete in public procurements - irrespective of the subject of the procurement (goods, works or services), the procurement method or value of the procurement – but continue the current practice of applying domestic preference, as described under 2.3 above. For procurements estimated at <€200,000, bidding documents would still be in the Polish language and foreign bidders would be required to bid in Polish;
- for procurements whose estimated value is >€200,000, domestic preference would still be applied to the Unlimited Tendering procurement method, but the bidding documents should be in an international language, to promote participation by foreign bidders.

2.7 Protests and Appeals: The Act afford bidders the right to protest against the result of public procurement tender when their ‘legal rights have been infringed by a violation of the principles of public procurement’. The bidder’s protest must be in writing and must be submitted to the procuring entity conducting the procurement. The Act prohibits the procuring entity from signing a contract resulting from the procurement exercise until the protest is resolved. However, where the procurement need is urgent, the Chairman of the OPP may permit the award of a contract before resolution of a complaint. The Act specifies a period of seven days, after the announcement of the result of a tender, during which a protest may be filed and no protest will be considered after seven days have elapsed. From the date of filing of the protest, the procuring entity then has a further seven days in which to consider the protest.

2.8 When a protest has been rejected by a procuring entity, or the bidder feels that his protest has been resolved unsatisfactorily or the review has exceeded the time period provided under the Act, the bidder has the right to appeal to the Chairman of the OPP. Such appeals procedures are covered by the arbitration procedures provided for under the Civil Procedure Code and must be heard within fourteen days of the lodging of the appeal. Three arbiters are appointed to consider the appeal: one by the bidder, one by the procuring entity and one by the Chairman of the OPP. Should a bidder fail to accept the decision of the arbiters, he has the right to appeal further, within seven days of their decision, to a common court under the Civil Procedure Code.

2.9 Whilst the Act’s provisions in respect of protests and appeals are relatively detailed, a major weakness of the procedure is that, if the procuring entity fails to review the protest within the specified period of seven days, the protest is deemed to have been dismissed. Clearly, a more active consideration of protests is desirable and would lend greater transparency to the protest procedure.

2.10 Bid and Performance Securities: The provisions on bid securities are contained in Articles 41 and 42 of the Act, which deal only with the Unlimited and Limited Tendering procurement methods and which specify that bidders are ‘obligated to submit a tender security within the range of 1-5% of the subject matter of the procurement’. In these cases, the submission of an acceptable bid security is a condition of responsiveness of the bid. The acceptable forms of bid security are defined by the Act. Article 75.2 of the Act stipulates that ‘The procuring entity may require a supplier or contractor to provide a guarantee of due and diligent performance of the contract’. The use of the word ‘may’, rather than ‘shall’ indicates that performance securities are optional and, in practice, for goods contracts, procuring entities often do not demand them. The Act specifies that the amount of any required performance security ‘shall not exceed twice the value of the fines under the contract or 10% of the value of the latter.’

2.11 For works contracts, performance securities are governed by the provisions of the Ordinance of the Minister of Physical Planning and Construction dated December 30, 1994 ‘On Establishing the Threshold Values of Construction Works for which Security for Performance of the Contract is Necessary and the Forms of this Security,’ the main provisions of which are:

- the procuring entity is obligated to require the contractor to provide a performance security in all cases where the expected value of the construction works exceeds €20,000.
- for construction works estimated to cost less than €200,000, the performance security should be within the range of 5-10% of the value of the contract;
- for construction works estimated to cost more than €200,000, the performance security should be within the range of 3-5% of the value of the contract.

2.12 Strengths and Weaknesses of Public Procurement Procedures and Practices

Strengths

- (i) A single Act governs procurement by both central and local governments. The main legislative provisions governing public procurement are contained in the Act, with specific provisions made in the secondary legislation or Ordinances which are more easily amended without recourse to voting in the Sejm.
- (ii) There is an autonomous Office for Public Procurement (OPP), whose Chairman reports directly to the Prime Minister, with clearly defined authority and obligations under the Act. The Chairman of the OPP has a legal obligation to submit an Annual Report on the functioning of the public procurement system to the Council of Ministers.
- (iii) Procurement is substantially decentralized to the procuring entities. The role of the OPP is to provide oversight and support to procuring entities for an effective and correct implementation of the Act.
- (iv) The Act forbids splitting of procurement needs in order to avoid the application of the Act.
- (v) The Act clearly establishes Unlimited Tendering as the ‘primary procedure for conducting public procurements.’ Contracts estimated to cost more than €30,000 are open equally to all bidders.
- (vi) For exceptional procurements >€200,000, as well as single service procurement, procuring entities may use a procurement method other than Unlimited Tendering only if they first secure a waiver from the Chairman of the OPP.
- (vii) The communications arrangements for advertising and notification of bidding opportunities, particularly the Public Procurement Bulletin (PPB) and OPP’s website, are exceptionally advanced and work, particularly at the level of national government, generally work effectively.
- (viii) The Act makes specific/express provision for the consolidation of procurements of several entities in order to achieve economies of scale.

Weaknesses

- (i) There is no governmental supervision of procurements <€3,000 and no ceiling put on the value of funds which can be spent by such uncompetitive methods.. Contracts can be directly negotiated and there is no legal requirement for procuring entities to document the procurement process.
- (ii) The criteria for the OPP’s granting of waivers to the Unlimited Tendering method for procurements (>€200,000) although stated in the Act but are flexibly interpreted to circumvent unlimited procurement, nor is the OPP required to report on the justifications for waivers granted which seem to be considerable numbers (about 15,000 in 1999)

- (iii) The Negotiations with Retaining Competition (NRC) procurement method, which may be used even for purchases >€200,000, albeit with an OPP waiver, is particularly open to abuse. For example, for procurements >€200,000, whilst procuring entities are obliged to place an advertisement in the PPB, they need only invite two bidders to participate in negotiations. Not only is this procurement method uncompetitive and untransparent, it also presents ample opportunity for corruption in negotiations between procuring entities and the invited bidders.
- (iv) The APP contains unnecessary limitations on the participation of foreign bidders in public tenders, including a provision that, if the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring may request that the entire work covered by the procurement be performed by domestic entities, raw materials and products.
- (v) The provisions of the Act for public bid openings are unclear and do not require opening of bids immediately after the bid submission deadline.
- (vi) Compliance with the notification and advertising requirements of the procurement law is weak at sub-national levels of government, where abuses include restricted dissemination of information on bidding opportunities and short bidding periods, which favor local bidders.
- (vii) There are no standard bidding documents for the main types of procurement – goods, works and services – with the result that there is wide disparity in the type and quality of procurement and contract documentation used by various procuring entities. At the time of submitting their bids, bidders are often unsure of their contractual rights and obligations. Equally, the rights and obligations of the procuring entities employer/purchaser/client are often inadequately defined.
- (viii) Assessment of bidders' qualifications is invariably done as part of bid evaluation, with the result that the outcome of bid evaluations may be based on factors other than the content of the bidders' bids.
- (ix) The Two-Stage Tendering procedure, provided for in the Act, is often misused, with the first stage acting as a prequalification exercise.
- (x) Evaluation of bids is invariably done on subjective criteria, usually based on Merit Points. The result is that bid evaluation is often subjective, open to manipulation and has unpredictable results.
- (xi) There are no separate, dedicated selection methods for procurement of services; Methods, designed for goods and works but inappropriate for procurement of services are used.
- (xii) The provision of training of public procurement officials is inadequate, with little or no participation by the Government and no standards set or recognizable qualifications provided.
- (xiii) Bid evaluation committees often lack evaluators with appropriate technical qualifications and expertise.

- (xiv) Planning of procurement, particularly works projects, is weak, especially at local government level, with the result that cost and time overruns are commonplace in works contracts.
- (xv) The provision for protests and appeals, as provided in the APP, is not adequate. A major weakness of the procedure is that, if the procuring entity fails to respond to a protest made by a complainant within the specified period of seven days, the protest is deemed to have been dismissed. This does not offer aggrieved bidders adequate right of redress. Every complaint or protest within the specified period should be considered and suitably resolved in writing.
- (xvi) Whilst most exceptions to the Act require the issue of waivers by the Chairman of the OPP, the criteria for such waivers are unclear and the OPP does not report on the bases or number of waivers granted. According to procuring entities, such waivers are easily obtained.
- (xvii) Whilst the Office for Public Procurement (OPP) is autonomous, the current arrangement whereby the Prime Minister directly appoints and may dismiss its Chairman may leave the holder of this crucial position open to political pressure. The independence and integrity of the OPP would be enhanced by the adoption of appointment and dismissal procedures which are less directly political and which include a greater element of due process, independent oversight and public scrutiny.
- (xviii) Whilst the APP has provisions which render ineligible for participation in public procurement natural persons who have been sentenced for a crime committed in connection with procurement proceedings and legal persons who employ an officer thus sentenced, the effectiveness of these provisions would be strengthened if the OPP were to instigate a practice of publishing the names of people and firms thus debarred in the PPB and on the OPP website.
- (xix) Procurement is not a recognized profession with public service.

3. Organization and Resources

3.1 The responsibility for conducting public procurement is decentralized to the individual ‘procuring entities’ e.g., ministries, municipalities etc. Each procuring entity has the right to initiate and conduct its own procurement financed with budgetary resources, and subject to the granting of waivers for certain applications. The financial aspects of the procuring entities’ conduct of public procurement are governed by the Public Finances Act, which includes provisions for auditing of procurement transactions and related expenditures by the Supreme Chamber of Control (NIK) or the regional clearing houses.

3.2 Scope of Application of the Act: The scope of the Act includes all public procurement financed fully or partially with public funds. In turn, public funds are defined as:

- funds from the state budget or the budgets of local self-government units that are allocated for ordinary activity and capital investment activity;
- funds are extra budgetary funds, as defined under the Budgetary Act of January 5, 1991;

- funds guaranteed, secured or for which the cost of the credit is co-financed by the State Treasury, the local self-governments or a union of self-governments;
- funds granted as foreign aid under international agreements, unless the agreement requires different procedures for using the funds; and
- funds originating from subscription charges for the use of unregistered radio and TV sets, referred to in the Act of December 29, 1992 on Radio and Television Broadcasting.

3.3 By these definitions, the identity of the public agencies covered by the Act is determined by the source of funds they receive. Agencies who spend funds raised from their trading activities are not covered by the provisions of the Act only in respect of these funds. The procuring entities subject to the Act are defined in Article 4, as:

- state units and support services created by the state budgetary units;
- funds established by state earmarks;
- units of local self-government and self-government assemblies;
- cooperatives, foundations and associations to the extent that they dispose of public funds;
- public utility entities, defined as state organizational units, municipal organizational units and subsidiaries;
- state agencies within the scope not regulated by separate provisions of the law;
- public radio and television broadcasting entities.

3.4 The Act gives the Council of Ministers the authority to designate, by ordinance, other entities which may be governed by the Act. In accordance with Article 4.2 of the Act, the Council of Ministers may, also by ordinance, define specific principles for conducting public procurement related to:

- states of natural disaster;
- the protection of internal and external national security; and
- the protection of state secrets.

3.5 Role and Functions of the Office for Public Procurement (OPP): The Act defines the duties and obligations of the Chairman of the OPP, who is directly responsible to the Prime Minister and whose rank is equivalent to that of a Deputy Minister of Government. The Chairman is appointed and may be dismissed by the Prime Minister. The Chairman's duties are defined in Article 9 of the Act as:

- approving the use by a public procuring entity of a procurement method other than unlimited tendering for contracts estimated to cost more than €200,000 equivalent; establishing, maintaining and publishing a list of arbiters to review appeals;

- presenting an Annual Report on the functioning of the public procurement system to the Council of Ministers;
- preparing draft regulations and Acts on public procurement;
- disseminating general conditions, forms of contract, rules and standard procedures for conducting public procurement;
- collecting information about the planning and performance of public procurement;
- preparing training programs, conducting and encouraging training on public procurement;
- international cooperation on public procurement matters;
- publication of the Bulletin of Public Procurement;
- motioning the Council of Ministers to assign a particular procuring entity to conduct a joint procurement exercise on behalf of a number of administrative units which have a common procurement requirement;
- require procuring entities to provide and publish information about the conduct of public procurement;
- notify breaches of the Act to the relevant jurisdiction, where there has been a violation of budgetary discipline.

3.6 Granting of Waivers by the OPP: Articles 14.3 and 71.1a of the Act define the Chairman of the OPP's authority to grant waivers in cases where procuring entities wish to:

- use a procurement method other than Unlimited Tendering for contracts estimated to cost more than €200,000 equivalent;
- use the Single-Source procurement method for contracts estimated to cost more than €20,000 equivalent.

This system is adhered to and appears to work reasonably well. However, its weakness is the absence in the Act or secondary legislation the criteria to judge each waiver of application. This may be regarded as contrary to the interests of transparency and competitiveness. There is no hard evidence in this regard, as the OPP does not report on the number of waivers granted. It may however, be noted that the procuring entities report that they have no difficulty in obtaining waivers from the OPP.

3.7 Monitoring of Low-Value Purchases: Another weakness in the current system is that the Act does not provide for any particular method of procurement for low-value purchases (i.e. under €3,000 equivalent) made by procuring entities, and the OPP does not monitor such purchases. There is ample evidence of abuse of this flexible procedure, including high volumes of low-value purchases made through the Single-Source procurement method and procurement being conducted without any written record. Such procedures are clearly open to abuse and there is much evidence that such abuse occurs, particularly at local government level. For example, one major city authority reported that it organizes its procurement staff by value of contracts placed, with the same small group of procurement officers dealing repeatedly

with undocumented, Single-Source procurements under €3,000. Such procurement and staffing arrangements are clearly open to abuse.

3.8 Budgetary Allocations to Fund Public Procurement: The Government's annual budgeting cycle adversely affects the procuring entities' efficient conduct of procurement because they usually learn about their budgetary allocation only in April or May each year for funds to be spent by December 31. As a result, they find it difficult to plan their procurement effectively and, as a result, often have to cram their annual expenditures on procurement into an unrealistically short time period of perhaps as little as seven or eight months. There is evidence that this also affects the procuring entities' selection of procurement methods in that, faced with shorter time frames to implement procurement, ministries apply frequently to the OPP for waivers to use methods other than Unlimited Tendering, which takes more time.

3.9 It is recommended that the Ministry of Finance and other stakeholders develop a method to inform entities of the approval of their budgetary allocation as early as possible, as well as to ensure financing beyond the one-year budgetary cycle.

3.10 Organization of Procurement Operations within Procuring Entities: Most procuring entities form bidding committees to undertake procurement exercises. Although their membership varies depending on the value and complexity of the procurement, they have some permanent members who participate in all procurement activities, from planning to bid evaluation and contract administration. The permanent involvement of a small number of procuring entity staff in all procurements and all bid evaluations may create conflicts of interest and increase the opportunity for corruption.

3.11 We recommend, therefore, that the OPP should promote the creation by procuring entities of a two-tier approach to the management of procurements >€200,000. This structure would comprise:

- a permanent **Procurement Committee**, comprising three members of the senior management team of the procuring entity, for example at Director General or Head of Department level. The functions of this Procurement Committee would be to:
 - approve annual procurement expenditure programs and ensure adequate planning of all tenders >€200,000;
 - oversee the entire procurement procedure of each tender, to ensure its probity and compliance with the Act on Public Procurement;
 - ensure that the most appropriate and competitive procurement method is used;
 - critically appraise any proposal to use a procurement method other than Unlimited Tendering for purchases >€200,000 before the submission of such an application to the OPP;
 - appoint the members of the Bidding Committee for each procurement and nominate its Chairman;
 - approve the bidding documents before their issue to the bidders;
 - approve the bid evaluation report and recommendation for award of contract, made by the Bidding Committee.

- for each procurement >€200,000, an ad hoc **Bidding Committee**, comprising up to five staff, including Procurement Officers, Technical Specialists/Engineers in the discipline relevant to the subject matter of the procurement, and Finance/Economics/Accounting Specialists. For each procurement, the end user department of the procuring entity should be represented in the Bidding Committee. The members of each Bidding Committee would vary from one procurement exercise to another, depending on the subject matter of the procurement. The functions of the Bidding Committee would be to:
 - prepare a procurement plan and cost estimate for each procurement;
 - implement the procurement procedure in accordance with the Act on Public Procurement;
 - draw up the bidding documents, including the technical specifications, to be approved by the Procurement Committee;
 - evaluate bids and prepare the bid evaluation report and recommendation for award of contract, to be approved by the Procurement Committee.
 - after approval of the recommendation for award by the Procurement Committee, place the contract with the winning bidder.
- We believe that this separation of functions would deliver the following benefits:
 - increase the control of procuring entities' senior management over the planning and execution of annual procurement programs and individual tenders >€200,000;
 - reduce the opportunity for political interference in contract award decisions;
 - reduce the opportunity for individual employees of procuring entities to exercise discretion in the award of contracts or to forge corrupt relationships with bidders;
 - increase the accountability of procuring entity staff, involved in procurement.

For procurements <€200,000, where the regular involvement of the procuring entity's senior management is not warranted, procuring entities should put in place appropriate organizational arrangements which balance decision-making authority with accountability for probity and compliance with the APP. Senior management should require a periodic (e.g. quarterly) report on all procurements <€200,000 and should also ensure that the conduct of such procurements is subject to regular audits by the procuring entity's Internal Audit function, in addition to the routine scrutiny exercised by external audit bodies, such as NIK and the Regional Clearing Houses.

3.12 Training of Public-Sector Officials in Public Procurement: While the OPP prepares and disseminates materials on procurement and related topics, for the use of procuring entities' staff for self-training purposes, should take more enhanced role in the provision or management of such training. With the exception of the initial training programs arranged and funded by external sources, such as the EU Phare Program, the private sector is assuming this role increasingly. We believe that the OPP should play a proactive role in fulfilling its obligation of managing the preparation and provision of training to the staff of the procuring entities both by the public and the private sectors. The need for the OPP to play this role is particularly acute, given that, throughout the public sector, there is a marked shortage of trained procurement personnel. Specific areas of weakness, which need to be addressed by training, include:

- procurement planning, and scheduling;
- cost estimating, particularly for civil works contracts;
- drafting of comprehensive, appropriate bidding documents;

- bid evaluation; and
- contract administration.

3.13 The OPP should adopt a more proactive role in providing training for public procurement officials from its own resources and in promoting the growth of other sources of provision, such as universities, technical universities and business schools. The OPP should also promote the development in Poland of an accreditation function, whereby training courses can be independently accredited to a defined quality standard, leading to the award of a recognized professional procurement qualification.

3.14 Status of the Procurement Profession: Procurement is not yet recognized as a profession in its own right in Poland and, as a result, procurement positions in government service are often occupied by non-specialists who have no career progression path ahead of them. Staff working in the procurement function are employed and paid on the same terms as other public-sector employees. It is clearly in the interests of all concerned – national Government, local government and the individual staff members - that Poland should grow a cadre of professional public procurement officers, adequately trained, professionally qualified and appropriately remunerated. Such a strategy is a key to improving the quality and probity of the public procurement function and to attracting and retaining high-caliber staff to the profession.

3.15 We recommend that the OPP initiate a dialogue within the Government, the objective of which should be to have procurement established as a separate career stream in the Polish civil service, both at national and local government levels. This action should be supported with separate job descriptions, qualifications requirements, career structures and salary scales for procurement officers, as well as an appropriate accreditation system.

3.16 Conduct and Ethics: There is currently no published Code of Ethics for procurement and other officers working in the public sector in Poland. The result is that procurement staff lack any clear guidance on the norms and values to which they are expected to adhere in the way they do their jobs. We recommend that the OPP drafts and publishes a clear and appropriate Code of Professional Ethics for Public-Sector Procurement Officers and that it communicates and promotes this Code throughout all procuring entities. This initiative may have to be coordinated with or implemented through the appropriate civil service administration.

4. Audit and Anti-Corruption Measures

4.1 Auditing of public procurement is exercised by different government agencies at two levels: at national level, the Supreme Chamber of Control (NIK) audits procurement conducted by national government agencies, whilst the Regional Clearing Houses at regional level control local government procurement. Both have the authority to refer breaches of the Act to the Committee for Budgetary Discipline in the Ministry of Finance for legal redress, which may be taken against the individual procurement officer or the organization. However, it is widely recognized that both these auditing bodies are severely under-resourced, with the result that auditing of public procurement is less comprehensive than may be necessary to ensure a high degree of compliance with the Act and to combat corruption effectively.

4.2 In order to conduct adequate compliance auditing, it is essential that efforts by NIK and the Regional Clearing Houses be strengthened. The task of this auditing is enormous and will increase as a result of the decentralization of administrative processes to regional and local self governments. Therefore, the need to strengthen audit capacity requires urgent attention of the Government. It is also important that the frequency of audits by NIK and other auditing bodies be increased and their scope widened. Ministries

and other government agencies will also need to strengthen their own internal controls and audit and functions.

4.3. During 1999, in the wake of the stories of corruption in public administration both at national and local level, the government made an assessment of the extent of corruption in public administration as well as that of the effectiveness of the anti-corruption laws and policies. In its efforts to fight corruption, Poland has taken several budgetary control measures, e.g., establishment of a system of budgetary control committees at different administrative levels. It has signed the European anti-corruption convention (January 27, 1999) and is adjusting the Polish penal law, the penal procedure and administrative law to the European standards in force. In addition, at the request of the Polish Government, the World Bank prepared in October 1999 a report on corruption in Poland. The report contains a review of the priority areas and proposals for action and is under government consideration.

4.4 The World Bank study, to which the CPAR team contributed, also found that public procurement, among others, is a major area of corruption. The study found ample evidence of high-level corruption affecting public procurement, violations of the APP and waste of public money through malpractice at both national and sub-national levels of the administration. NIK has recently exposed several high-profile cases of malpractice, for example involving Polish Railways (PKP), Social Insurance Board (ZUS), where the APP was breached, large amounts of public funds wasted and expensive contracts mishandled. Areas which have proven particularly susceptible to corruption include high-value IT contracts, railway equipment, road building and other construction projects. Reported malpractices include: bribe rates set as percentage of the price of the winning bid; contracts given to companies belonging to the family of council members; bidding companies have the same owner or the same address, or fictitious addresses. Construction contracts for bridges and office buildings, as reported in the study, appear to be particularly vulnerable to corrupt practices, both during bidding and contract performance stages. Instances of the same kinds of abuses were found at sub-national level. Indeed, the problem appears to be growing relatively more quickly at sub-national level, in part due to the creation in 1999 of two new tiers of sub-national government, with the attendant lack of established procurement procedures and of staff trained and experienced in good procurement practice. Also at sub-national government level, the situation is exacerbated by the absence of arm's length relationships in smaller localities and by inadequate separation of functions: for example, elected local officials regularly involve themselves in the evaluation of bids for local government contracts, a practice which greatly increases the risk of corruption.

4.5 Procurement Weaknesses. The following is a detailed list of procurement weaknesses which make the system vulnerable to corrupt practices:

- Shortened bidding period favoring pre-identified bidders and inhibiting participation by others
- Technical specifications and evaluation system are oriented towards particular contractors and suppliers.
- Lack of good quality standard bidding documents.
- Use of a subjective point system of evaluation.
- Inadequate training of government procurement employees
- Lack of clear procedures for procurement of consulting services.

- Weak conflict of interest and appeal process.
- Extension of contracts; a contracts with a small value is awarded, and then extensions with much higher values are made.
- Correction of submitted bids: bids are corrected after submission by implementing agency in consultation with the bidders which is an unacceptable practice.
- Negotiated procurement: procuring entities make frequent use of this method resulting in procurement that lacks transparency and results in higher contract prices.
- Leakage of information during bidding, i.e., lack of confidentiality of the bidding process.
- Contracts by the state enterprises are issued to firms linked with persons, politicians or people of influence.

4.6 The initial proposals for a program to prevent and reduce corruption includes a recommendation to introduce technical improvements in various laws and administrative and financial mechanisms to be set in motion immediately. Concerning public procurement, the report recommends accelerated and effective implementation of an improved procurement system. The proposed action plan in this report covers this recommendation.

4.7 The APP has provisions, in Articles 19.4 and 19.5, which render ineligible for participation in public procurement natural persons who have been sentenced for a crime committed in connection with procurement proceedings and legal persons who employ an officer thus sentenced. In addition to these provisions, the impact of the legislation would be significantly strengthened if a mechanism were to be introduced whereby the identities of bidders or suppliers thus debarred could be published. Publication would not only make the process more transparent but also act as a powerful deterrent to others from participating in fraudulent or corrupt activity in relation to public procurement. The OPP could take this step, as an administrative procedure, by publishing the names of debarred firms in the PPB and on its website.

5. Public Sector Management Performance

5.1 The performance by procuring entities of public procurement is governed by the provisions of the Act, plus the various Ordinances, as enacted from time to time.

5.2 Application of Procurement Methods: The procurement methods which procuring entities may use are described under the Act. However, whilst the methods described are quite wide-ranging, there are a number of gaps in the Act which have not been plugged by the secondary legislation and which are giving rise to inconsistency of performance of public procurement by the procuring entities. The most serious of these are:

- (iii) Because there is no separate set of procurement methods prescribed for services, these are procured using the procurement methods applicable to goods. This leads to several undesirable practices. For example, it is common practice for procuring entities to require consulting firms to submit technical and financial proposals simultaneously and hold public bid openings, at which the firms' prices are read out. Evaluation of the technical and

financial proposals then proceeds concurrently, with the result that consulting firms frequently complain that procuring entities manipulate the evaluations to get the result they prefer.

- (iv) The Act provides that bids should be opened at the time and in the place which are specified in the bidding documents, without setting any requirement that bids should be opened promptly after their submission. In practice, it appears that most ministries of the national government follow best practice and open bids on the same day as their receipt. However, several procuring entities, including parastatals and local government bodies open bids 1 or 2 days after receipt. Even if there is no interference with bids in these instances, transparency is compromised.

5.3 Value of Public Procurement: The total value of Unlimited Tendering procedures announced in Poland in 1999 was 17.7 billion Polish Zlotys (US\$4.3 billion equivalent), up 30% from the 1997 figure of 13.6 billion Polish Zlotys (US\$3.4 billion equivalent). It is not possible to put a figure on total value of public funds spent by public procurement, as the OPP does not collect and publish data on purchases <€ 3,000 made by procuring entities. Of the 17.7 billion Polish Zlotys worth of unlimited tenders announced in 1999, 70% were for civil works, 18% for goods and 12% for services.

5.4. The OPP reports that, in 1999, procuring entities awarded the contract to the lowest-priced bid in 65% of the Unlimited Tenders advertised in the Bulletin. Whilst the practice of awarding to the lowest-priced bid may not follow internationally-accepted best practice - in that relevant non-price factors may not be considered during evaluation – this high percentage does, at least, demonstrate that economy is accorded significant importance under the Polish system. The OPP also reports that, based on a sample of procurements conducted by the Unlimited Tendering method during 1999, the total value of contracts awarded was 12 % lower than the total value of cost estimates for the same procurement exercises, which would appear to indicate that the use of Unlimited Tendering is having a positive economic effect.

5.5 Advertising: Poland has a relatively sophisticated system for the collection and dissemination of information on public bidding opportunities. The main features of the system include the PPB published by the OPP, and a frequently-visited Internet website, on which bidding opportunities are published. The progress which Poland has made in the area of publication of tendering opportunities funded by public money are illustrated by the following statistics:

	1997	1998	Variation
Number of Issues of Bulletin of Public Procurement	158	211	+ 34%
Average No. of Issues of BPP per Month	13	18	+ 38%
Total Number of Announcements (of all kinds)	44,567	53,147	+ 19%

The level of compliance with the advertising requirements of the law is generally high at national government level. However, at sub-national levels of the public sector, there are many instances of poor compliance, including restricted dissemination of information on bidding opportunities and bidding periods which are kept unnecessarily short, to favor preferred, usually local, bidders.

5.6 Timeliness of Procurement Performance: The procurement of goods and consultants' services generally occurs on time. Delays in award of civil works contracts are commonplace, as are delays in the performance. Cost and time overruns are also commonplace on works contracts, particularly at local government level, where project management and contracts administration skills are weak.

5.7 Appeals: In 1999, the OPP received 1,327 appeals from bidders about various aspects of the operation of the public procurement system. This number was up by 32% from the 1,005 appeals lodged during 1997. It should be kept in mind however, that the public procurement market in Poland grew also by 30% (for Unlimited Tenders) of the 1,327 appeals, 283 were withdrawn before the decision date; 657 were dismissed; and 387 were found justified.

5.8 It is recommended that a full record is kept of all the complaints and the action taken thereupon. It is further recommended that a copy of all correspondence relating to bid protests and bidder complaints also be provided to NIK, for them to consider during their scheduled audits.

6 Performance on Bank-assisted Projects

6.1 Since 1990, the Bank has approved 37 loans to finance 33 operations amounting to a total of close to US\$5.0 billion (US\$4.0 billion net of cancellations) of which US\$2.9 billion has been disbursed. Of the 37 loans, 23 have been already closed. With the exception of 6 projects all of the operations approved during the first four years of lending have been completed. Fourteen loans are currently under implementation (including recently approved Hard Coal Sector Adjustment). From the older loans, only Health Services Development Loan (approved in 1992) has been disbursing very slowly. However, recently the loan has been restructured and action taken to strengthen project management and improve its performance.

6.2 A further 2 loans are expected to be approved during the remainder of FY2000, amounting to US\$158 million. Five operations are tentatively scheduled for FY2001, amounting to US\$620 million..

6.3 Procurement under Bank-financed projects is usually handled by Project Implementation Units (PIUs), set up by the Borrower for each Project, and in consultation with the Bank. PIU staff are government employees from sector ministries, local governments, etc. The performance of PIUs has been in general satisfactory. Procurement staff employed in the implementing agencies are continuously trained and gaining experience in application of the Bank procedures.

6.4 Implemented projects are generally rated satisfactory. No misprocurement has been noted. The portfolio's quality is good and there are no projects in which there is a risk of not meeting their development objectives. One of the major issues affecting Bank lending to Poland is that the pace of loan disbursements is sometimes slow, especially just after the loan effectiveness. The disbursement rate is higher than the average rate achieved in all member countries.

6.5 There are a few problems which relates to weak project management rather than procurement, more specifically there are: (i) delay in project/contract implementation specially at the start up of infrastructure projects (e.g. lack of preceding administrative actions like land acquisition, construction permit application, etc.); (ii) poor technical specifications; (iii) lack of timely decisions and inadequate procurement planning.

Strengths and Weaknesses in Procurement Management under Bank-assisted Projects.

Strengths:

- Procurement procedures, including selection and contracting of contractors, suppliers and consulting firms, are very clear and usually followed;
- In most cases contracts are awarded within a reasonable time frame and without serious delays;
- Most Implementing agencies perform procurement in a well-managed fashion;
- No cases of misprocurement have been recorded;
- Suppliers/Contractors/Consultants consider PIUs of Bank-assisted projects as fair and efficient in handling procurement.
- The number of complaints are not unusually high, and most of these are of a technical nature
- NCB works <US\$3 million equivalent done under local law.

Weaknesses

- Some delays in starting procurement activities under a new project;
- Many implementing agencies fail to prepare procurement plans at the beginning of the project;
- Selected implementing agencies, both private and public, and especially those which do not have previous experience of implementing Bank procurement procedures, find those procedures difficult to implement;
- Some implementing agencies favor local bidders in the way they design procurement packages.
- Many implementing agencies lack the capacity to prepare detailed, comprehensive and open technical specifications for goods and/or works, which not only reduces the quality of their bidding and contract documents but also often favors local bidders.

7. General Risk Assessment

7.1 Since 1990, several laws and regulations have been introduced in Poland to support the market economy system. The passage by the Sejm of the Act on Public Procurement on June 10, 1994, (and amended several times since then) made Poland a pioneer in central and eastern Europe in setting up a sound public procurement system. Poland has a procurement system which is to a large extent based on transparent procurement procedures adapted from the UNCITRAL model public procurement law. While procurement is the responsibility of government agencies, an independent Office of Public Procurement

supports them in this function and provides oversight for effective implementation of the Act on Public Procurement. However, experience in procurement in other countries in the region shows that it takes considerable time before procurement policies and procedures are fully translated into practice. While this translation of policies into practice has been successful to a certain degree in Poland, it has not been able to keep pace with the demands of a very active Polish economy and the ongoing economic and administrative reforms, such as decentralization of public functions to local levels.

7.2 While the public procurement laws and regulations stipulate an economic, efficient and transparent public procurement system, procurement practices have been found to be at variance with the stipulations of the law. Shorter (than stipulated by the Act) bid preparation time allowed to bidders, unclear bidding documents, ambiguous technical specifications, lack of transparency in public bid opening, systematic use of a point system of evaluation (not provided for by the law) where qualifications of bidders are evaluated at the same level as their prices and bids rejected for trivial reasons, procuring entities do not conduct procurement in accordance with the law because of lack of experience and training (especially at local levels), small value contracts become large value contracts because of unjustified and discretionary extensions during contract performance and as a result of unclear technical specifications, are evidence of this variation. Of course, certain undesirable practices, such as procuring consultant services using the procedures more applicable to the procurement of goods and works, are encouraged by the silence of the law itself on that subject.

7.3 Despite the fact that Poland is in the process of introducing a revised Act on Public Procurement, both to improve the transparency of the current law and to align its procurement procedures and practices with that of the European Union with a view to its impending accession, and in light of the findings both of the Country Procurement Assessment mission and the recommendations of the Bank report on corruption in the country, it can be concluded that Poland, from the procurement point of view, is an average risk country. This rating recognizes the impressive progress which Poland has made to date in reforming its public procurement system and places Poland in the vanguard of those Eastern European countries which have relatively well-developed public procurement systems, including such countries as Hungary and Croatia. However, a comparison between Poland's public procurement system and those of the EU member countries reveals that further reform is necessary before Poland can attain that standard.

To that end, if the Government agrees to the recommendations in this report and acts promptly to implement the Action Plan (see Attachment 1), the next 1-2 years should deliver further improvement in the procurement system. It should be Poland's objective and one of the OPP's top priorities to implement the recommended reforms, in order to move Poland towards a low-risk rating as soon as possible and, preferably, before EU accession.

8. Private Sector Commercial Regulations

8.1 Private sector commercial entities have their own purchasing rules. Large firms have written purchasing rules prescribing purchasing procedures. They also have necessary procurement committees to make procurement decisions. The private sector commercial activities are generally governed by the Commercial and Civil Codes, tax laws, labor code, foreign exchange, etc. Regulations related to customs, licensing, quotas, quality certifications and inspection have been (or are being) aligned to international standards both in compliance with WTO requirements and also with a view to Poland's accession to EU.

8.2. The private sector view of the public procurement system is generally positive, despite some undesirable practices being followed by procuring entities, such as use of poor-quality bidding documents and a system of bid evaluation based on merit points. The public procurement system is considered to be a

valuable source of business and the transparency assured by public advertising of bids and public bid opening is particularly appreciated.

9. Commercial Practices

9.1 The private sector in Poland has grown rapidly. There is a large number of private enterprises of all types and sizes. These are both purely Polish or having mixed Polish and foreign ownership. These enterprises use various sources of supplies (equipment and materials) both at home and abroad. Their purchasing practices, including contracting arrangements, vary according to the nature and size of their business. A small firm may not have an organization for conducting its purchases and the owner himself or herself may conduct procurement through telephone (and these days through Internet as well) while a large firm generally has a well organized purchasing department staffed with competent purchasing staff. These departments draw heavily on the firm's technical and legal department for dealing with different aspects of procurement. In both cases, the purchasing practices are based on the selection of sources of supplies through competition. Selection is usually made as a result of comparison of prices and delivery. Price negotiations are also a common practice.

9.2 There is evidence of under-invoicing especially among small companies. There are also reports of "facilitation" payments for expediting customs clearance. Goods are also frequently described incorrectly on the invoices. This is attributed to the introduction of the Single Administrative Document (SAD) where the coding system is often not relevant to reality. Tarification language is specific and often fails to describe goods properly (especially for customs valuation purposes). This creates discretion and results in different tariffication at different border crossings. Except in case of large contracts, involving manufacturing, pre-shipment inspection is rarely conducted. The general practice is to conduct inspection either at the time of customs clearance or upon receipt of goods. Barter or counter-trade have become things of the past.

9.3 The INCOTERMS are understood well in Poland and used in commercial contracts. CIF, CIP and EXW are the most commonly used INCOTERMS.

B - RECOMMENDED ACTION PLAN

10. Strategic Approach

10.1 From the legislation point of view, Poland has a sound public procurement system. Since June 1994, when the Sejm passed the first public procurement law, the law has gone through several amendments with a view to incorporating the lessons learned by the OPP and procuring entities. The law has been revised again in order to make it more compatible with the EU procurement directives. It is expected that this revision will further improve the transparency and competitiveness provided by the current law. Furthermore, during the last five years, procuring entities in Poland, especially at the national level, have acquired experience in implementing procurement according to the requirements of the public procurement law, and the Office of Public Procurement in supporting these entities in their responsibility of conducting public procurement and in supervising the system. However, it has been determined that in most cases the shortcomings relate to practice and only in a few cases to the deficiency of the procedures. Therefore, while it is important to make the law more transparent and competitive, to realize savings in public spending, improvement in procurement practices need an even sharper focus. The areas to be addressed are:

- Provide good quality standard bidding documents;
- Introduce unambiguous and neutral technical specifications;
- Introduce objective evaluation criteria;
- Separate evaluation of bidder's qualification from the bid evaluation;
- Require bid opening the same day as the deadline for bid submission;
- Allow adequate bid preparation time to bidders;
- Remove barriers to participation by foreign bidders;
- Require mandatory post-qualification in the absence of pre-qualification;
- Allow adequate time to procuring entities to spend budget allocations;
- Build procurement as a distinct profession;
- Introduce two-tier procurement decision making system;
- Introduce code of ethics for procurement professionals;
- Include provisions in the law suitable for procurement of consultant services;
- Prepare a training strategy and implement it;
- Improve bid dispute arbitration procedures;
- Introduce procedures for procurement under Euros 3,000 to minimize the use of Sole Sourcing;
- Introduce best practices to procuring entities through the Public Procurement Bulletin;

11. Measures to be Taken by the Government

11.1 The action proposed to be implemented by the Government to address the issues listed in paragraph 10.1 is at Attachment 1. These actions can be grouped as follows:

- Bidding Process
- Planning
- Procurement Organization, Profession, Accountability and Training
- Best Practices

Bidding Process. Lack of good quality standard bidding documents for goods, works, services and prequalification documents is the most urgent issue to be addressed. It is proposed that the OPP should set up drafting committees, one each for goods, works, services and prequalification documents; it should seek appropriate budgetary allocations from the government and, if necessary, external financial and technical assistance from sources such as EU, OECD, the World Bank, etc. It is further recommended that the OPP should prepare model technical specifications and disseminate them to procuring entities. It should also organize appropriate training for their staff in the preparation of clear, concise and broad technical specifications.

The other issue to be addressed urgently is the systematic use by all procuring entities of a subjective point system of evaluation and combined evaluation of qualification of bidders and bids, even though the law does not provide for such an evaluation system. This is leading to manipulation of bid evaluation results. It is recommended that the OPP instruct procuring entities to discontinue the use of this system; disseminate guidance on the use of objective systems of evaluation through the Public Procurement Bulletin; and publishes examples of best practice in the Bulletin.

The OPP should also issue instructions to provide adequate time to bidders after the publication of tender notices for preparation of their bids; to open bids immediately after the deadline for bid submission; and to

introduce a system of post-qualification, rather than evaluation of bidder qualifications along with their prices.

Planning. There is lack of proper procurement planning, which is leading to inefficient and uneconomic procurement. The OPP, in consultation with the Ministry of Finance and other major procuring entities should establish rules for the preparation of procurement plans and their implementation as soon as information about approval of annual budgetary allocations is available to them. The one-year budgetary cycle also makes it difficult to conduct economic and efficient procurement as the funds have to be spent before the end of the fiscal year i.e. December 31 every year while information about the budgetary allocation reaches procuring entities around April and May, which is already too late to conduct unlimited tendering especially for large contracts. It may be understood that the government is making efforts to find a solution to this problem and to extend funding to cover financing of multi-year contracts.

Procurement Profession. Procurement is not yet a profession in Poland. There is a general lack of procurement professionals. Agencies nominate their staff to undertake procurement along with their other responsibilities. In order to make procurement a career stream, it should be included in civil service as a distinct profession. The OPP, along with the relevant government administrative units, should take the lead in preparing a strategy for including procurement as a separate career stream in the Polish civil service. In addition, in order to ensure that procurement professionals are competent in the field of procurement, OPP should also initiate the introduction of an accreditation system for certification of experienced public officials as procurement professionals.

Procurement Organization. There is also a lack of appropriate procurement organization at the level of procuring entities. It is recommended that each procuring entity is required to establish a permanent procurement selection committee and separate evaluation committees only as needed. In this regard, OPP will have to create a basis for procuring entities to establish a permanent procurement selection committee to serve as a decision making body and draft detailed rules about the composition, competence and obligations of such selection committees. It should also ensure that procuring entities include qualified technical experts in evaluation committees.

Accountability. There is no formal code of ethics for government employees. The rules regarding ethics exist in different laws and regulations and are not effective. Therefore, there is an urgent need for the government to introduce a code of ethics for public servants. Concerning public procurement, the OPP should take the lead in this area. It is recommended that OPP draft a code of ethics for procuring entities employees dealing with procurement matters.

Training. Training of the staff of procuring entities in procurement is crucial to effective implementation of the public procurement law. Initially, the OPP prepared and implemented several training programs throughout the country. These programs were funded by both the budgetary resources as well as external financial assistance. However, over time the OPP's focus on the need of training became less sharp and it relied more on inspiring training by others, primarily private sector training providers, rather than playing an active role in fulfilling this important function for which the law makes it responsible.

Since the recent decentralization of procurement functions to regional and local levels of government, where the conduct of procurement seems to have suffered most because of the lack of training of the public officials at those levels and their unfamiliarity with the law, it is strongly recommended that the OPP prepare a training strategy in consultation with procuring entities, especially regional and local bodies. It should not itself prepare and implement training programs with the help of procuring entities but should also involve the private sector in providing such training. In this regard, it should prepare a set of nationally recognized qualification requirements in procurement together with accreditation of educational

institutions throughout the country both in public and private sectors which can deliver training curricula to meet the training needs. As a long term objective, it should also consider the establishment of a professional institute for procurement profession, or expand an existing one to include procurement profession.

Procurement of Services. In the absence of provisions in the PPL specific to the procurement of consultant services, procuring entities are using the same procedures for the procurement services as are applicable to goods and works. This gives rise to undesirable practices, such as decision on the selection of service providers on the basis of their price rather than the quality of their proposal, requirement of bid and performance securities, etc. As recommended a number of times in the past, the Bank recommends strongly that the OPP include separate provisions relating to procurement of services in future amendments to the APP.

Collection and Dissemination of Best Procurement Practices. Collection and dissemination of best procurement practices is extremely important for good conduct of public procurement. For example, some entities open bids immediately after bid submission deadline (i.e., the same day), although the PPL does not require it. Some entities, instead of using sole-sourcing for small purchases (less than Euros 3,000 equivalent) as is done by most, combine the entity's needs and procure them through competitive procedures, such as request for proposals. It is, therefore, important for the OPP to collect examples or best practices and to disseminate them through the Public Procurement Bulletin to all procuring entities. The OPP should also assess from time to time the effectiveness of the application of best practices with a view to including them in the Act.

11.2 The EU Perspective: With Poland's candidacy for accession to the European Union now well advanced and accession expected between 2003 and 2005, it is clear that future changes in the public procurement legislation will be heavily oriented towards achieving the necessary compliance with the relevant EU Directives on Supplies, Services and Works. The recommendations for legislative reform made in this report are broadly compatible with current EU public procurement legislation. The one major exception is in the application of Domestic Preference. This report (see 2.3 above) does not argue for the abolition of the current Ordinance 'On Applying Domestic Preferences in Conducting Public Procurements,' preferring instead to recommend the loosening of current restrictions on the participation of foreign bidders. It is clear, however, that both the domestic preference application and the restrictions on foreign bidders – at least, as they apply to bidders from EU member states – will have to be abolished upon Poland's accession to the EU.

A second noteworthy point is that, whilst the EU Directives allow for Negotiated Procurement, this report recommends that Poland discontinues its Negotiations with Retaining Competition procurement method. Nevertheless, this need not be incompatible with the EU Directives, as Polish law may retain the Two-Stage Tendering method, under which bidders submit unpriced technical bids in the first stage, the procuring entity may negotiate with each bidder with regard to the technical content of its bid only, then bidders who complied with the first-stage specification are invited to submit their revised technical bids with price in the second stage. This two-stage procedure accords with the EU Negotiated Procurement procedure.

12. Measures to be Taken by the Bank

12.1 It is recommended that the Bank continue its procurement dialogue with the Government on the weaknesses of the existing system. The Bank's technical assistance to the OPP may be needed in implementing the proposed action plan, especially to support the OPP efforts to prepare suitable standard

bidding documents, training strategy, training programs and their implementation, and provision of best procurement practices.

12.2 The Bank should continue accepting the Unlimited Tendering procedure of the Polish procurement law as National Competitive Bidding (NCB) in Bank-financed projects, subject to the conditions that the NCB draft documents will be satisfactory to the Bank prior to their use, no domestic preference will be applied in NCB; and there will be no restriction on the participation of bidders in NCB from Bank member countries. This procedure was accepted previously as a result of the March 1996 Country Procurement Assessment and has already been used successfully on the Municipal Finance Project and the Emergency Flood Recovery Project.

12.3 The Bank should continue holding procurement seminars and workshops for the staff of implementation agencies responsible for Bank-financed projects. These seminars have been successful in making public officials aware of the benefits of a transparent and competitive procurement system and in introducing international procurement practices to public officials.

13. Technical Assistance

13.1 The Government will need substantial resources in order to implement the proposed action plan. Resources will be needed for training a large number of public officials throughout the country; starting up training courses in educational institutions; and initiating an accreditation system for procurement professionals. It is recommended that it identify funds from its own budgetary resources, in addition to exploring the possibility of seeking technical assistance from international organizations, such as the European Union, OECD, EBRD, World Bank and bilateral donors.

14. Timetable

14.1 In order to ensure that public procurement is conducted efficiently, economically and without creating situations of discretion for public officials, it is recommended that the following actions be implemented without delay:

- Provide good quality standard bidding documents and prequalification documents;
- Introduce unambiguous and neutral technical specifications;
- Introduce objective evaluation criteria;
- Separate evaluation of bidders' qualifications from bid evaluation;
- Require bid opening the same day as the deadline for bid submission;
- Allow adequate bid preparation time to bidders;
- Abolish the untransparent Negotiations with Retaining Competition procurement method;
- Allow adequate time to procuring entities to spend budget allocations.

The following actions can be considered to be medium-term priorities, to be implemented within 6 – 12 months:

- Abolish limitations on the participation of foreign bidders in public tenders;
- Introduce two-tier procurement decision making system;
- Raise procuring entities' awareness of good procurement planning;
- Require mandatory post-qualification in the absence of pre-qualification;

- Introduce code of ethics for procurement professionals;
- Include provisions in the law suitable for procurement of consultant services;
- Improve protest and appeals procedures;

Finally, there are a number of other recommendations whose implementation may take place in more than twelve months' time:

- Establish procurement as a distinct profession within the civil service;
- Introduce an accreditation system for procurement professionals;
- Prepare and implement a training strategy for public procurement officers;
- Appoint technically-qualified arbitrators.

For details, see the Action Plan (Attachment 1) and Paragraph 11.1 above.

15. Recommended Bank Approach for Supervision

15.1 In case of acceptance of the Unlimited Tendering procurement method according to the Act on Public Procurement (as amended) as NCB in Bank-financed projects, it is recommended that Bank should pay special attention to the supervision of this procurement method especially in the early stages of project implementation. Ex-post reviews should also be conducted regularly. Project launch workshops for every new project are proving to be useful both to implementation agency staff, as these create a better understanding of the Bank procurement requirements and to the Bank as this better understanding results in less staff time spent on project procurement issues.

POLAND

Country Procurement Assessment Report

Action Plan

High = < 6 months

Medium = 6 – 12 months

Low = > 12 months

Specific Issue(s)	Recommended Action(s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
A. BIDDING PROCESSES 1. Lack of good quality standard bidding documents	<ul style="list-style-type: none"> Draft standard bidding and pre-qualification documents for goods, works, and consultant services 	√			Office of Public Procurement	<ul style="list-style-type: none"> Set up the drafting committees, one each for goods, works, and services Seek technical and financial assistance from other sources, such as EU, OECD, WB, as needed. Finalize draft standards Disseminate to procuring entities. Collect samples (other countries in the region, European Union, World Bank, etc.) and decide on suitable model Organize training in the use of standard bidding documents 	
2. Poor quality of technical specifications/terms of reference, designs and drawings	<ul style="list-style-type: none"> Prepare model technical specifications/terms of reference Draft guidelines on the preparation of clear, unambiguous and unrestrictive technical specifications and terms of reference Establish technical task force including consultants for contracts. 	√	√	√	Office of Public Procurement	<ul style="list-style-type: none"> Draft models and disseminate them to procuring entities Draft guidelines on the preparation of precise and un-restrictive technical specifications Include preparation of technical specifications as a separate topic in procurement training. In the short term, disseminate the best practices to procuring entities. 	

Attachment 1

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Specific Issue(s)	Recommended Action(s)	Priority	Responsible Agency	Specific Steps	Comments
		High	Medium	Low	
3. Combined evaluation of qualification of bidders and that of bids	<ul style="list-style-type: none"> Separate evaluation of bidders' qualifications from the evaluation of bids to ensure objectivity Technical Specialists on Bid Evaluation Committees and to separate the evaluation of the qualification of bidders from the evaluation of bids Develop good quality prequalification documents 	√	√	Office of Public Procurement	<ul style="list-style-type: none"> In the long run, amend the law to provide for a well structured evaluation methodology, i.e., requiring preliminary examination during which substantial responsiveness of bids, including examination of qualification requirements, is established and comparison of prices and other factors of substantively responsive bids plus post-qualification in the absence of pre-qualification
4. Widespread use of a point system of evaluation combining price and qualification criteria, leading to subjectivity and discretion	<ul style="list-style-type: none"> Discourage procuring entities from using a point system of evaluation for goods and works Provide for objective evaluation systems for goods and works 	√	√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to ask procuring entities to discontinue the use of a point system of evaluation Amend the legislation e.g. new ordinance to include clear and objective evaluation methodologies Disseminate guidance on the use of objective systems of evaluation through directive of OPP and the Public Procurement Bulletin OPP to publish examples in the Bulletin
5. Bid opening is not required immediately after the deadline for bid submission	<ul style="list-style-type: none"> Require procuring entities to open bids the same day as the deadline for bid submission 	√	√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to initiate amendment to the law or issue directive
6. Short bid preparation time	<ul style="list-style-type: none"> Adequate time should be allowed to bidders to prepare their bids 	√	√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to strengthen the law to provide at least 4 weeks for bid preparation and issue directive
7. Limitations on participation of foreign bidders in public tenders	<ul style="list-style-type: none"> Remove limitations <€30,000 and on services and works performed in Poland 	√	√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to amend the legislation
8. Lack of Post-qualification requirements in bidding	<ul style="list-style-type: none"> Lack of Post-qualification requirements in bidding. Introduce a provision that postqualification should be applied in cases where prequalification is not 	√	√	Office of Public Procurement	<ul style="list-style-type: none"> OPP to amend the legislation

Attachment 1 **Page 30 of 5**

Specific Issues	Recommended Action(s)	Priority			Responsible Agency	Specific Steps	Comments
		High	Medium	Low			
B. PLANNING 1. Lack of good procurement planning resulting in inefficient and uneconomic procurement	<ul style="list-style-type: none"> • Improve procuring entities' awareness of good procurement planning, especially when allocated budgetary funds have to be spent within one year 		✓		Office of Public Procurement/MOF and procuring entities	<ul style="list-style-type: none"> • In consultation with the Ministry of Finance and other major procuring entities establish rules that procurement plans are prepared and procurement work is initiated by all procuring entities as soon as information about approval of annual budgetary allocations is available to them • Disseminate information to procuring entities on the need for good planning, and guidance on how to prepare good procurement plans 	
C. PROCUREMENT ORGANIZATION, PROFESSION, ACCOUNTABILITY, AND TRAINING 1. Procurement not yet a career stream in Poland	<ul style="list-style-type: none"> • Include procurement profession in civil service as a distinct profession • Introduce accreditation for procurement professionals 			✓	Office of Public Procurement and relevant government administrative units	<ul style="list-style-type: none"> • OPP to work with relevant government administrative units to prepare a strategy for including procurement profession as a separate career stream in the Polish civil service. • OPP to initiate introduction of an accreditation system 	
2. Lack of appropriate procurement organization at the level of procuring entities	<ul style="list-style-type: none"> • Each procuring entity to establish a procurement selection committee and evaluation committees only as needed 		✓		OPP to issue instructions to procuring entities for action	<ul style="list-style-type: none"> • OPP to create basis for procuring entities to establish a permanent procurement selection committee to serve as a decision making body • OPP to draft detailed rules about the composition, competence, and obligation of selection committees • Evaluation committee to include qualified technical experts 	

Attachment 1

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Specific Issues	Recommended Action(s)	Priority	Responsible Agency	Specific Steps	Comments
		High	Medium	Low	
3. Absence of a code of ethics for public procurement staff	<ul style="list-style-type: none"> Introduce a code of ethics for public servants 	✓		Office of Public Procurement	<ul style="list-style-type: none"> OPP to draft a code of ethics for procuring entities employees dealing with procurement matters Also Part of anti-corruption measures
4. Removal of non-transparent and uncompetitive procurement method from the law	<ul style="list-style-type: none"> Abolish the Negotiations with Retaining Competition procurement method 	✓		Office of Public Procurement	<ul style="list-style-type: none"> Initiate amendment to the Law
5. Absence of provisions in the PPL specific to the procurement of consultant services. As a result the provisions applicable to goods and works are used for the selection of consultants resulting in undesirable practices	<ul style="list-style-type: none"> Include separate provisions in future amendments of the APP, distinctly applicable to the procurement of consultant services 	✓		Office of Public Procurement	<ul style="list-style-type: none"> Include separate provisions in future amendments of the APP, distinctly applicable to the procurement of consultant services
6. Training strategy for the training of procurement staff of procuring entities	<ul style="list-style-type: none"> Prepare a training strategy to fulfill the procurement training needs in general and the needs of the recently decentralized administration in Poland, in particular 	✓		Office of Public Procurement	<ul style="list-style-type: none"> OPP to prepare a strategy in consultation with procuring entities, especially regional and local bodies The procurement training strategy to promote the private sector to undertake this training, as well as steps to create procurement training capacity at local and regional levels Prepare a set of nationally recognized professional qualifications procurement, together with accreditation of educational institutions to deliver training curricula to meet the training needs Consider the establishment of a professional institute for procurement profession, or expand an existing one to include procurement profession

Attachment 1
Page 5 of 5

Specific Issue (s)	Recommended Action (s)	Priority	Responsible Agency	Specific Steps	Comments
		High	Medium	Low	
7. “Arbitrators” who are responsible for resolutions of bid protests lack technical qualifications”	<ul style="list-style-type: none"> Either appoint technically qualified arbitrators or provide them easy access to technical expertise 			✓	<ul style="list-style-type: none"> Office of Public Procurement OPP to decide on feasibility of the two options and to implement it. Amend law to provide for formal response
8. Protests and Complaints	<ul style="list-style-type: none"> All protests to be formally responded to 		✓		<ul style="list-style-type: none"> Office of Public Procurement
9. OPP Chairman directly appointed and dismissed by Prime Minister.	<ul style="list-style-type: none"> Adopt more transparent appointment and dismissal procedures for the position of OPP Chairman 	✓			<ul style="list-style-type: none"> Cabinet of Ministers Change appointment and dismissal procedures
10. Lack of administrative procedure for publishing the identities of firms debarred for having engaged in procurement-related fraud or corruption	<ul style="list-style-type: none"> Make administrative provision for publishing the identities of firms found to have engaged in fraud or corruption Begin publishing the identities of debarred firms in PPB and OPP website • 	✓		<ul style="list-style-type: none"> Office of Public Procurement 	<ul style="list-style-type: none"> Instigate administrative procedure for publishing the names of firms debarred for having engaged in fraudulent or corrupt practices. Publish the names of debarred firms in PPB and OPP website.
D. BEST PRACTICES	<ul style="list-style-type: none"> All best practices should be collected from procuring entities and disseminated to encourage their application 		✓	<ul style="list-style-type: none"> Office of Public Procurement 	<ul style="list-style-type: none"> OPP to collect best practices Disseminate them through the Public Procurement Bulletin Follow-up to assess their application and regularize them OPP to monitor low value procurements Amend law to require procuring entities to document small value purchases
1. Collection and dissemination of best procurement practices. For example, some entities open bids immediately after bid submission deadline (i.e. the same day), although the PPL does not require it. Some entities instead of using sole-sourcing for small purchases (less than Euro 3,000) combine the entity's needs and procure them though some competitive procedure such as request for proposals					

**The World Bank's comments
On Draft Public Procurement Law**

General

Art. 2(1): The act should provide a clearer definition of "construction works".

The language in Article 35 (1)(1) is rather expansive and may lead to disqualification of potential bidders on frivolous grounds (failure to provide due care and diligence...)

In Article 37.2: it is not clear what is meant by that "the bid evaluation shall not include the characteristics of the bidder". This appears to separate the assessment of the bidders' qualifications from the bid evaluation

Article 42 (2): states that the procuring entity shall provide the legal and factual justification for declaring a certain procurement process "null and void". Article 95(2) does not list the decision to reject all bids as one of those decisions on which no appeal can be made. These two articles thus expose the procuring entities to demands for recourse for taking the decision to reject all bids.

In Article 58: on limited tendering, a mechanism similar to prequalification has been introduced. The difference here is that the decision on the number of bidders to invite to submit bids is essentially arbitrary. While the genesis for this provision is the method by same name in the EU Directives, it is necessary to clarify this point by providing a pre-disclosed basis on which to limit participation.

Article 68: All bidders who had submitted first stage bids and who meet the predisclosed qualifications for the specific bidding process should be invited to submit second stage bids on the basis of the single set of technical specifications.

Serious consideration be given to doing away with competitive negotiations not only because it is a method that is prone to abuse but also because all the circumstances under which it can be implemented should be subject to other methods.

Attachment 3

**List of People
Interviewed for the CPAR, Poland**

Organization	Name	Title
Ministry of Finance	Ms. Agnieszka Rudniak Ms. Beata Nehrebecka Ms. Krystyna Wisniewska	Deputy Director, Foreign Assistance Funds Dept. Head of Division, Foreign Assistance Funds Dept. Director, Office of Public Finance Discipline
Office of Public Procurement	Dr. Marian Lemke Mr. Piotr-Nils Gorecki	Chairman Director, Department of Foreign Integration and International Relations
Ministry of Agriculture & Food Economy	Ms. Bozena Lublinska-Kasperek Mr. Wojciech Wilk	Head of Division, Department of Pre-Accession Assistance and Structural Funds Department of Pre-Accession Assistance and Structural Funds
Ministry of National Education	Mr. Romuald Piwonski	Deputy Director, Office of Administration & Economy
Ministry of Justice	Mr. Mariusz Kramarczuk	Head of Public Procurement Division
Ministry of Health and Social Welfare	Mr. Jacek Prokop	Deputy Director, Public Procurement Dept.
Polish Center for Testing & Certification	Mr. Andrzej Sulimski Mr. Marian Harasimiuk	Director Deputy Manager, Administration & Economy Department
Marshal's Office Mazowieckie Voivodship (Office of Speaker of Regional Parliament)	Ms. Anna Platkowska-Kulaj	Marshal's Representative for Public Procurement
Central Board of Customs (GUC)	Mr. Jan Zralek	Director, Bureau of International Cooperation
Supreme Chamber of Control (NIK)	Ms. Czeslawa Ruzcka-Lorentz Ms. Anna Urbanowicz	Director, Information & Systems Analysis Dept. First Expert, Division of International Affairs
Central Clinical Hospital, Warsaw Medical Academy	Eng. Mieczyslaw Stolarczyk	Deputy Technical Director
Ministry of Labor & Social Policy	Mr. Grzegorz Kubski	Public Procurement Specialist, Office of Administration and Budget
Ministry of Environmental Protection, Natural Resources and Forestry	Mr. Czeslaw Wieckowski Mr. Remigiusz Kalbaczky Mr. Szeweluk	Director, Department of Foreign Relations Chief Expert, Department of Geology Director, Control Bureau

Ministry of Interior & Administration	Mr. Andrzej Warwas	Deputy Director, Department of Housing
Ministry of Economy	Mr. Adam Orzechowski Mr. Krzysztof Januszek	Deputy Director, Department of European Integration and International Organizations Head of the WTO Division, Department of European Integration and International Organizations Director, IT Department
Ministry of State Treasury	Mr. Zbigniew Mularzuk Ms. Anita Ryng Mr. Ryszard Wojciechowski Ms. Katarzyna Krolak Mr. Piotr Syryczynski	Director, EU Integration and Foreign Cooperation Dept. Coordinator of Public Procurement Unit, Legal Dept. Project Manager, Capital Privatization I Dept. Team Manager, Supervision and Privatization II Dept.
General Directorate for Public Roads	Mr. Wiesław Adamczyk	Divisional Director, Central Warsaw Division
Mokotów Borough Council Central Warsaw Gmina	Ms. Dorota Stachura	Deputy Manager, Public Procurement Department
Cracow Municipality	Ms. Maria Rusowicz	Public Procurement Coordinator
National Bank of Poland	Mr. Henryk Klata Mr. Andrzej Newecki	Director, Administration Department Head of Division, Administration Department
Delegation of the European Commission	Mr. Peter Maher	Head, Economic & Commercial Section
Foundation for Privatization	Ms. Ewa Szymanska	Task Manager
Regional Clearing House (local government auditing body)	Ms. Teresa Krolska Mr. Wojciech Ulatowski	Phare Senior Procurement Officer Head of Control Division, Warsaw
Proeko Ltd. (private-sector environmental consultants)	Ms. Urszula Baranowska	Team Leader, Procurement & Financing of Development Projects
Asmabel Ltd. (private sector municipal services firm)	Mr. Tadeusz Ksiazek	Vice-President of the Board
Exbud Nova S.A. (major, private-sector construction contractor)	Mr. Krzysztof Pyrzak	Representative of the Director of Marketing
Nicom (private sector consulting firm)	Ms. Małgorzata Sidowska Ms. Grażyna Mazurek	President Senior Specialist
Karen Notebooks (private-sector manufacturer/supplier of computers)	Mr. Adam Nogaj	Major Accounts & Development Manager
Kapsch Telecom (private sector supplier of telecoms)	Ms. Monika Mizielinska-Chmielewska	President

equipment and official of Business Center Club	Mr. Aleksander Lukasik	Sales Manager, Named Accounts
Chamber of Commerce, Cracow	Mr. Waclaw Andruszko	Director
Mostostal Krakow S.A. (major private-sector civil works contractor)	Eng. Dionizy Boryczko	Director of Procurement and Marketing
Hydrotest (private-sector civil works contractor)	Eng. Wieslaw Migdal	Consultant
Public Procurement Center Ltd. (private-sector provider of training services)	Ms. Hanna Niedziela Mr. Dariusz Koba Ms. Halina Strzelczyk	President Vice President Vice President
SIDiR (Polish National Member of FIDIC)	Mr. Adam Heine Mr. Andrzej Michałowski	Former President Vice President
Polish Informatics Association	Mr. Jaroslaw Deminet	Secretary General
Rolimpex (major private-sector importer/exporter of agricultural produce)	Mr. Marek Kwiatkowski	Commercial Director
Polish Agency for Foreign Investment	Mr. Andrzej Paplinski	Director, Department of Research
PriceWaterhouseCoopers	Mr. Reginald V. Webb Mr. Artur Pikula	Assurance and Business Advisory Services Audit and Accounting Advisory Services
Polimex-Cekop	Ms. Grażyna Kowalczuk	Manager, Financial Experts Department
RUSAK – custom agency	Mr. Andrzej Rusak	President, President of Custom Agencies Association
POLCARGO – inspection and expert services	Mr. Andrzej Zawalski Ms. Aneta Balcerkiewicz	President Head of Division of Inspection Services

Attachment 4

POLAND

COUNTRY PROCUREMENT ASSESSMENT REPORT

List of Documents

1. The Polish Law Collation. Seventeenth Edition, July 1999, published by the TEPIS Publishing House of the Polish Society of Economic, Legal and Court Translation. The following laws are:
 - (i) The Constitution of Poland, April 2, 1997
 - (ii) The Civil Code
 - (iii) The commercial code
 - (iv) Labor Code
 - (v) Copyright and Neighboring Rights Act
 - (vi) Economic Activity Right
 - (vii) State Enterprises Act
 - (viii) Commercialization and Privatization of State Enterprise Act
 - (ix) Counteracting Monopolistic Practices Act
 - (x) Suppression of unfair Competition Act
 - (xi) Regulation on Counteracts for Sale of Movables to consumers
 - (xii) Protection of Business Dealings Act.
 - (xiii) Foreign Exchange Law
 - (xiv) Natural Persons Income Tax Law
 - (xv) Legal Persons Income Tax Law
 - (xvi) Goods and Services Tax and Excise Duty Tax
 - (xvii) Fiscal Control Act
 - (xviii) Insurance Activity Act
 - (xix) The Customs Code
 - (xx) Tax Ordinance Act
2. Supreme Chamber of Control (NIK): Information Brochure on the activities of NIK
3. The Act of June 10, 1994, on Public Procurement as amended on August 29, 1997,
4. Ordinance of the Council of Ministers of December 28, 1994, on applying domestic preferences in conducting public procurements.

5. Ordinance of the Minister of Physical Planning and Construction of December 30, 1994, on establishing the threshold values of construction works for which performance security is necessary, including the form of performance security.
6. Ordinance of the Minister of Physical Planning and Construction of December 30, 1994, on the methods and basis for preparing investor's cost estimates.
7. Report on the functioning of the public procurement system in 1998, Warsaw, April 1999 (accepted by the Council of Ministers on June 1, 1999).
8. Draft Public Procurement Law, August 3, 1999.
9. Act of October 27, 1994, on toll motorways.
10. Act of November 26, 1998, on Public Finances.
11. Regulation dated October 19, 1991, on the audit and announcement of financial reports and auditors and their professional body.
12. Act of December 23, 1994, on the Supreme Chamber of Control.
13. Report on a survey of opinion of foreign investors on social and economic conditions of business operations in Warsaw, Poland, June 1997. Polish Agency for Foreign Investment.
14. Code of Business Conduct and Business Ethics of the Regional Development Agency of Lublin.
15. Investment Opportunities in Poland. Special Economic Zones.
16. Effectiveness, Openness, Subsidiarity, a New Poland for New Challenges, Third Amended and Supplemented Edition, Chancellery of the Prime Minister of the Republic of Poland, Government Plenipotentiary for the Systematic Reform of the State, Warsaw, December 1998

POLAND
COUNTRY PROCUREMENT ASSESSMENT REPORT
(CPAR)

Annex A – Legal Framework

Annex B – Trade Practices

Annex C – Financial Framework

Annex D – Public Sector Procurement of Goods/Works

Annex E – Public Sector Selection of Consultants

Annex F – Procurement Performance

Annex G – Private Sector Procurement

Annex H – Checklist Comparing National Competitive Bidding Procedures and World Bank Policy

Europe and Central Asia Region
April, 2000

Annex A – Legal Framework

GENERAL FEATURES

1. Legal System (i.e. Common/Civil Law; Socialist; Shari'a; other)

Poland is a civil law country. The Constitution of the Republic of Poland was adopted on April 2, 1997. The principal sources of law are the constitution, statutes passed by Sejm, and ordinances of the Council of Ministers and those of government ministers.

2. Form of government (i.e. federal or centralized)

Poland is a unitary state. It has a central government and a three-tier local government - Gmina, Powiat, and Voivodship where the central government is represented. The system of government is based on the separation of and balance between the powers. Legislative power is vested in the Sejm and the Senate, executive power - in the President and the Council of Ministers, and the judicial power - in courts and tribunals. The balance of powers consists in the fact that the Constitution does not grant any of the above supremacy over the others by creating numerous mechanisms of mutual influence. The Head of State is the President, and the head of the government is the Prime Minister. The ministers are appointed by the President at the Prime Minister's proposal. The government must be approved by the Sejm

3. Does the Constitution contain any provision directly bearing on public sector procurement? (If so, describe)

The Constitution does not contain any provision on this subject. However, the Supreme Chamber of Control (NIK) is the body invested, under the Constitution, with the authority to audit expenditures including expenditures on procurement, by all organs of central and local government.

4. Is there a separate body of law, which regulates public sector procurement, or is it governed by regulations issued under an organic finance act?

The Polish Parliament, Sejm, passed the Act on Public Procurement (APP) on June 10, 1994 which became effective on January 1, 1995. The law was amended on August 29, 1997. This APP and the Council of Ministers' decrees regulate public sector procurement in Poland. Because of the government's concern to constantly improve the transparency, economy and efficiency aspects of the PPL, it has been reviewing and amending the APP on a regular basis.

5. Do other bodies of law regulating associated aspects of procurement contain provisions which are directly related to problems identified within the local system? (e.g. labor, tax, customs, insurance, and banking laws, foreign exchange controls or laws defining national standards. If so, describe)

In addition to the Act on Public Procurement dated June 10, 1994, and as amended on August 29, 1997, the following are the applicable laws and regulations:

- *Commercial Code, June 27, 1934 amended 1946, 1950, 1964, 1969, 1988, 1990, 1991, and 1994.*

- *Civil Code, April 23, 1962, amended 1971, 1976, 1982, 1984, 1985, 1989, 1990, 1991, 1993, and 1994.*
- *Civil procedure Code , November 17, 1964.*
- *Labor Code,, June 26, 1974, and the amendments of 1975, 1981, 1982, 1985, 1986, 19871988, 1989, 1990 and 1991*
- *Ordinance of the President of the National Bank of Poland on the Schedule and Forms of issuing Bank Guarantees, November 5, 1992*
- *Customs Law, December 28, 1989, as amended in 1991,1992 and 1993,*
- *Foreign Exchange Act, December 2, 1994.*
- *Tax Law, December 19, 1980 (Uniform Text dated November 15, 1993).*
- *Act on Copyright and Neighboring Rights, February 4, 1994.*
- *Law on Economic Activities, December 23, 1988, and the amendments of 1990, 1991, and 1993.*
- *Ordinance of the Ministry of Foreign Economic Relations on Specification of Goods and Services Licensed in Foreign Trade, June 29, 1993.*
- *Law on State Owned Enterprises, September 25i 1981, and the amendments of 1991, 1993 and 1994.*
- *Law on Privatization of State Owned Enterprises, July 13, 1990, and the Amendments of 1991.*
- *Law on Financial Auditing and Reporting, October 19, 1991*
- *Law on Enterprise with Foreign Participation, June 14, 1991, and the Amendments of 1991 and 1993.*
- *Act on Civil. Works, July 7, 1994.*
- *Testing and Certification Act, April 3, 1993.*
- *Decision of the Council of Tests ad Certification, March 31, 1995.*
- *Act on Physical Persons Income Tax, 26 July 1991.*
- *Corporate Income Tax, January 31, 1991.*
- *Business Law, 1992.*

6. Is the system clear, comprehensive and consistent? Does it cover all essential aspects with no unduly complicated, unnecessary, conflicting or outdated regulations and are rules found in various distinct sources or within a well-coordinated legal framework?

While the system is comprehensive, Poland is making efforts to improve its clarity and consistency, hence large number of amendments to existing laws, issuance of decrees, etc.

7. Is the hierarchy of the sources of procurement rules well established?

The hierarchy of the legal system in Poland is as follows:(i) Acts of Parliament; (ii) Council of Ministers' Ordinances (iii) Ministers' decrees; and(iv)administrative instructions. Therefore, the primary source of public procurement system in Poland is the Act on Public Procurement followed by the Council of Ministers' regulations and the Public Procurement Office's instruction, and administrative rules

8. Do the same rules apply to central and local governments?

Yes.

9. Are there procurement rules established for parastatals? Describe.

There are no separate rules established for parastatals. All entities, including state-owned enterprises, that use public funds are obliged to procure goods, works and services in accordance with the provisions of the public procurement law and regulations.

10. Is the procurement function decentralized? If so, describe basic structure, name the main decentralized procuring entities and indicate whether their role, rights and responsibilities are clearly delegated in writing.

The APP fully decentralizes the public procurement function in Poland. Procurement is the responsibility of procuring entities. A procuring entity is any entity that is obliged to conduct public procurement under the APP. The APP to a large extent defines the role, rights and responsibilities of procuring entities.

11. Is there an entity(ies) with oversight responsibilities for procurement functions throughout public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure. Is it operationally involved in procurement? Is it the Central Tender Board?

The OPP was created on January 1, 1995. It has 60 staff members and five departments. The OPP plays a policy making and coordinating role for the Polish public procurement market. It is not a central-purchasing agency. The only tenders that it conducts are for its own needs. The OPP is an independent agency within the government. The key duties of the OPP include: (i) the publication of the official Public Procurement Bulletin in which all unlimited tenders above Euro30,000 are published; (ii) issues administrative decisions concerning motions to use a different procedure from unlimited tendering, the shortening of the minimum time-limits for submission of bids and waving or approving the application of domestic preferences; (iii) the preparation of training programs, organizing and inspiring training sessions; and (iv) the organizing of bidding process dispute hearings. The head of the PPO is its Chairman who is appointed by and reports to the Prime Minister. The Chairman of the PPO is assisted by a number of deputies and advised by the Council of the Office.

12. Is there a Central Tender Board or a similar institution? What are its duties and responsibilities? Do the procuring entities or the Central Tender Board issue the award recommendation?

The PPL does not provide for a central tender board. Procurement is decentralized and each procuring entity is responsible for conducting its procurement in accordance with the APP.

13. Does the system allow/facilitate the introduction of new and innovative techniques and contracting practices without compromising basic principles?

Procurement techniques and contracting practices in procurement are limited to the extent prescribed by the existing legislation. The OPP however, closely monitors the implementation of the procurement law with a view to improving the system.

14. Are these rules/procedures regarding bidder suspension and debarment?

The Act includes conditions under which a bidder may be excluded from competing for public procurement based on performance, bankruptcy, failure to pay taxes and other government obligations, and for offering bribes to public officials to influence their decisions. There is no publication of debarred firms.

15. Is the country a member of regional trade/customs agreements? (If so, specify)

Poland is a member of CEFTA, EFTA, and is planning to enter into a new regional trade agreement with the Baltic States. Poland is also a member of WTO and an associated member of the EU. As Poland's EU accession is tentatively scheduled for 2003, further harmonization may be expected

16. Are there provisions regarding preferences for particular categories of suppliers of goods and services? (Specify) Is the purchasing entity compensated by the government for awarding contracts to higher cost national or local firms?

The Council of Minister's Ordinance of December 28, 1994 'On Applying Domestic Preferences in Conducting Public Procurements' makes it obligatory to apply a domestic preference in the evaluation of bids for all procurements. This applies to all procurement methods available under the APP, including those where bidders are invited directly. The margin of preference is 20% for goods, civil works and services and, in the comparison and evaluation of bids, this percentage is subtracted from the bid price of qualifying bidders.

To qualify for domestic preference, a bidder must meet the following requirements:

- *for goods contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;*
- *for services contracts: use at least 50% of the value of domestic raw materials and products in the performance of the procurement;*
- *for civil works contracts: use at least 50% of the value of domestic raw materials and products and by means of domestic companies taking part in at least 50% of the performance of the procurement.*

The government does not compensate procuring entities for awarding contracts to at higher-cost to national or local bidders.

17. Are there primary /secondary boycotts? (Specify)

There is no reference to boycotts, except to meet the obligations under U.N. resolutions.

18. Are provisions on domestic/international arbitration codified? (If so, specify in which statute) Are the arbitration rules applicable to procurement contracts? Do they incorporate international rules?

The Polish Code of Civil Procedure (Act of November 17, 1964 (as amended)) provides for a formal arbitration system. Alternatively, the court of arbitration established in 1991 at the Polish Chamber of Commerce could also be considered.

19. If domestic arbitration rules are in force, are they generally in line with established principles such as those embodied in the UNCITRAL rules? (Highlight major differences)

Art. 79 to 92 of the PPL provide for protests, appeals, and judicial settlement of disputes. There are no legal provisions for arbitration to be applied to international contracts with foreign suppliers and contractors. However, contracting parties may agree to inclusion of arbitration in contracts between them.

20. Is the country a member of the New York Convention on the Recognition of Foreign Arbitral Awards?

Yes

21. Are there laws or regulations governing policies and procedure for awarding concessions/contracts for private sectors provision/operation of power, water or other infrastructure facilities? (BOO, BOT, etc.)

There are several laws covering awards of concessions/contracts (BOT, etc.). There are no specific competitive procedures included in these laws for the award of concessions and there are no general conditions of contract. For each such contract, conditions of contract are negotiated between the parties. There are a few BOT type contracts for motorways.

BASIS OF TRANSPARENCY

1. Is there a legal or regulatory requirement for public disclosure of procurement legal texts?

Yes see below

2. Are there mandatory requirements for maintaining written records of procurement? Are they available to the general public?

Written records are kept for all stages of procurement for three years after their creation. These records are available to the general public with the exception of the information the disclosure of which will be contrary to State interests and the commercial interests of the bidders, and the information relating to examination, evaluation and comparison of bids. However, there is no requirement to document purchases <€30,000 in value.

3. Are requirements for advertisement of contracting opportunities adequate? Is the country's national gazette published in a timely fashion? Is it available to the general public?

All contracting opportunities are advertised in the Bulletin of Public Procurement. Procurement entities may also advertise in the local media but only after the advertisement has appeared in the Bulletin of Public Procurement. The OPP publishes the bulletin on a weekly basis. The OPP also maintains a website on the internet. Procurement notices are also available on this website.

4. Are requirements regarding public bid opening, if any, appropriate?

The process of bid opening is similar to the WB procedures except that it does not specify that the bids shall be opened immediately after the deadline for bid submission.

5. Are negotiations after bid opening or award selection generally forbidden?

Yes, except under the method of negotiations with retention of competition.

6. Do rules on negotiated procurement, if any, provide the basis for a fair and transparent process? Detail.

No. The Negotiations with Retaining Competition (NRC) procurement method lacks transparency, is uncompetitive.

7. Are conditions for use of various procurement methods clearly established and is there an explicit requirement that open competitive bidding is the preferred or default method?

The preferred method of conducting public procurement is Unlimited Tendering which allows competition to all interested parties to participate. A public procurement valued less than Euros 30,000 does not require advertisement, written procedures, proceedings records, and tender security. The use of a different method other than the Unlimited Tendering, if the value of the contract exceeds Euros 200,000, is subject to a waiver by the OPP Chairman. The other procurement methods used are limited tendering; two-stage tendering; negotiation with retaining competition; request for quotations; and single source selection. The thresholds as prescribed by the law are as follows:

The key financial thresholds, which dictate the available procurement methods, may be summarized as follows:

FINANCIAL THRESHOLD	APPLICABLE PROCUREMENT METHODS
> €200,000	<i>Unlimited Tendering (primary method) Two-Stage Tendering Limited Tendering) with Negotiations with Retaining Competition) OPP Request for Quotations) waiver</i>
> €30,000	<i>Unlimited Tendering (primary method) Limited Tendering Two-Stage Tendering Negotiations with Retaining Competition Request for Quotations</i>
> €20,000	<i>Single Source (with OPP waiver)</i>
< €20,000	<i>Single Source (no OPP waiver required)</i>

Other factors which dictate the choice of procurements include:

Only by procuring entity's invitation; specialized character of the procurement limiting the number of suppliers; and cost of unlimited tendering not in proportion with the value of procurement

Limited Tendering

Technical features cannot be determined in advance; negotiations with suppliers necessary; subject matter is research, experiment, preparation of scientific opinion or performance of other specialized services

Two-Stage Tendering

Urgency/lack of required number of offers(minimum two) in unlimited tendering

Negotiations with retaining competition

Off-the-shelf goods readily available

Request for quotations (minimum of four quotations)

<p><i>EURO 3,000 or less; extension of an existing contract up to 20% of the value; contract for research, experiment or preparation of scientific opinion; only single source of supply; in case of application of national preference.</i></p>	<p><i>Single-source procurement</i></p>
<p>8. Is there a requirement for public notice of contract awards?</p> <p><i>Yes. If the announcement for tendering was published in the Bulletin of Public Procurement, then the notice of awards are also required to be announced in the same publication. The Act also requires that the announcement of award shall also be posted in a public place outside the procuring entity's office.</i></p>	
<p>9. Are requirements for bid and contract securities clear and appropriate? Are they required of all bidders?</p> <p><i>Bidders are required to submit a bid security in an amount ranging from 1 to 5% of the value of the contract. The maximum value of the performance security is 10%. The securities have to be provided in the form of cash; a bank or insurance or pledge securities issued or guaranteed by the State Treasury.</i></p>	
<p>10. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract?</p> <p><i>Qualifications requirements for bidders are not systematically specified in bidding documents. Generally, these relate to bidder's experience (similar contracts/references, etc.), financial standing, etc. A point system is used to evaluate these qualifications together with other facts .</i></p>	
<p>11. Do requirements for bid examination and evaluation provide the basis for a rational and fair process?</p> <p><i>No, the use of a point system of evaluation which is subjective has become a standard practice in Poland, and has been repeatedly misused by some procuring entities.</i></p>	
<p>12. Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, names of successful bidders)? If so, describe scope and frequency.</p> <p><i>Such information is prepared and maintained by procuring entities, and is collected by the OPP which publishes it in its annual reports.</i></p>	

13. Does government hold regular meetings with the business community to discuss public procurement issues?

No, but the OPP disseminates a large amount of information on tendering processes and tenders. The OPP claims that this information is used by among others, the business community both in Poland and abroad.

14. Is there a conflict of interest policy in effect? (If so, describe its essential features)

The Act briefly describes three conditions of conflict of interest. A Person cannot represent the procuring entity if such person is directly or indirectly related to a legal person competing for the procurement; such person has worked for the bidder in the last three years.; and has a legal or factual relationship with the supplier or the contractor

15. Are the laws on bribery of government officials enforced? Do government bidding documents and contracts contain anti-bribery and anti-corruption conditions?

There are laws on bribery of government officials. However, bidding documents and contracts do not contain anti-bribery and anti-corruption conditions.

BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICIALS

1. Are government employees expected to follow a published code of ethics? If so, describe its basic features.

There is no published code of ethics. However, the government employment contracts contain provisions on professional conduct and behavior.

2. How easy is it for bidders to report bribes by others and solicitation/extortion of bribes by government officials?

There is no reference to the reporting of bribes to officials in the Act. Chapter 8 Protest and Appeals of the Act seems to be the only recourse through which the bidder can report bribes and as a result he has lost the award. In any case,, contractors, and suppliers, do not readily report demands of bribes by officials because of fear of possible repercussions for their future business.

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3. Do bidders have adequate access to administrative or judicial review/appeal ?

Yes

4. Are there measures/initiatives to curb/control corruption, e.g. anti-corruption statutes and/or bodies, whistle- blower statutes, comprehensive reforms of the civil service/judiciary, regional initiatives, provisions in the criminal law, anti-bribery provisions, etc.? (If so, describe)

The Government has set up a whole system of budgetary disciplinary committees that is responsible for ensuring government employees' compliance with the rules applicable to public spending. This improves public servants accountability. Currently, the Government is working on a program to introduce tougher anti-corruption measures.

In Poland, in addition to the Criminal Code which includes anti-bribery and anti-corruption measures, a number of other laws exist which include anti-corruption provisions. These are as follows:

The Act of 16 September 1982 on Civil Servants: *The purpose of the Act is to guarantee reliability and impartiality in the performance of official duties by employees of state institutions and avoidance of conflicts of interests. The Act defines the rules of performing official duties and the instruments preventing corruption.*

The Act of 25 July 1996 on the Civil Service: *The scope and purpose of this Act is the same as the Act on Civil Servants, but concerns employees of the civil service corps, called "employees of the civil service."*

The Act of 5 June 1992 on Limitation of Conducting Economic Activity by Persons Performing Public Functions: *The Act defines the scope of performance of duties by persons performing high state functions. It contains instruments preventing the possibility of taking advantage of a public function to realize own personal or group interest.*

The Act of 26 March 1982 on the Tribunal state: *The purpose of the passed Act is among other things to prevent corruption among persons occupying the highest positions in state administration.*

The Act of 10 June 1994: *as amended on August 19, 1997 on Public procurement: The purpose of this Act is to ensure openness and impartiality of economic actions financed from public funds, observance of the principle of honest competition and equal treatment of contractors in the process of allocating public orders and proper management of public funds.*

The Act of 9 May 1996 on Exercising the Mandate of Deputy and Senator: *The purpose of this Act is to avoid a conflict of interests and accumulation of remuneration from public funds and elimination of realization of personal and group interests.*

The Act of 6 April 1990 on the Police and the Act of 6 April 1990 on the State Protection Office: *The purpose of these Acts is to protect state organs and institutions against corruption on a wide scale and against penetration of representatives of crime to state administration.*

Poland is also a signatory of the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions.

Annex B – Trade Practices

1. Are foreign firms engaged in trade with the country required to use a national agent?

No.

2. Are there indications that over-invoicing and/or under-invoicing are common practices? For which purposes?

There is some evidence of under-invoicing specially among small companies. Medium and Large scale companies do not get involved in this malpractice.

3. Are goods frequently described incorrectly on the invoices?

This is very common problem with SAD (Single Administrative Document) where the coding system is often not relevant to the reality. Tarification language is specific and often fails to describe goods properly (especially for custom purposes). This creates a lot of discretion and results in different tariffication at different border crossings.

4. Are there indications that import documents are falsely labeled?

Very often documents are incomplete and/or do not fulfill Polish requirements. Polish law requires correct documents to be presented at the moment of custom clearance. These often lead to manipulation of the procedures and corruption during clearance of goods.

5. Is there evidence of any other trade malpractice affecting public sector procurement?

Yes, for example when public purchases are shipped through customs the service is always worse since public sector is not able to “facilitate” the clearance process as effectively as private sector. Another problem for agricultural products importers is the presence of five different state organizations at the borders. Laws do not clearly specify the division of responsibilities between customs, quarantine, veterinary, health inspection (Sanepid) and border control. Certificates of Origin (prepared by foreign exporters) of bulk commodities are sometimes false and almost not verifiable.

6. Is there a pre-shipment verification program? Who conducts the inspections? What goods are included?

There are no legal regulations or formal requirements with only one exception for some agriculture goods and harmful materials that must be inspected. Inspection is in practice voluntary and is conducted only by private companies. Lack of formal requirements creates a situation where there is very low interest in inspection because of additional cost, time and unwelcome third party involvement in the trade transaction. Clients of inspections companies are mostly importers or exporters. Joint inspections are sometimes used.

Annex B – Trade Practices

7. Is there a threshold for pre-shipment inspection? What is the amount?

There is no threshold and there are only some categories of goods that must be inspected. These are some agriculture products imported to Poland (veterinary, quarantine) and manufactured goods that require safety clearance.

8. If pre-shipment inspection is conducted by a private company, what is the duration of the contract with the company? Was the contract awarded following a competitive process?

Usually the duration of contract is one year. It is often extended on annual basis. In general contracts are not awarded through a competitive process. There are almost no public clients ordering inspection services except custom administration (inspections help to evaluate customs values). Fees for services are relatively low.

9. Is pre-shipment inspection, if any, conducted according to generally established procedures? Are there indications that the inspection is not effective?

Procedures are always agreed between the client and the inspection company. They may be based on certain Polish or foreign norms, specific to certain type of goods. Once the norms are agreed they are strictly followed by inspection company which also uses its internal guidelines. Inspections are always effective since they are conducted strictly according to the norms. Another issue is whether the results are effectively used – but this is the discretion of clients.

10. Are goods also normally inspected upon arrival?

Yes, quantitatively and qualitatively. In general, goods are inspected upon arrival but also during transit (almost each time when reloading takes place).

11. Are inspection procedures in conformance with established practice?

Yes. However, it is always agreed with clients which rules should be followed (foreign, Polish or mixed). Minimum requirements are established especially for inspection of goods financed through public procurement. This may even include inspection of samples or random samples of the goods. This could help ensure that public money is spent for contracted quality and quantity. The concern about fair tendering process for procurement of goods using public money is extended to contract performance which is part of the process.

12. Do pre-shipment/post-shipment inspection, if any, unduly increase the procurement lead time?

No, if the process is well organized and coordinated with for example custom clearance. Common practice is to conduct inspection at the same time when custom clearance is done. In many cases custom officers base their assessment of quality and quantity of goods on the results of inspection (by specialized inspection company). Typically the inspection should not take more than 1 or 2 days, only if laboratory analysis are required it may take up to 5-7 days.

Annex B – Trade Practices

13. Is counter-trade used? Barter agreements? In which percentage of the country's total trade? For which commodities?

Barter trade is no longer a trade practice. Parallel export and import agreements are used by companies trading with the east. 1998 crisis has negatively influenced trade and may lead to a radical drop in the international trade with eastern neighbors. Most popular import commodities are gas and oil products, in export are agriculture and practically all other products.

14. Are the ICC's INCOTERMS generally understood and commonly used in the Country? Are other trade terms used? What are the most commonly used INCOTERMS used? FOB? CIP? CFR? DDP?

INCOTERMS are well understood. CIF, CIP, and EXW are the most commonly used terms.

15. Are there indications suggesting price-fixing in open bidding?

No.

16. Are licensing and customs procedures generally transparent and efficient?

The language of custom procedures described in the custom codes is in principle transparent and clear. However, some people argue that those procedures in practice create significant barriers in trade and give too much power to custom administration "over the commodity". Custom clearing process is highly bureaucratic, mainly because of lack of uniform application and different practices in different offices.

The new custom code (January 1998) introduced two important innovations: simplified procedures for custom clearance and the "custom declaration". As of now, simplified procedures (status of approved partner) are enjoyed only by about 600 companies. This may be a result of limitation of the use of simplified procedures only to companies (exporters or importers) while custom agents are not eligible for this status. Unfortunately, the second innovation (custom declaration) has never been introduced since this is in contradiction with VAT law.

17. Are "facilitation" payments normally necessary to clear goods through customs, obtain work permits for expatriate labor, process monthly payment certificates/invoices?

It is said that "facilitation" payments are often necessary for custom clearance. They are not necessary for work permits and absolutely not for processing payments.

18. Are local staff familiar with shipping and other trade documents? With documentary credits?

In general over last years the knowledge and familiarity has been growing. Private sector employees are certainly much more experienced than public sector employees.

Annex B – Trade Practices

19. Are local staff experienced in import planning and importation procedures?

National experience is constantly growing. Experience of the staff working for specialized companies (e.g. custom agents, forwarding companies) is quite significant. It is interesting to note that the number of private sector employees working for custom agencies is almost equal to number of custom officers in the country.

Annex C – Financial Framework

1. Are banks capable of issuing Letters of Credit?

Yes.

2. Are banks generally creditworthy?

In general all banks on the Polish market are considered to be creditworthy. Polish banks in general have relatively low capital and are not capable of financing large projects. They tend to plan their operations rather carefully.

3. Can bid, performance and advance payment securities be obtained easily locally? What formats are permitted? Bank guarantees? Bonds? Other? Provide details on cost, if available.

Yes, in practice all forms can be obtained easily. The most popular form is bank guarantee. Letter of credit is also permitted (usually has to be unconditional, available for the first request, min. validity 45 days). Fees vary according to creditworthiness and credibility of client.

4. Are the requirements for issuance of bid, performance and other securities to local suppliers / contractors reasonable.

Yes, they are perceived as reasonable. However, companies with poor financial standing have more problems in meeting collateral requirements to obtain bank guarantees.

5. Do local suppliers/contractors have reasonable access to credit?

Yes, the credit market is competitive. Banks used to be very restrictive and required huge securities (e.g. 110% of the total loan or value of guaranty). Credible and creditworthy companies have always easy access to credit. Competition between the banks (induced by privatization and supply of foreign capital to the banking sector) creates opportunities for the availability of credit. Relatively high interest rates in Poland make banks interested in credit operations.

6. Do implementing agencies obtain budgetary authorizations for contract payments falling due beyond the current financial year?

It is not allowed with no exceptions. Any increase of current allocation or new budget line (within a budget year) can only be made available when amendment to the budget plan is adopted by appropriate authority (e.g. gmina's council). Multi-year budgeting is not yet possible (except large infrastructure investment by central government each of which is usually subject to its own Act). However, it will be possible under provisions of Public Finance Law after January 1, 2000 ("financing of multi-year programs").

7. Are major projects or programs clearly identified in government budget estimates?

Yes.

Annex C – Financial Framework

8. What procedures are followed to ensure the procuring entity obtains budget authorization prior to inviting bids?

According to existing laws, plan of disbursements is necessary to launch tender procedure. There is no obligation of securing any funds by the public entity (a 90% of total cost used to be required) before the tender is open. Note: the fact of not completing the plan of disbursement is not considered as a budgetary discipline violation while exceeding the plan is considered as a violation.

9. Do procuring entities reliably receive the monies authorized? Or is the budget subject to revision during the year by a restrictive cash release system?

It depends on the nature of an entity. Gminas receive only about 10% of the budget from central Gov. subsidies, about 90% are their own revenues. In case of Powiats, which receive about 80-85% of the budget from central Gov. subsidies, they have to rely on timely receipt of authorized money. In general there are delays and one can see a situation of “December fever” when all money has to be spent almost immediately (otherwise it has to be returned back). Finalization of budgetary allocations is long (delays in issuance of executive laws) and creates situation when authorization is granted mid-year. This creates unnecessary rush and short-circuiting of economic and transparency in procurement procedures.

Foreword to Annex D: In preparing this annex, we have intentionally set out to provide the reader with a detailed, comprehensive guide to the provisions of the APP, which may be used by Procurement Specialists operating in Poland to ready gain ready access both to the legal provisions and to current practice.

Annex D - Public Sector Procurement of Goods/Works

GENERAL RISK ASSESSMENT

1. Is the public sector procurement profession held in high regard?

Public-sector procurement is not yet recognized as a profession in its own right, which is not surprising, given that the Polish Government has been conducting procurement competitively for less than 10 years. The profession is, therefore, at a nascent stage but is developing.

At the level of the national Government, interested stakeholders, such as bidding companies and consulting firms, report that public-sector procurement officials are generally professional. By contrast, the same stakeholders report that they find public-sector procurement officials at the local government level to be untrained and inconsistent in their application of the law.

Several public-sector procurement officers perceive that they are distrusted and held in low esteem by the general public. There have been a number of recent scandals, reported in the print media, in which waste or misappropriation of public funds has been alleged; as a result, some procurement staff in Ministries think that the general public sees them as ‘potential thieves’ and are concerned that the only impression which the public at large gets of them is the often negative one portrayed by the mass media.

2. Are pay levels for procurement professionals comparable to that for other public and private sector technical specialists? Give current range of monthly salaries.

Because procurement is not yet recognized as a distinct profession in the country, public-sector procurement officials are paid on the same salary scale as other public-sector officials at the same grades. There is no separate career stream or salary scale within government service for procurement personnel.

During 1998, average salaries for civil servants were as follows:

	<i>PLN/month</i>	<i>US\$ equivalent</i>
<i>Central Government</i>	<i>1,779</i>	<i>\$430</i>
<i>Voivodship</i>	<i>1,372</i>	<i>\$331</i>
<i>Gmina</i>	<i>1,467</i>	<i>\$354</i>

Source: ‘Statistical Yearbook’ 1998.

In 1998, the average monthly salary in central government administration was 34.6% higher than the average salary in the economy as a whole, which is favorable in that it may be interpreted as a factor which reduces the pressure on public officials towards corruption. On the other hand, public-sector procurement officers perceive themselves as being very lowly paid. By contrast, private-sector salaries for administrative staff are approximately 120% higher than salaries for the similar level of staff in

public service. This is clearly an important contributing factor to the high level of staff turnover among procurement officials working in government service and may also be an enticement towards corruption. There are no published data on salary levels for specific technical professions.

3. Is the procurement profession generally staffed with honest and capable individuals?

At the level of the national government, interested stakeholders report that public procurement staff are generally honest and capable. However, at the various levels of local government, the same stakeholders report a much lower level of confidence in the capability and honesty of procurement officials. Rumors of corruption in the award of local government contracts for works are widespread.

The recent, wide-ranging reform of public administration in Poland, which has led to the creation of a number of entirely new levels of local government, has contributed to the dilution of capability in the area of procurement, as large numbers of new, as yet untrained, staff have been and will be drafted into procurement positions in these new local government organizations.

4. Does a code of ethics exist that procurement professionals are expected to follow?

There is no code of ethics for public procurement officials. Their conduct is governed by the Act on Public Procurement and by the regulations governing the conduct of civil servants.

Article 20 of the Act on Public Procurement specifies the circumstances under which a public procurement official is debarred from representing a procuring entity in a tender process:

- if s/he is in a direct relationship (marital, kinship etc) with an officer of a bidding entity;
- if, during a period of three years before the tender, s/he worked for a bidding entity e.g. as a Director, employee or subcontractor;
- if s/he is in a legal or factual relationship with a bidding entity which might justify doubts about his/her objectivity.

Whilst these provisions do not take the place of a Code of Ethics, they at least offer some safeguards against conflicts of interest.

5. Are the authorities relating to procurement clearly delegated to the entities carrying out the process? Are the applicable procedures clearly defined?

The Act specifies the authorities of the participating organs of government to carry out public procurement on a decentralized basis, as well as the rights and obligations of the Council of Ministers, Prime Minister and Chairman of the OPP to control and change these authorities through specific approvals, waivers and secondary legislation.

The Act specifies the procurement methods which public-sector procuring organizations may use as:

1. Unlimited Tendering;
2. Limited Tendering;
3. Two-Stage Tendering;
4. Negotiations with Retaining Competition Quotations;
5. Request for Proposals
6. Single-Source Procurement

However, the law is not sufficiently specific in defining the detailed procedures which should apply to each procurement method, with the result that practice varies widely between different procuring entities. The best-run of the government entities, both national and local, have expanded upon the Act by developing their own detailed procurement procedures, even though this is not mandated by the law. Public-sector procurement officers, at both central and local government levels, express concern that, because the Act leaves considerable latitude in the detailed procedures for applying the various procurement methods (for example, in the 7 permissible bases for using Single-Source), they may be left open to accusations of breaching the law, despite their best efforts to act correctly. In this respect, the Act does not offer individual procuring entities and their procurement staff sufficient protection and clear instruction.

6. Are procurement decisions ever overridden by higher governmental agencies? If so, by whom? To what degree is the procurement decision-making process independent from politics?

Most government agencies form bidding committees to undertake procurement exercises. Their membership varies from 3 to 30, depending on the size of the institution, the value of the procurement and the level of government. Bidding committees are generally comprised of the head of the purchasing department (plus one or more of his/her staff), appropriate technical specialists (who advise on the drafting of technical specifications and on the technical evaluation of bids), financial/accounting staff and procurement specialists.

Within central government ministries, procurement award decisions usually have to be approved at director general level and decisions on procurements >€200,000 at deputy minister or minister level. This leaves the process open to political interference, though such is not widely reported. At local government level, procurement decisions are more prone to political influence, as chain of command from elected official, through political appointee to procurement officer is shorter.

7. Does the highest level of government encourage/support/enforce compliance with existing procurement regulations? Are violations investigated and procurement/other responsible officials held accountable?

The Act defines the duties and obligations of the Chairman of the OPP, who is directly responsible to the Prime Minister and whose rank is equivalent to that of a deputy minister. The Chairman's duties include:

1. *approving the use by a public procuring entity of a procurement method other than unlimited tendering for contracts estimated to cost more than 200,000 Euros equivalent;*
2. *establishing, maintaining and publishing a list of arbiters to review appeals;*
3. *presenting an Annual Report on the functioning of the public procurement system to the Council of Ministers;*
4. *preparing draft regulations and Acts on public procurement;*
5. *disseminating general conditions, forms of contract, rules and standard procedures for conducting public procurement;*
6. *collecting information about the planning and performance of public procurement;*
7. *preparing training programs, conducting and encouraging training on public procurement;*
8. *international cooperation on public procurement matters;*
9. *publication of the Bulletin of Public Procurement;*

- 10. motion the Council of Ministers to assign a particular procuring entity to conduct a joint procurement exercise on behalf of a number of administrative units which has**
- 11. common procurement requirement;**
 - 12. require procuring entities to provide and publish information about the conduct of public procurement;**
 - 13. notify breaches of the Act to the relevant jurisdiction, where there has been a violation of budgetary discipline.**

All public-sector purchasers wishing to use a procurement method other than Unlimited Tendering

for contracts estimated to cost more than Euro200,000 equivalent have to apply to the Chairman of OPP for a waiver. This system is regularly adhered to and appears to work reasonably well. However, procuring entities report that they have no difficulty in obtaining from the OPP waivers to many provisions of the Act and the OPP does not report fully on the number of waivers granted and the justifications for them.

A further area of weakness in the current system is that the OPP does not monitor low-value purchases (i.e. under Euro3,000 equivalent) made by procuring entities. There is ample evidence of abuse of these procedures, including high volumes of low-value purchases let by Single-Source and procurement being conducted without any written record. Such procedures are clearly open to abuse and there is much evidence that such abuse occurs, particularly at local government level. For example, one major city authority reported that it organizes its procurement staff by value of contracts placed, with the same small number of procurement officers dealing repeatedly with Single-Source procurements under 3,000 Euros, for which the Act requires no documentation of the process and which the OPP does not monitor. Such procurement and staffing arrangements are clearly open to abuse.

Control over public procurement is exercised by different government agencies at two different levels: at national level, the Supreme Chamber of Control (NIK) audits procurement conducted by national government agencies, whilst the Regional Clearing Houses control local government procurement. Both have the authority to refer breaches of the Act on Public Procurement for legal redress, which may be taken against the individual procurement officer or the organization. However, it is widely recognized that both these organizations are severely under-resourced, with the result that auditing of public procurement is less comprehensive than is desirable

ORGANIZATION

1. Is appropriate information on procurement adequately disseminated (i.e. procurement staff are aware of updated rules and thresholds, and other issues relevant to their assigned responsibilities)?

Yes. The Office of Public Procurement publishes updates of the relevant primary and secondary legislation, as well as samples of good practice, through the Bulletin of Public Procurement (211 issues published in 1998) and on its Internet website. Procurement officials are, therefore, generally well-informed about the legislation affecting the conduct of their jobs.

However, the OPP's publication of procurement documentation stops at examples, which public procurement officials are at liberty to adopt or ignore. This leads to a wide disparity in the quality of procurement documents issued by public-sector procuring entities.

2. Are the procurement and supply management functions clearly distinguished?

Yes. Public procurement officials concern themselves almost exclusively with the tendering, procurement and contracting aspects of the function, whilst supply management – distribution, warehousing, stock control etc. – are handled by separate groups of officials.

3. Is contracting authority reasonably delegated (i.e. there are no unnecessary levels of approvals or cumbersome procedures)?

Delegation to individual procurement officers of purchasing authority for low-value purchases (less than Euro3,000 s equivalent) is common and, because this is not monitored by the OPP, this may be open to abuse.

By contrast, higher-value procurements are invariably handled by bidding committees, in which approvals for award of contract generally have to be approved at the level of head of department , for large, strategically important purchases, the head of procuring entity.

4. Are thresholds for contracting powers regularly updated?

Article 15.3 of the Act on Public Procurement gives the Council of Ministers the right to update the financial thresholds for the various procurement methods by ordinance no later than September 30 each year, with the revised thresholds to apply from January 1 of the following year.

5. Do procuring entities have internal quality control mechanisms? Are they regularly audited?

Compliance with the Act is usually controlled by the operation of the head of the administrative unit e.g. bidding committee, which is chaired by a senior public official, such as a head of department or Director General of a Ministry. The bidding committee controls compliance, timeliness of the procurement, technical and cost aspects of the procurement, rather than the quality of the procurement process per se.

There is no evidence of public-sector procuring entities having in place formal quality assurance systems and none is accredited to any internationally-recognized quality assurance standard.

6. Are procurement staff experienced in international procurement?

At the level of national government agencies, there is substantial experience of international procurement among the staff of those agencies which have conducted procurement under externally-financed programs, including those of the World Bank, EBRD and the EC.

However, there is little such experience at local government level, especially among those levels of local government created by the recent public sector reforms.

7. Is career advancement primarily based on job-related accomplishments and factors?

Career advancement is based mainly on seniority and length of service, with job-related accomplishments a secondary factor.

8. Do adequate formal and on-the-job training programs exist for entry- and higher-level procurement staff that contribute to proper professional career development?

The Act on Public Procurement includes, within the scope of activities of the Chairman of the OPP, at Article 9.1.7, ‘preparing training programs and conducting and encouraging training concerning public procurements.’ However, mainly due to limited financial and human resources, the OPP currently restricts itself to the role of “encouraging” or “inspiring” such training. The Government makes no regular provision for the training of its officials in public procurement.

Instead, the main provider is the private sector, where there exists a relatively large number of companies, mostly staffed by former Government procurement officers, who conduct training courses for public procurement officials. The courses are mostly short (1-2 days), focused on a single topic per course and do not lead to any recognized qualification. The Government does not accredit these courses in any way, nor do the public-sector organizations who purchase these training services evaluate their quality and/or developmental impact. There is, therefore, no way of assessing the quality of the training provided by these private-sector operators.

A further difficulty of this over-reliance on private-sector training provision is that the fees for such courses are relatively high and there is no doubt that, given the modest government budgets for training, provision is insufficient to meet the needs of public procurement officials.

There is no recognized career development path for procurement officials and, therefore, no direct link between attendance on private-sector training programs and career development.

9. Are there additional training resources in the country which are currently utilized or that could be utilized to complement Government/donor-administered programs (e.g. universities and private institutions)?

Given that the Government plays little part in the direct delivery of procurement training and education services to public-sector employees, there is undoubtedly scope to involve publicly-owned education and training facilities – including universities and technical colleges - in the provision of public procurement training. However, this would require a marked shift in the OPP’s present policy of ‘inspiring’ training to a much more proactive stance, in which the OPP would encourage such institutions to provide these services, involve itself in curriculum development and accredit both the programs and the delivering institutions. Such a scheme would also require the involvement of an appropriate national body to accredited academic qualifications and/or the institutions awarding them.

Poland is well provided for in terms of universities, technical colleges and business schools which could be involved in such a training scheme. However, at the moment, the Government seems to lack the will to promote such initiatives.

10. Did previous training programs lead to an obvious improvement in the quality/productivity of procurement work?

The EC Phare Program financed wide-scale training of several thousand public procurement officials throughout the country in 1995 and this had a significant impact on the readiness of government servants to implement the new Act on Public Procurement. The procurement expertise which currently exists within central and local government can be attributed in large measure to this comprehensive training program. Since then, however, no such far-reaching training program has been repeated.

As mentioned above, no measurement is currently available of the impact of the procurement training programs regularly delivered by the various private-sector providers.

11. Do procurement staff have adequate project/contract management capabilities?

Suppliers of goods report few instances of poor project management practices; their contracts are generally managed effectively and payments made on time.

For works contracts, however, reports of poor practice are widespread, particularly at local government level. The main problems are reported to include unfair application of contract terms and employers pressurizing contractors to deliver uncontracted scope of work. These difficulties are exacerbated by the lack of appropriate standard forms of contract.

There are also many reports of poor administration of consultants' contracts – for which, again no standard form of contract exists – including late payment and no cut-off point for the acceptance of consultants' Final Reports. This, in turn, leads to consultants receiving their final payments often as much as one year late.

12. Are procurement agents used? Under what circumstances? How are they selected? Describe normal basis for compensation and contract duration.

No. Public-sector purchasers invariably carry out procurement themselves.

13. Is procurement monitoring and administration computerized? How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?

The majority of public sector procuring entities use informal, paper-based procedures for monitoring and administering procurement. In a few cases - for example high-value, complex works – computerized tools are used, usually by major, national-level purchasers and often with the help of external consulting firms, who bring with them more advanced management tools than are available with the procuring entities themselves.

With regard to the collection of price information on civil works, the Ministry of Interior and Administration performs this function. The Act, at Article 25.4, requires every procuring entity awarding a contract for construction works to submit to the Ministry of Interior and Administration 'price information from the proceeding and a copy of the best bid.' Furthermore, the Ordinance of the Ministry of Physical Construction and Planning of December 30 1994 'On the Methods and Basis for Preparing Investors' Cost Estimates' defines the precise method of cost estimating for civil works procurements.

The method for preparing investors' cost estimates, defined in the ordinance, provides instructions and formulae for both Simplified and Detailed Cost Estimates. The Simplified cost estimate is calculated by adding the products of the number of construction activity units and multiplying them by their unit prices, taking into account VAT on goods and services. The Detailed cost estimate is calculated taking into consideration the costs of material, labor, equipment and a mark-up for indirect cost and profit for a construction activity, adding VAT. The ordinance requires that, for material costs, the "Integrated Catalogues of Material Outlays" issued quarterly by the Ministry of Physical Planning and Construction should be used. It also states that 5% should be used as a profit mark-up for all types of construction activity.

The methods stipulated do not provide a mechanism accurately to estimate the total cost of the construction, as the methods do not include other construction-related activities which have to be included in the mark-up for indirect cost. For example, activities related to maintaining a good environment during construction could be included as a cost element in the formulae.

There is no evidence of such a formal method of cost surveying for goods or consulting services. For goods, procuring entities keep informal records of past prices paid for similar items and combine this historical information with informal price surveys, done by scrutinizing brochures and telephoning a selection of potential bidders immediately prior to purchasing.

PROCESS – PLANNING

1. Are project implementation units adequately staffed with trained procurement, planning, scheduling, expediting and cost estimating personnel?

There is a marked shortage of procurement personnel adequately training in procurement planning and scheduling, with the result that procurement planning usually does not happen at all. This weakness is exacerbated by the annual budgeting cycle, which forces public-sector procuring entities, once they receive their budget allocation – typically as late as April or May each year – to attempt to cram their annual expenditures on procurement into an unrealistically short time period.

Cost estimating is a particular weakness in civil works contracting and, in many cases – particularly at local government level – it is not done at all, despite the presence of secondary legislation in this area. Some national government agencies have reasonable capabilities in this regard but, at local government level, the practice is uniformly weak.

2. Is overall planning for complex goods, works and other contracts done in sufficient detail to produce realistic project definition, achievable completion schedules and accurate cost estimates?

No. Planning of complex projects, particularly works projects, is a major area of weakness, with the difficulties being particularly acute at the level of local government. Inter-related components of complex projects are generally not well integrated at the planning stage, with the result that delays in one component have a concomitant negative impact on dependent components. Cost and time overruns are commonplace on works contracts.

3. Is the early technical and financial planning well coordinated so that projects are fully funded when work needs to begin, based on accurate cost estimates?

Technical planning of projects is generally poor, with inadequate planning of complex projects, incomplete technical documentation and drawings.

Financial planning habitually suffers from the annual budget cycle, whereby funding is voted late in the financial year (April – May) and multi-year projects suffer from uncertainty over future years' funding. Very large projects (over 100 million Euros) are immune from the annual budgeting cycle, as they are each subject to their own Act of Parliament. However, these are rare.

Cost estimating is done fairly adequately at national government level but invariably done badly or not at all at local government level, with the result that there is little learning from previous projects put towards better planning and implementation of future projects.

4. Are appropriate methodologies used to plan multiple inter-related procurement activities on large projects (e.g. the critical path method)?

Only on the highest-value, most complex projects, which, by definition, are implemented at national government level and often with the assistance of external project management consultants, who bring with them formal, computer-based project planning and control techniques such as CPM.

5. Are project components appropriately packaged for procurement purposes?

The practice of packaging project components to achieve the optimal contracting strategy is not yet developed among public-sector procuring entities. In this respect, many procuring entities appear to be inhibited by the blanket provision of the Act, at Article 3.2, that 'The procuring entity may not divide the procurement into parts or lower the value of a procurement in order to avoid the application of this Act.' As a result, most appear to avoid packaging, so as not to run the risk of breaching this provision of the Act. Such practices are reinforced by inadequate understanding of how the Act is to be applied in practice and by insufficient training of procurement staff in its application.

6. Are completion schedules generally met for goods, works and consultant services contracts? If not, what is the major cause for slippage? Is sufficient time generally allowed for external reviews/clearances?

For goods contracts, schedules are generally realistic and most deliveries are made on time. Poland's well-developed transport infrastructure, its location close to the center of Europe and the fact that most of its imports arrive by land or sea from Western Europe all facilitate on-time deliveries.

Works contracts frequently run late, with the result that contract cost increases are commonplace, even though most contracts are let on a fixed-price basis.

For consulting services contracts, performance by the consultants is generally timely but payment for their services is frequently delayed. The main contributing factor to this is the lack of a good standard form of contract for consulting services.

Most procuring entities are timely in their review and clearance procedures.

7. Do procurement units regularly conduct market surveys to update their knowledge of prevailing prices for goods and works?

For goods and services, no such formal market surveying techniques exist in Poland. For frequently-purchased items, most procuring entities are well-informed about prices chargeable in the local market, based on their accumulated knowledge of suppliers and on prices previously paid. However, this information is not collected, stored and used in any systematic way.

By contrast, for civil works, the Act and related Ordinances of the Ministry of Physical Planning and Construction provide for a structured system (described above) for collecting and disseminating information on prices paid for construction works.

8. Are procedures and methodologies for planning procurement of recurrent items (i.e. inventory control, forecasting of future requirements, classification, coding, accounting/financial management, spare parts management, and delivery systems) adequate?

Such practices are generally not well developed. Because of the shortcomings of the annual budgeting cycle, most procuring entities are denied the opportunity to plan recurrent purchases in advance. The common practice is that requisitioning departments make their annual expenditure ‘bids’ to the central Ministry / local government function in the annual budget planning exercise; then, once the final budget has been approved by Parliament, the actual expenditure allocations are worked out by negotiation between the center and the various spending departments.

PROCESS – DOCUMENT PREPARATION

1. Do standard documents exist for goods, works and other types of contract? List. Are other international contract formats used? If so, identify.

No, the Government neither publishes nor uses standard documents for any type of procurement. The OPP does publish sample procurement documents, including bidding documents and example evaluation methodologies, but these are not mandatory and different public procuring entities change them to suit their own ends. This leads to a wide disparity in documentation and generally poor-quality bidding documents.

World Bank SBDs are used for Bank-funded operations and a few procuring entities have adopted the Bank’s procurement documents for non-Bank-funded applications. EBRD and EU standard bidding documents are used for procurements financed by those organizations. The FIDIC form of contract is sometimes used for works, particularly by the private sector or where independent consulting engineers are engaged.

2. Are these documents, if any, readily adaptable to specific contract situations (i.e. by modifications made through a Bid Data Sheet, Special Conditions of Contract or similar)?

Because the Government does not publish its own standard bidding documents, but only sample documents, adaptation is widespread but not well controlled through the format of the documents. There are no standard formats such as Bid Data Sheets and this contributes to the poor quality of procurement documentation identified at 1) above.

3. Are there separate documents for international and national competitive bidding not financed by the Bank?

No, there are no standard documents, either for national or international competitive bidding. Some of the procuring entities which have IFI procurement experience have begun to use World Bank standard bidding documents for international competitive bidding; however, the NCB document is not widely disseminated.

4. Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application?

The sample procurement documents issued by the OPP are weak in this respect, especially as they are open to extensive adaptation by different procuring entities. Bidding documents issued by procuring entities frequently lack the detailed instructions necessary to enable bidders to prepare fully compliant bids; evaluation criteria are often left vague, in many cases deliberately so in order to afford discretion in the bid evaluation process. Merit Points Systems are the most widely-used evaluation methodology, with an inappropriate balance between price and non-price features being commonplace.

Salient examples of evaluation methodologies cited by bidders include:

(i) for the procurement of standardized computer equipment:

- *Price – 60%;*
- *Technical Quality - 40%.*

(ii) for civil works:

- *Price – 40%;*
- *Contractor's experience – 20%;*
- *Contract Conditions and Guarantees offered – 20%;*
- *Contractor's Commercial Standing – 20%.*

Another serious shortcoming, as illustrated in the second example above, is that the bidders' qualifications are invariably assessed as part of the bid evaluation process and these are treated very subjectively under the Merit Points System. This is the model bid evaluation methodology promulgated by the Office of Public Procurement.

5. Do they contain other necessary information, such as eligibility requirements, basis of bid, language and currency of bids, common currency for purposes of evaluation, source and date of the exchange rate, etc.? Are sample forms and other appropriate sections of the documents provided?

No. Because there are no standard documents, there is wide variation in the level of detail in bidding documents issued by procuring entities.

With the exception of those procuring entities which have experience of doing procurement in accordance with the guidelines of major lending institutions, such as the World Bank or EBRD and which have, as a result, adopted their procurement documentation, purchasers do not generally include a Form of Bid in the bidding documents. This results in lack of comparability in the bids submitted by bidders which, in turn, makes comparison and evaluation of bids subjective and opaque.

With regard to the language of bids, Article 37.1 of the Act on Public Procurement states, for the Unlimited and Limited Tendering procurement methods, "unless prepared in Polish and in writing,

the bid shall not be valid". However, the act further provides that "In especially justified circumstances, the Chairman of the Office may agree to the preparation of the tender in a language commonly used in international trade." However, no information is published on the number of instances which such waivers have been granted.

In most cases, procuring entities do not dispatch a standard or sample form of contract to bidders with the bidding/invitation documents. Therefore, bidders are seldom in a position, at the time of bidding, to price the risks and obligations which they may be asked to assume. One informed source – a trade association representing more than 1,500 private-sector manufacturers – estimates that:

- *in 30% of tenders, the procuring entity provides a sample form of contract with the bidding documents;*
- *in a further 30% of tenders, the procuring entity provides only a statement of the main contract terms; and*
- *in the remaining 40% of tenders, the procuring entity provides no advance information on the contract terms. In these instances, the selected bidder usually proposes his own standard terms of contract, which then form the basis for negotiation between the two parties.*

6. Are bidders required to provide bid security in an appropriate amount as a condition of responsiveness of their bid?

The provisions on bid securities are contained in Articles 41 and 42 of the Act, which deal only with the Unlimited and Limited Tendering procurement methods and which specify that bidders are 'obligated to submit a tender security within the range of 1-5% of the subject matter of the procurement'. In these cases, the submission of an acceptable bid security is a condition of responsiveness of the bid.

Acceptable forms of bid security, as defined by the Act are:

- *cash (which the procuring entity is required to keep in a bank account);*
- *surety;*
- *bank guarantee;*
- *insurance guarantee;*
- *pledge on securities issued or guaranteed by the State Treasury.*

In addition, the following forms of bid security may be used, with the consent of the procuring entity:

- *shares which are subject to public trading;*
- *stock exchange lists; and*
- *bills of exchange.*

Also under these two procurement methods, the Act gives the Chairman of the OPP the right to waive the need for bid security "in cases where the costs of organizing the tendering are not significant."

7. Is pre- or post-qualification provided for?

Prequalification is provided for under the Act (see 'Process-Prequalification' below) but it is not sufficiently widely used.

The Act does not provide for postqualification and there is no evidence of its use. By contrast, the bidders' experience, financial standing and other resources are assessed as part of the process of bid evaluation.

8. Are qualification criteria appropriate and clearly described?

Qualification criteria are often inappropriate and not sufficiently transparent. This has led to frequent abuses of the prequalification process, such as the subjective assessment of bidders' financial resources, which has been the cause of complaints, mainly from civil works contractors.

9. Are conditions of contract generally equitable? Do they provide adequate coverage for most important commercial and legal issues (for the method of procurement, size, nature and type of contract used) and provide adequate protection to the Government, without putting undue risk on bidders?

Because there are no standard forms of contract in wide use by public-sector procuring entities, the conditions of contract vary widely from one purchaser to another. For goods and works contracts, the main conditions appear to be broadly equitable, although a common complaint is that works contracts lack adequate dispute resolution provisions. Also, even though contract terms may be fairly equitable at the time of award, they are often inequitably applied during contract implementation.

For consulting services assignment, it is common that contracts contain no advance or stage/intermediary payments. Rather, contracts are lump-sum and generally fail adequately to define the payment conditions, particularly the conditions under which the consultants is to be paid their final payment. This has led to several instances where consulting firms have been forced to wait for more than a year to receive their final payment, with procuring entities often making arbitrary decisions about acceptance of the consultants' final reports and assessment of the acceptability of the consultants' services being made by unqualified client staff.

There is a serious weakness in the commonly-used form of contact for works, in that it fails to make adequate provision for dispute resolution. The only provisions are for attempted amicable settlement and, if that fails, the parties proceed directly to legal process. It is clear that some intermediary steps, such as adjudication and arbitration, are desirable.

10. Are standard purchase orders used for shopping?

Although no such standard purchase orders have been issued by the OPP, many procuring entities have developed their own forms of purchase orders for small-value contracts, which appear to be generally acceptable to suppliers.

PROCESS - PRE-QUALIFICATION

1. Is pre-qualification carried out when appropriate? What types of contracts is it used for? Works? Goods? Other?

For all public tenders, Article 22.2 of the Act requires that every supplier, contractor and consulting firm submit to the procuring entity a statement that:

- *it has the legal capacity to enter into legal transactions according to legal requirements;*
- *it has satisfied the legal requirements essential to perform the defined work or activities. if these legal requirements are established under another Act;*
- *it possesses the knowledge, experience, financial resources, technical competence, personnel and all necessary capacity to perform the procurement;*
- *it is in a financial situation to ensure performance of the contract;*
- *it is not excluded from the procurement on any of the grounds which the Acts defines elsewhere (i) failure to perform during the past three years; (ii) in bankruptcy proceedings or declared bankrupt; (iii) in arrears with payments of due taxes, charges, social insurance contributions; (iv) natural persons convicted of a crime in connection with a procurement proceeding; and (v) legal persons employing such a convicted natural person).*

In practice, there is ample evidence that these blanket provisions are often used in lieu of a formal prequalification exercise, though it is clear that they do not perform that same functions. For example, the bidder's statement that he 'possesses the knowledge, experience, financial resources, technical competence, personnel and all necessary capacity to perform the procurement' is not required to be evidenced by any objective pass/fail criteria. Also, these requirements are sometimes used subjectively to debar potential bidders from bidding.

The Act provides that prequalification may be used only on contracts whose estimated value exceeds 30,000 Euros equivalent.

A more formal prequalification process is provided for under Article 23 of the Act, though it still takes as its basis the provisions of Article 22.2, described above. The requirement is that the procuring entity should place an advertisement to prequalify in the Bulletin of Public Procurement at least one month before advertising the tender itself (in the case of Unlimited Tendering) or before invitations to tenders, in the case of more restricted procurement methods. The law also requires the procuring entity to dispatch the prequalification document to applicant firms no later than 14 days before the deadline for submission by bidders of their applications to prequalify. These provisions are at odds with best practice in that:

- *when a prequalification exercise has been undertaken, the procuring entity still has to publish the tender announcement in the Public Procurement Bulletin, rather than the bidding being limited to those bidders who have met the prequalification criteria;*
- *prequalification may be used even for procurements other than Unlimited Tendering i.e. for procurement methods which are based on direct invitation of bidders (Limited Tendering);*
- *the time allowed to potential applicants for prequalification is short at 14 days;*
- *because the Act does not prescribe the situations in which prequalification is to be used, procuring entities generally use it very little.*

Bidders also report that the Two-Stage Tendering method, defined in Articles 53-62 of the Act, is in practice sometimes used for high-value, complex contracts, with the first stage effectively acting as prequalification, instead of its more accepted use for generating detailed technical design.

2. Is the pre-qualification process fair and transparent? Are decisions made promptly? Are foreign firms allowed to apply?

Whilst the Act requires, at Article 23.4.2, that the prequalification documents should contain a ‘description of criteria and evaluation methods’, in practice, the criteria employed are often vague and subjectively applied, which calls into question the transparency of the process. There is no significant evidence of delays in procuring entities making decisions on prequalification applications.

Prequalification is governed by the ‘Principles of Conducting Public Procurement’ contained in Article 18.1 of the Act, which include the statement that ‘Domestic as well as foreign suppliers and contractors shall be able to participate in procurement proceedings on an equal basis’. Equally, prequalification is subject to Article 18.2 of the Act, which states that, for contracts estimated to cost less than 30,000 Euros equivalent, the procuring entity may limit participation in the procurement to domestic suppliers or contractors and foreign suppliers or contractors which have a branch or representative office in Poland.

A more restrictive provision is contained in Article 18.3 of the Act, which states that ‘If the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring entity may request that the entire work covered by the procurement be performed with domestic entities, raw materials and products’. Whilst this provision excludes the supply of goods, it is clearly open to abuse by procuring entities in respect of civil works and consulting services to sometimes exclude foreign bidders, irrespective of the value of the procurement.

3. Are standard pre-qualification documents used? Do they clearly and completely describe all the prerequisites for submitting responsive applications for pre-qualification? Is financial information routinely requested and critically evaluated to assess an applicant’s financial capacity to perform?

There are no standard prequalification documents in use. As a result, the quality and appropriateness of the documentation used is questionable. Applicants, particularly civil works contractors, complain vociferously about prequalification criteria being applied subjectively and about financial information submitted by applicants being evaluated in inconsistent ways. A common complaint among bidders is that financial information is used not so much to measure a firm’s capacity to execute the contract as a proxy measure for ruling certain bidders in or out of the prequalification process.

4. Do procuring entities verify prior to contract award if a successful bidder continues to meet pre-qualification requirements?

No. Given the tight timescale specified in the Act – prequalification documents to be issued to applicants 14 days before issue of the bidding documents – prequalification information is not as perishable as under other procurement regimes.

5. Are suppliers required to have a local agent in order to qualify to bid for goods or services?

For contracts estimated to cost more than 30,000 Euros equivalent, there is no such restriction.

However, for contracts estimated to cost less than 30,000 Euros equivalent, procuring entities may, under Article 18.2 of the Act, limit participation in the procurement to domestic suppliers of contractors and foreign suppliers or contractors which have a branch or representative office in Poland.

5. Do procuring entities maintain updated lists of qualified suppliers and contractors and updated market information on commonly procured goods, including spares and consumables? Is supplier and contractor performance routinely evaluated and are any standing lists of pre-qualified suppliers and contractors updated and modified based on this information. Can newcomers readily apply and be qualified?

For goods and services, there is no evidence of systematically-maintained, centrally-held databases on suppliers, their products and prices. In a much more informal way, procuring entities maintain records on competitive suppliers, their products and prices and use this information when inviting bidders under the restrictive procurement methods.

For civil works, however, the Act requires procuring entities to submit to the Ministry of Internal Affairs and Administration price information resulting from the tender, along with a copy of the winning bid. The Ministry uses these data to collate price information on standard items, such as building materials.

There is no formal system for evaluating the performance of suppliers and contractors. The qualifications and financial standing of bidders is generally assessed during bid evaluation and procuring entities retain and re-use this information in an informal way, which bidders often complain is discriminatory.

Notwithstanding the provisions of Article 18.2 of the Act, where contracts estimated to cost less than 30,000 Euros equivalent may be limited to domestic suppliers or contractors and foreign suppliers or contractors which have a branch or representative office in Poland, there are no other formal barriers to newcomers. In practice, however, particularly for low-value contracts awarded at local government level, new bidders do find it hard to break into bidding fields where the procuring entity has built up relationships with trusted local bidders and where Unlimited Tendering is not being used.

PROCESS – ADVERTISEMENT

1. Are contracts to be awarded by competitive bidding publicly advertised?

Article 14a of the Act on Public Procurement requires that ‘Announcements of public procurement shall be published in the Bulletin of Public Procurement, published by the Chairman of the Office of Public Procurement’. This requirement applies to all procurements valued in excess of 30,000 Euros (US\$31,200 equivalent). The Act also specifies, at Article 33.3, that an advertisement for an Unlimited Tendering procedure must contain:

- the name and address of the procuring entity;***

- *the quantity, amount and category of deliveries to be procured, or services to be supplied, or the category, range and location of construction;*
- *the desired or required time period and deadline for performing the public procurement;*
- *information about conditions required of suppliers or contractors; and*
- *at statement of the applicability of national preferences.*

Whilst the Act does not stipulate how frequently the Bulletin is to be published, the established practice is that it is published frequently (211 issues in 1998). The Act requires that such announcements should be published free of charge to the Purchaser and that the Office must publish such announcements no later than 10 days after their submission by the procuring entity.

The Chairman of the OPP has to right, under the Act, to refuse to publish any announcements which fail to comply with the requirements of the Act.

In addition, the Office of Public Procurement has a well-developed homepage on the Internet, where all competitive tenders are published. The Office reports that their homepage takes 20,000 ‘hits’ or visits per day.

Furthermore, there two bulletins published by private-sector publishers – one weekly, one monthly – which collect and collate information for the private sector on public tenders.

The combination of these legal requirements and publication media means that Poland has an exceptionally strong system for publishing public procurement tendering opportunities.

2. Is sufficient time allowed to obtain documents and prepare bids?

For procurements estimated to cost less than 30,000 Euros, the provisions of the Act with respect to minimum time periods for submission of bids do not apply and the practice is that bidders are often given as little as two weeks to which to prepare their bids.

For the Unlimited and Limited Tendering procurement methods, the time allowed to bidders under the Act for the preparation of their bids is adequate at:

- *Unlimited Tendering: 6 weeks from the date of the advertisement;*
- *Limited Tendering: 4 weeks from the date of the invitation.*

The Act also provides that a procuring entity may allow a shorter time period for the preparation of bids, but in any case not shorter than 3 weeks, in the following special circumstances:

- *Where a period longer than 3 weeks would make contract performance within a given budgetary year impossible;*
- *Where a longer period could result in significant damage;*
- *Where an item is being re-bid and the original tender failed to result in the award of a contract;*
- *Procured items include deliveries, services or construction works which are commonly available at pre-set quality standards.*

In practice, these provisions are frequently flaunted or abused, particularly by local government procuring entities. Bidders report many instances where procuring entities allow as little as 2 weeks for preparation of bids for fairly complex works contracts, giving the unmistakable impression that the tendering process is being manipulated in favor of a pre-selected bidder

PROCESS – COMMUNICATIONS BETWEEN BIDDERS AND THE PROCURING AGENCY

1. Are requests for clarifications answered promptly and completely in a written form?

Yes, procuring entities are generally diligent in their handling of requests for clarification of bidding documents, which are always handled in writing. Article 21.2 of the Act stipulates that ‘all statements and notifications of the procuring entities and suppliers or contractors are effective only in the written form.’

2. Are clarifications, minutes of the pre-bid conference, if any, and modifications of the documents promptly communicated to all prospective bidders?

The common practice is that written clarifications of bidding documents are copied to all bidders. Pre-bid conferences are rare in Poland; technical clarifications for works tender are often handled during the site visit.

3. Are bidders afforded sufficient time to revise their bids following a modification of the documents?

Yes. Article 39.1 of the Act requires that procuring entities should extend the deadline for submission of bids in order to allow bidders time to consider modifications to bidding documents and this provision is generally respected.

4. Do procuring entities maintain accurate records of all communications with the bidders (before and after the deadline for submission)?

Generally, yes. The Act requires that, for procurements estimated to cost less than 30,000 Euros equivalent, the procuring entity is obligated to document ‘the basic activities related to the proceeding’. For higher-value procurements, the documentation requirements are more stringent.

For all public procurements, the Act requires procuring entities to maintain documentation, including the bids, for 3 years after conclusion of the procurement process.

5. Are there communications between the procuring entities and the bidders, other than appropriate requests for clarification of a bid made by the evaluating committee?

At central government level, there are few or no such improper communications. By contrast, at local government level, such contact appears to be more commonplace, particularly for low-value procurements (< 3,000 Euros equivalent), where no written record of the procurement process is required.

PROCESS - RECEIPT OF BIDS AND OPENING

1. Are bids received prior to the deadline securely stored?

Generally, yes. There is no evidence of bids being tampered with after submission and before bid opening.

2. Are public bid openings conducted?

For the Unlimited and Limited Tendering methods, public bid openings are required. No such

requirement exists under the Act for the other, more restrictive procurement methods.

3. If so, are they conducted at a specified place closely following the deadline for submission? Generally how long after are they scheduled?

Article 43.1 of the Act requires that ‘The tenders shall be opened at the place and time specified in the announcement of the tendering.’ However, the Act does not specify a maximum interval which should elapse between submission of bids and their opening in public. This is a serious weakness in the current Act.

In practice, many central government Ministries open bids within 1-2 hours of their submission, which is consistent with best practice. By contrast, local government procuring entities frequently open bids the day after submission, which undermines transparency.

4. Do bid opening procedures generally follow those specified in the Guidelines? What information is read out at the opening ceremony? Are minutes kept?

Polish practice departs from the Guidelines in that there is no required maximum interval between submission of bids and their opening in public; the Act only requires that bids be opened at the place and time specified in the bidding documents. Several Ministries (Agriculture, Education) voluntarily follow good practice and open bids on the day of receipt but, in many organizations, particularly at local government level, procuring entities open the bids the day after submission. This undoubtedly undermines transparency.

The information which the Act requires to be read out at public bid openings, under the Unlimited and Limited Tendering methods, is the following:

- *The name and address of each bidder whose bid is opened;*
- *the price of each bid.*

There is no requirement that discounts be read out or the presence or absence of a bid security. Because the Act, at Article 37.3, stipulates that each bidder may submit only one bid, there is no need to read out the prices of alternative bids.

The Act also requires that an official record be kept of the bid opening and that this be communicated, upon request, to bidders. In practice, many procuring entities fail or are tardy in making this information public, other than to those bidders who are represented at the bid opening.

The Act does not expressly stipulate that late bids and those not read out at the opening should be returned to the bidder unopened and not considered further for evaluation. In practice, however, most procuring entities observe this good practice.

5. Do bid opening procedures differ for goods, works or other types of contracts? If so, how?

Because the Act only has one set of clauses covered bid opening for Unlimited and Limited Tendering, the procedures are the same for goods, works and services.

The practice of bid opening for consultants’ services procurements breaches best practice, in that both Technical and Financial Proposals are opened simultaneously at the public bid opening and the price in the Financial Proposal is announced. This allows and, in practice, leads to abuse of the evaluation system, as technical rankings of bids are often manipulated in the light of known price information in order to contrive the evaluators’ preferred ranking of bids.

PROCESS - BID EXAMINATION AND EVALUATION

1. Are evaluations conducted by qualified evaluating committees?

Frequently, no. One of the bidders' most vociferous complaints is that their bids are being evaluated by procuring entity officials who lack the appropriate technical qualification to undertake the evaluation, that evaluators are chosen according to the government post they hold, rather than their technical qualification to evaluate bids. This appears to be a particular problem for works contracts.

Combined with the subjectivity of the Merit Points System, this leaves the evaluation process open to abuse and manipulation, which are commonplace.

At the level of the individual Ministry (the example cited is the Ministry of Education), Bidding Committees typically comprise up to 9 people, including:

- *Director of Budget and Administration (typically responsible for all procurement);*
- *A representative of the Legal Department;*
- *A representative of the Accounting Department;*
- *One or more representatives of future user groups (in the education sector, teachers or administrators);*
- *One or more Technical Specialists representing the requisitioning Department.*

Typically, the same Bidding Committee both specifies the requirement, including writing the technical specification, and evaluates the bids. The Bidding Committee makes a recommendation for award of contract which has to be approved by the Director General or, for high-value contracts, the Minister.

In the case of smaller procuring entities, including public agencies, city councils and other levels of local government, the bid evaluation committee is not as structured as the example cited. Evaluation is often left to administrative personnel who lack the technical competence to evaluate bids.

2. Are evaluating committees appointed ad hoc for each evaluation?

A mixed system is the generally practice. As in the example cited above, some members of the bid evaluation committee remain constant (Director of Budget and Administration, Legal Department, Accounting Department), whereas other members of the committee will change according to the nature and value of the procurement operation, for example the representatives of the requisitioning and end-user departments.

3. Is responsiveness determined on the basis of the documentary requirements described in the documents and according to established practice?

Whilst Article 48.1 of the Act requires that 'Only the principles and criteria set forth in the invitation to participate in a procurement proceeding and in the specification of the essential provisions of the procurement shall apply in the selection of a tender', in practice, responsiveness is frequently determined in an arbitrary manner. This abuse is exacerbated by the universal use of Merit Points-based evaluation systems and by the inclusion of the assessment of the bidders' qualifications in the bid evaluation process. In particular, bids are often rejected as non-responsive on the grounds of the documentation submitted or because of arbitrary interpretation of the financial information submitted by bidders.

4. Are bid evaluations carried out thoroughly and on the basis of the criteria specified in the documents?

The legal safeguards in this respect appear satisfactory, in that:

- Article 48 of the APP requires that ‘Only the principles and criteria set forth in the invitation to participate in a procurement proceeding and in the specification of the essential provisions of the procurement shall apply in the selection of a tender’;

and that

- Article 49, requires that, in the evaluation of bids, ‘the best offer shall be selected’.

The APP definition of ‘best offer’ is ‘the offer, tender or quotation with the lowest price that is exactly the same quality of the subject matter sought in the procurement proceeding or an offer, tender or quotation with the best balance of price, life-cycle costs, completion or delivery time or other criteria specified in the relevant provisions’. This is a satisfactory definition, in that it provides for the selection of the lowest priced, fully technically-compliant quotation for simple procurements, such as Request for Quotations, and for the selection of the lowest evaluated bidder for more complex or higher-value procurements.

However, there is a wide gap between the APP provisions and Polish practice. Given that the commonly-used system of evaluation of bids is merit points, evaluations are often conducted in a highly subjective manner, the bid evaluation criteria stated in the bidding documents being arbitrarily applied. This situation appears to have arisen because the OPP has disseminated a number of examples of bid evaluation criteria, all based on merits points, and most procuring entities have taken these up as representing approved practice.

5. Is the successful bidder’s qualification to perform the contract determined solely on the basis of the criteria stated in the documents? (See above) If not, what other criteria are considered?

Usually, they are. However, because the evaluation criteria stipulated in the bidding documents are invariably subjective, their application does not provide sufficient safeguards against the award of contracts to unqualified bidders.

6. Are evaluations normally completed within the original bid validity period?

Yes, they are usually completed within the original period of bid validity. However, the Act, at Article 40.2, allows the procuring entity to request bidders to extend the period of validity of their bids, without putting a limit to the number of extensions which a procuring entity may seek

7. Are bid evaluation reports prepared containing all essential information (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder’s qualifications were verified)?

More often than not, no. The use of subjective Merit Points Systems for evaluation and the lack of good standard bidding documents contribute to opaque evaluations, reflected in unclear bid evaluation reports. Whilst, for contracts estimated to cost more than 30,000 Euros equivalent, the Act requires procuring entities to document the procurement process, including bid evaluation, there is no standard form of bid evaluation report, so the quality and level of detail of such reports varies

widely. Reports invariably lack detailed explanation of the bid evaluation process. Weak and under-resourced auditing provisions permit this to happen.

8. Describe any significant differences between goods and works procurement relating to the above.

None identified. The requirement of the Act that ‘the best offer shall be selected’ is applied to both goods and works.

PROCESS – CONTRACT AWARD AND EFFECTIVENESS

1. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily?

There is no such requirement. The requirement of the Act is that the ‘best offer’ shall be selected. ‘Best offer’ is further defined as ‘the offer, tender or quotation with the lowest price that is exactly the same quality of the subject matter sought in the procurement proceeding, or an offer, tender or quotation with the best balance of price, life-cycle costs, completion or delivery time, or other criteria specified in the relevant provisions describing the procurement’.

Whilst these provisions of the Act could be interpreted as meaning that the contract should be awarded to the lowest evaluated bidder, in practice most procuring entities do not apply these provisions, but award to either the lowest priced bid or to the bidder which they consider to have submitted the ‘best offer’, arrived at by subjective means. In 1998, procuring entities selected the lowest-priced bid in 69% of all Unlimited Tenders over 30,000 Euros in value.

2. Are negotiations conducted with bidders, before or after selection?

The Act, at Article 44.2, which applies only to the Unlimited Tendering and Limited Tendering procurement methods requires that ‘No changes in the content of the tender, especially a change in price, and no negotiations between the procuring entity and the offeror concerning the submitted tender shall be permitted.’

In practice, this applies to most tenders operated by central government Ministries. However, it is routinely flaunted by regional and local government procuring entities, who regularly engage bidders in price negotiations, particularly in the case of works contracts. This negotiation creates ample opportunity for corruption.

In the more restrictive procurement methods, the Act makes the following provisions:

- *Negotiations with Retaining Competition: The procuring entity may negotiate all aspects of the contract with the minimum 2 bidders whom he is required to invite to submit bids. However, the Act requires that, when the negotiations have been completed, the procuring should invite these 2 bidders ‘to submit their final offer, including price, and selects the best offer’. Whilst this provision is similar to the ‘Best and Final Offer’ arrangement, which offers a limited degree of transparency, there is evidence that this procedure is abused and that price negotiations are commonplace.*
- *Requests for Quotations: The procuring entity must invite a minimum of 4 quotations and the Act stipulates that ‘No negotiation of price shall be conducted.’ There is also evidence that this provision is flaunted.*
- *Single-Source: Under 3,000 Euros, procuring entities may negotiate directly with an single supplier and there is no requirement under the Act to document the process.*

3. Are additional Government approvals required before contracts can be made effective?

In the case of uncontested awards, no. Article 2.2 of the APP refers only to the internal decision of the procuring entity, e.g., in the case of a Ministry this could be the decision of Director General.

Where an appeal is lodged by a bidder within 7 days of the announcement by the procuring entity of the results of the tender, the Act requires the procuring entity to review such appeal in accordance with Articles 79-92 of the Act.

4. Is performance security required in an appropriate amount and in an appropriate format?

Article 75.2 of the Act stipulates that ‘The procuring entity may require a supplier or contractor to provide a guarantee of due and diligent performance of the contract’. The use of the word ‘may’, rather than ‘shall’ indicates that performance guarantees are optional and, indeed, in goods contracts, procuring entities often do not demand them. The Act specifies that the amount of any required performance security ‘shall not exceed twice the value of the fines under the contract or 10% of the value of the latter.’

The permitted forms of performance security are:

- *Cash;*
- *Treasury bonds;*
- *Surety;*
- *Bank guarantee;*
- *Insurance guarantee;*
- *Pledge of securities issued or guaranteed by the State Treasury;*

and, subject to the consent of the procuring entity:

- *shares admitted for trading and stock exchange listings;*
- *proprietary notes;*
- *guarantees issued or extended by private individuals or legal persons.*

For works contracts, performance securities are governed by the provisions of the Ordinance of the Minister of Physical Planning and Construction dated December 30, 1994 ‘On Establishing the Threshold Values of Construction Works for which Security for Performance of the Contract is Necessary and the Forms of this Security.’ the main provisions of which are:

- *the procuring entity is obligated to request the contractor to provide a performance security in all cases where the expected value of the construction works exceeds 20,000 Euros.*
- *for construction works estimated to cost less than 200,000 Euros, the performance security should be within the range of 5-10% of the value of the contract;*
- *for construction works estimated to cost more than 200,000 Euros, the performance security should be within the range of 3-5% of the value of the contract.*

5. Describe any differences between goods and works relating to the above.

As described under 4) above, the use of performance securities for works is mandatory above 20,000 Euros, whereas it is discretionary – and, therefore, less common – for goods contracts.

PROCESS – CONTRACT ADMINISTRATION

1. Are there manual or computerized procurement and/or contract monitoring systems?

Most public-sector procuring entities do not have computerized contract management tools, but use paper-based systems. In the case of high-value, complex works contracts, where the procuring entity has employed a private-sector consulting engineering firm, they do bring such computerized tools to the administration of contracts.

2. Are suppliers and contractors generally paid on time? What is the normal time lapse from invoice submission to final payment?

As suppliers of goods and works contractors generally make no complaints about late payment, it is to be assumed that they are usually paid on time.

By contrast, consulting firms commonly complain about late payment. Typically, the form of contract used by procuring entities contains no advance or stage payments, just a single, final payment, often at the end of a twelve-month assignment. In practice, because the contract often lacks a milestone event to trigger acceptance by the procuring entity of the consulting firm's Final Report, even this final payment is often made several months after the completion of the services. This practice is clearly unfair to consulting firms.

3. Are there appropriate procedures to monitor delivery of goods and services to verify quantity, quality and timeliness?

Most procuring entities use manual procedures, which appear to work satisfactorily for goods contracts.

For works, most contracts are let on a lump-sum basis, with payments related to the achievement of milestones. Admeasurement contracts, requiring the regular measuring of quantities and checking of the quality of inputs, are rare.

4. Are contract changes or variations handled promptly in accordance with the contract conditions and established practice (i.e. change/variation orders are given and/or confirmed in writing, constructive change orders are avoided, unit rates in the contract are honored but the supplier or contractor is allowed to agree to any new unit rates introduced and the completion schedule for each change or variation, etc.)?

The current Act is silent on how any additional scope of work should be handled contractually; this applies to all types of procurement: goods, works and services. For civil works, contractual practices vary widely and, because no single body monitors how contracts are implemented, it is impossible to make any empirical observations about how contract changes are handled.

The Ministry of Interior Affairs & Administration, which has authority in the area of civil works contracting, cites the 'complete freedom' in contract forms as one of the most worrying gaps in the current legislation. The Ministry also recognizes that there is a preponderance of 'informal arrangements' between employers and contractors.

Some works contractors complain that public-sector employers pressurize them to perform additional scope of work without additional payment or, in works contracts, to use better-quality materials than those specified in the contract, again without commensurate payment.

At the same time, contract price increases during implementation of the contract are widespread.

5. Do procuring entities normally make a good faith attempt to resolve disagreements through informal negotiations?

Yes, most potential disputes are remedied by amicable settlement. This is partly a function of the balance of power in contractual relationships favoring the procuring entity, in a market sector where there are too many contractors pursuing too little work. It is also driven by the fact that most contracts have no dispute resolution procedures other than amicable settlement and legal proceedings. The parties to the contract usually go to whatever lengths necessary to avoid the latter.

Even in contracts which do provide for adjudication, contractors report that it is seldom called upon to resolve disputes.

6. If this fails, are the resulting disputes handled in accordance with the contract conditions?

As mentioned under 5 above, because contracts typically do not have formal dispute resolution procedures (adjudication, arbitration), potential disputes are usually resolved informally between the procuring entity and the supplier/contractor, with the resolution generally favoring the former.

7. Are supplier and contractor claims handled fairly based on a clear recognition of both parties' obligations under the contract?

Generally, no. Because there is no standard form of contract and because most works are contracted on a lump-sum basis, many contractors submit claims only in the case of major unforeseen expenditures.

8. Are works contracts supervised by independent engineers? Does an employee of employer act as engineer in some cases?

Because the FIDIC forms of contract are not in general use by public-sector employers in Poland, the concept of the independent Engineer is not widely accepted. Also, admeasurement contracts are rare: most works are contracted on a lump-sum basis.

In most cases, the employer's own employee supervises the work of the contractor.

9. Are contract managers/administrators skilled in resolving problems in a timely manner and dealing with unforeseen circumstances arising during the life of the contract? Do they adequately document all actions of contractual import taken by the purchase/employer during implementation?

No. Because there are no standard forms of contract in use and because the FIDIC form of contract is not widely adopted, most contract administrators have little experience of formal problem-resolutions techniques, such as those provided for under FIDIC. As a result, most potential contractual problems or claims are dealt with informally between the employer and contractor, often without any formal documentation.

10. Are contractual remedies utilized only when appropriate and in accordance with the contract conditions?

Usually not. This stems from the following forces:

- *There is no standard form of contract for works in use in Poland;*
- *Such forms of contract as are used cover only the main contract terms and do not make adequate provision for contractual remedies: the most common forms provide for only attempt at amicable settlement, then legal proceedings;*
- *The balance of power in any given contract between a public-sector procuring entity and a private-sector contractor is usually tilted heavily in favor of the procuring entity, with the result that contractors are often pressurized into performing additional Scope of Work, over and above that stated in their contract, without additional payment.*

11. Are contracts generally completed on schedule and within the originally approved contract price? Or are cost and time overruns frequent? If so, in which sectors and for which particular kinds of contracts? Are fair final acceptance procedures used and certificates issued in a timely fashion?

Both time and cost overruns are common, even in the case of lump-sum contracts. These are driven by a number of factors, including:

- *Inaccurate cost estimating;*
- *Inadequate planning / time scheduling of works;*
- *Poor or absent technical documentation and drawings in the bidding documents and, therefore, in the contract.*

12. Are contracts generally administered in a fair and equitable manner (e.g. the purchaser/employer grants extensions of time when delays are attributable to its untimely action, fair compensation is provided to offset additional costs caused by its mistakes, etc.)

There is ample evidence that contracts, particularly works contracts, are not fairly administered. As cited above, contractor report frequent instances where employers pressurize them to perform additional Scope of Works without additional payment.

In cases where unforeseen circumstances delay works execution, resolution is normally worked out between the employer and the contractor informally, rather than in accordance with detailed contractual provisions for dealing with such events.

13. Are under-inspection, over-inspection and/or improper rejection of goods, materials or methods of carrying out the works a common problem?

As there are no reports of such practices, it is to be assumed that they are not common.

14. Are disruptions of the supplier's or contractor's orderly performance common?

Performance of goods contracts normally proceeds smoothly.

Works contracts are more frequently disrupted, as described above.

15. Can any of the improper contract administrative practices identified above, be attributable to a problem identified in the local procurement environment? Specify.

There is evidence in delays in the import of goods caused by inefficient practices by Customs officials. In particular, with frequent changes to the Customs legislation, Customs officers at different borders points interpret the law inconsistently. Importers report than Customs officers' decisions on the classification of imported goods, for tariff assessment purposes is often arbitrary and this gives rise to corruption.

There are also wide disparities in the application at border entry points of different, sometimes ambiguous, legal provisions governing the various state agencies involved in import operations: Customs, Quarantine services, Veterinary authorities, Central standardization Institution and Health Inspectorate. Importers also report that these different agencies demand bribes to speed up their approvals processes.

16. Are procurement evaluations/audits conducted? If so, describe scope, frequency, who carries them out, etc.

The Supreme Chamber of Control (Najwyższa Izba Kontroli or 'NIK') is the body invested, under the 1997 Constitution, with the authority to audit expenditures, including expenditures on procurement, by all organs of central and local government. NIK has the statutory obligation to audit all central government ministries and agencies; it also have discretionary power to audit local government entities and agencies, although, in practice, this is normally left to the Regional Clearing Houses.

NIK's functions are limited to auditing; it has no power to sanction. In cases where NIK identifies a possible breach of the Act on Public Procurement, it notifies the Office for Public Finance Discipline, in the Ministry of Finance, which may refer the alleged violations to the Ministry's Supreme Committee for Public Finance Discipline, which has the right to take legal action against the offending public official.

There are four penalties which may be imposed for abuses of public funds, including those perpetrated under the public procurement system, as defined in the recently-passed Act on Public Finances:

- *a warning;*
- *verbal sanction;*
- *financial penalty equal to three months' salary;*
- *banishment from any position in control of public funds.*

NIK conducts audits according to its quarterly and annual plans. Contents of the plan are suggested by the Sejm, President, Prime Minister and the chairman of NIK itself. NIK also conducts joint audits (managed by NIK) and ad hoc audits upon the recommendations of the Chamber.

As part of its audit function, NIK also presents its findings to the Directors of all audited procuring entities, making recommendations for systemic improvements in the functioning of the public procurement system.

The basis of NIK's audit operations is ex-post. However, if specifically commissioned by Parliament, NIK may also conduct ex-ante controls on expenditures of public funds.

At local government level, audits of public procurement operations are conducted by the Regional Clearing Houses, which report to the Prime Minister. The Regional Clearing Houses have 360 local government entities within their remit and a legal obligation to audit each entity at least once every 4 years. Given their limited resources, the Regional Clearing Houses conduct their audits on a sampling basis, focusing on high-value expenditures. It is worth noting that the scope of such audits is very broad: public procurement is only one element of the audit, as the law defines 14 different classifications of violation of budgetary discipline.

With regard to the scope of these audits, they focus on compliance with the various laws governing the expenditure of public funds, including compliance with the Act on Public Procurement. The audits check for compliance of the procurement methods employed with the Act, respect for financial thresholds, advertising requirements and that the contract has been awarded in accordance with the provisions of the bidding/invitation documents. For works contracts, the auditor checks that the initial contract price with within the Investor's Cost Estimate, as it is against the law for a procuring entity to award a works contract at a price which exceeds this estimate. However, the scope of such audits does not include a comparison of contract prices with market prices, nor any measurement of value for money achieved in the expenditure of public funds.

PROCESS – RECORD KEEPING

1. For contracts to be awarded on the basis of competitive bidding, does the procuring entity maintain a complete record of the process? This would include e.g. copies of all public advertisements, pre-qualification documents (if used), the pre-qualification evaluation report documenting any decisions not to pre-qualify certain potential bidders, the bidding documents and any addenda, a record of any pre-bid meetings, the bid opening minutes, the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid, copies of bids, appeals against procedures or award recommendations, a signed copy of the final contract and any performance and advance payment securities issued, etc.

For contracts below 30,000 Euros in value, the Act requires procuring entities to document only 'the basic activities' of the procedure. Evidence is that retained document is scant and poor-maintained.

The Act also requires that an official record be kept of the bid opening and that this be communicated, upon request, to bidders.

For contracts below 3,000 Euros in value, there is no requirement to document the procurement procedure at all. Given that there is no aggregate limit to the number of such low-value contracts which a procuring entity may award and that the OPP does not monitor or report on these contracts, there is a high risk of abuse in this area and the evidence is that such abuse, including corruption, is widespread in these low-value contracts.

Where the Act requires the procurement process to be documented, it also requires that procuring entities retain the bids for a period of 3 years following the conclusion of the procurement proceeding. There is no legal requirement that documentation other than the bids – e.g. prequalification or bid evaluation reports – be maintained.

2. Are adequate contract administration records maintained? (These would include contractual notices issued by the supplier, contractor, purchaser or employer; a detailed record of all change or variation orders issued affecting the scope, quantities, timing or price of the contract; records of invoices and payments; certificates of inspection, acceptance and completion; records of claims and disputes and their outcome; etc.)

Contract administration records are generally poorly maintained. Given that there are no standard forms of contract for major applications (goods, works and services) in use in Poland, the documentary requirements for contract administration are generally lax. For works performed under lump-sum contracts, changes to the Scope of Work are often agreed informally between the employer and the contractor, with no written change order.

3. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items?

No formal systems are maintained. Individual procurement officers are usually well-informed about prices available in the local market for frequently-purchased goods and they update this information by telephone enquiries and consulting suppliers' catalogues.

4. Are periodic reports prepared on overall procurement activities? By and for whom?

Under Article 9.1.3 of the Public Procurement Act, the Chairman of the OPP has a legal obligation to present an Annual Report to the Council of Ministers on the functioning of the public procurement system. This Report is published in Polish and English and is made available to the public through the OPP's Internet homepage.

The scope of the Annual Report does not include low-value purchases <3,000 Euros in value.

Annex E - Public Sector Selection of Consultants

1. Are procuring entities generally well staffed, experienced and capable of carrying out a professional selection process for consultant services? Do they administer consultant contracts effectively?

In Poland 12% of the total spending (1999 statistics) is used for the procurement of services (including technical services). The procuring entities at the central level are well staffed in conducting selection of consultants, compared to the staff of procuring entities at regional and local levels. However, the entities at regional and local levels do not have to deal with a large number of consultant contracts. Whilst contracts are usually administered effectively, there is evidence that final payment of consultant fees is often delayed, as contracts lack a trigger to prompt final payment.

2. Is the winning consultant firm normally chosen by comparing competitive proposals submitted by a short list of qualified firms? Where do implementing agencies obtain the information necessary to develop short lists? If not, specify what other methods are used and when they are used.

The Public Procurement Law of Poland does not include any specific provision for the selection of consultants. The provisions applicable to goods and works also apply to consultants. Therefore, the methods used for selecting consultants are two-stage tendering, unlimited tendering ,and limited tendering. Shortlists are used only in limited tendering. Two-stage tendering notices are published , since it is open tendering, shortlists are drawn from stage one negotiations.

3. Do requests for proposals clearly describe the selection process and evaluation criteria?

The same tender documents that is used for procurement of goods and works are used for the selection of consultants. A point system of evaluation is used. This system includes both price and qualification factors. Price plays an important role in selection. Some experienced entities separate technical evaluation from price.

4. Do the Terms of Reference describe the requirements of the assignment clearly and completely, including background, scope and objectives, deliverables, time frame, anticipated staff-time, and government contributions?

Terms of Reference are generally unclear and not structural in the manner described , and result in submission of unclear proposals. Terms of Reference sometimes include bidding and contract conditions.

5. Is selection based only on technical considerations or also on price?

Selection is based on both technical considerations and price. Up to 50% of the weight is assigned to price. Some procuring activities, who have experience with the Bank and/or EU selection procedures separate technical evaluation of proposals from price and originally up to 30% of the weight to price.

6. Are technical criteria detailed and appropriate and their relative weights reasonable?

Generally, both technical and price evaluation criteria are combined. The relative weights are not reasonable. The system is inappropriate.

7. If price is also a selection factor, are technical evaluations completed before opening and consideration of price proposals? Are the relative weights chosen for each factor appropriate?

Price is always a selection factor. Technical evaluations are completed before price evaluation only when a two-stage tendering procedure is used. This procedure is used only for the very few large consultant contracts. The weights are generally not applicable.

8. Are there standard conditions of contract? Are they fair and equitable to the consultant? Do they adequately protect the interests of the client?

There are no standard conditions of contract.

9. What form of compensation is used? Unit rates? Lump sum based on milestones? Other?

Normally, fixed price/lump-sum contracts are used. Payments are limited to milestones.

10. Are consultants required to submit proposal, performance and/or advance payment securities?

Advance payments are generally not made. Bid and performance securities are required. The amount of the bid security is 1 to 5% estimated cost, and performance 10% of the contract price.

11. Is there a conflict of interest policy provision included in the conditions of contract? (If so, describe)

There is no standard conditions of contract. However, since the contracts are subject to the Polish laws, the relevant provisions in different laws (civil law, criminal law, etc.) apply.

12. Are evaluations conducted by committees with appropriate expertise?

Generally, Yes

13. Are general criteria broken down into appropriate detailed criteria agreed by the evaluating committee before conducting the evaluation?

Only the experienced procuring entities (which are quite limited in number) have such practices.

14. Are all criteria applied consistently, fairly and impartially by the evaluators? Are the individual score sheets kept as part of the procurement record?

From the statements made by the representatives of some consulting firms interviewed during the assessment, it seems the evaluation criteria are not applied in the manner described above. Individual score sheets are kept as part of the procurement record.

15. Are evaluations conducted individually by each member of the committee and the results averaged?

Generally, yes.

16. Are new factors or weights added after the issuance of the request for proposals which are considered during the evaluation?

No. The PPL forbids such practices.

17. Are evaluation reports prepared containing essential details of the process, results, and matters to be taken up during contract negotiations?

All procuring entities use a prescribed format for this purpose. These formats contain essential details. Evaluation committees also list issues which are negotiated with selected consultants.

18. Are evaluations normally completed within the time originally requested for the validity of proposals?

Yes. This is a common practice necessitated by one year budgetary cycle (one year from January 1 to December 31) during which funds have to be spent.

Annex F – Procurement Performance

VOLUMES

- What are the approximate annual values of public procurement for goods, works, and consultant services, respectively?.

The figures for procurement expenditures financed by Polish Government budget funds for 1997 and 1998, excluding procurement financed by external sources, are presented below. The figures also exclude purchases <€3,000, for which the OPP does not collect data.

- *Monetary figures are in Billions of Polish Zlotys*

(Monetary figures in bracketed italics are Billions of US Dollars)

Category 97-98	1997	% of Total	1998	% of Total	%	Variation
Works	9.52 <i>(2.30)</i>	70%	11.20 <i>(2.71)</i>	64%	+18%	
Goods	2.45 <i>(0.59)</i>	18%	3.85 <i>(0.93)</i>	22%	+57%	
Services	1.63 <i>(0.39)</i>	12%	2.45 <i>(0.59)</i>	14%	+50%	
<i>Total</i>	<i>13.60</i> <i>(3.29)</i>	<i>100%</i>	<i>17.50</i> <i>(4.23)</i>		<i>100%</i>	

Source: Office of Public Procurement Annual Reports, 1997 and 1998.

- What are the approximate percentages of goods, works, and consultant services financed by external donors?

Based on a survey of current World Bank-financed loans, the figures are as follows:

	<u>Goods</u>	<u>Civil Works</u>	<u>Consultants'</u> <u>Services</u>
Foreign	100%	50-80%	100%
Local	85-100% ¹	80-100%	90-100%

¹ 100% of ex-factory cost; 80-85% of other items procured locally.

- What is the percentage of procurement based on competitive bidding procedures? by other methods?

Based on the same survey of 29 World Bank-financed loans signed with Poland since 1990, the figures are as follows:

	<u>ICB</u>	<u>Non-ICB</u>
<i>Completed Projects</i>	92%	8%
<i>Current Projects</i>	79%	21%
<i>All Projects</i>	88%	12%

4. What percentage of competitively bid procurement is donor financed?

The approximate figures for 1998 are as follows:

	<i>Amount</i> <i>US\$m</i>	<i>Percentage</i>
<i>Value of Government procurement:</i>	4,300	97%
<i>Value of World Bank-funded procurement:</i>	146	3%
Total:	4,446	100%

When the value of other donor-funded programs and projects (e.g. EBRD, EU Phare etc.) is added, the percentage of donor-funded procurement may rise to 4-5%.

GENERAL EXPERIENCE

1. Are government organizations generally perceived by suppliers/contractors/the public as fair and efficient in their procurement practices?

Bidders report that national government Ministries are generally fair and efficient in their procurement practices. However, at the various levels of local government, the same stakeholders report a much lower level of confidence in the capability and honesty of procurement officials. Rumors of corruption in the award of local government contracts for works are widespread.

The public's perception of government organizations, in the way they conduct their procurement operations, appears to be one of mistrust. There have been a number of recent scandals, reported in the print media, in which waste or misappropriation of public funds has been alleged. As a result, governmental organizations and the procurement staff who work in them are held in low regard by the public, who appear to have little trust in their honesty.

2. Has the country been rated in Transparency International corruption surveys? What results?

Poland has been regularly surveyed by Transparency International.

The Transparency International Corruption Perceptions Index (CPI) relates to perceptions of the degree of corruption as seen by businesspeople, risk analysts and the general public and ranges between 10 (highly clean) and 0 (highly corrupt).

For the past 4 year's Poland's CPI has been as follows:

<u>Year</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
CPI	5.57	5.08	4.60	4.20
Ranking country out of	24th	29th	39th	44th most corrupt
	54	52	85	99 surveyed

The logical inference is that the interest groups surveyed perceive Poland to have been becoming steadily more corrupt during each of the past four years.

In a separate but also relevant survey of 100 randomly-selected members of the Polish parliament, the Sejm, conducted in late 1998, the independent Polish Institute of Public Affairs found that those legislators considered the level of corruption in Poland as follows:

<u>Frequent</u>	<u>Medium</u>	<u>Rare</u>	<u>Don't Know</u>	<u>Total</u>
18%	40%	32%	10%	100

When the same 100 members of the Sejm were asked the question 'Which of the following categories in Poland are exposed to the lowest and which to the highest risk of corruption?', they answered as follows:

	<u>Highest Risk</u>	<u>Lowest Risk</u>
<i>National Politicians</i>	38	45
<i>Local Politicians</i>	63	23
<i>General Public Administration</i>	50	30
<i>Self-Government Administration</i>	53	31
<i>Police</i>	46	33
<i>Customs</i>	89	3

Source: Paper presented by Jacek Kurczewski, Chair in Sociology of Custom and Law, Institute of Applied Social Sciences, University of Warsaw to the Princeton University-Central European University Joint Conference on Corruption, Budapest, Hungary, October 29 – November 6, 1999.

Annex F
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3. Which of the following factors are considered to be problems by persons familiar with public procurement in the country?	Yes	No
Inappropriate or outdated laws and regulations	X	
Poor compliance and enforcement of existing laws	X	
Poor information about procurement needs		X
Shortage of experienced professional staff	X	
Poor training of procurement staff	X	
Low pay for procurement staff	X	
Poor procurement planning	X	
Poor procurement methods and procedures		X
Lack of good standard procurement documents	X	
Cumbersome contract approval procedures		X
Lack of delegation of contracting authority		X
Inadequate appeal mechanism	X	
Interference by higher level officials	X	
Lack of anti-corruption measures and enforcement	X	

EXPERIENCE WITH WORLD BANK-ASSISTED PROJECTS

1. How many Bank projects have been completed in the country? are now underway? in which sectors?

	<u>Number</u>	<u>Loan Amount US\$m</u>
Completed Projects:	17	3,021
• Current Projects:	12	1,203
All Projects	39	4,224

Distribution of Projects by Sector:

	<i>SD</i>	<i>EG</i>	<i>HD</i>	<i>IN</i>	<i>PE</i>	<i>PF</i>	<i>Total</i>	
<i>Completed projects:</i>	3	2	1	3	0	5	14	
•								
• <i>Current projects:</i>		0	3	2	4	0	3	12
<i>All Projects:</i>	3	5	3	7	0	8	26	

2. Which organizations have been responsible for procurement in these projects?

The implementing agencies which have handled procurement on Bank-financed projects to date are:

*Project**Implementing Agency(ies)*

*Bielsko-Biala Water & Wastewater
Emergency Flood Recovery*

Municipal Company ‘Aqua’ S.A.

Ministry of Flood Recovery

*Employment Promotion & Services
Energy Resource Development
Environment Management*

Ministry of Environmental Protection, Natural Resources and Forestry

Forest Development Support

Ministry of Labor and Social Policy

*Health Services Development Project
Katowice Heat Supply & Conservation
Municipal Finance Project*

Polish Oil and Gas Company

Ministry of Environmental Protection, Natural Resources and Forestry

*Port Access and Management
Power Transmission
Privatization and Restructuring
Private Enterprise Development
Roads and Roads II*

Ministry of Environmental Protection, Natural Resources and Forestry

Ministry of Health and Social Welfare

District Heating Enterprise of Katowice

Bank for Socio-Economic Initiatives S.A.

Powszechny Bank Kredytowy S.A. W Warsawie

Ministry of Transport & Maritime Economy

Polish Power Grid Company

Polish Development Bank (PDB)

“

General Directorate of Public Roads

Ministry of Transport & Maritime Economy

Telekomunikacja Polska S.A. (PTSA)

Polish State Railways (PKP)

Pomorskie Hurtowe Sentrum Rolno- Spozwczce S.A

*Telecommunications
Transport Project – Railways
Wholesale Markets I*

Lubelska Giedla Rolno-Ogrodnicza S.A.

Wholesale Markets II

3. What thresholds for prior review for goods, works and consultant services are currently in effect for ongoing projects? Are they the same for all projects?

According to the ECA Regional Procurement Management Guidelines of February 1998, the applicable procurement thresholds for Poland are as follows:

<u>Procurement Method</u>	<u>Category</u>	<u>Threshold US\$</u>
<i>ICB</i>	<i>Works</i>	<i>> \$3m – 5m</i>
<i>NCB</i>	<i>Works</i>	<i>< \$3m – 5m</i>
<i>ICB</i>	<i>Goods</i>	<i>> \$400,000</i>
<i>IS</i>	<i>Goods</i>	<i>< \$300,000 – \$400,000</i>
<i>NS</i>	<i>Goods</i>	<i>< \$100,000</i>
<i>Minor Works</i>	<i>Works</i>	<i>< \$300,000</i>

In practice, however, as a result of a review of Shopping thresholds, conducted in ECA Region in mid-1999, the Region has been reducing the Shopping thresholds in all new Loan Agreements negotiated with Poland to the following levels:

<u>Procurement Method</u>	<u>Category</u>	<u>Threshold US\$</u>
<i>IS</i>	<i>Goods</i>	<i>< \$100,000</i>
<i>NS</i>	<i>Goods</i>	<i>< \$50,000</i>

The impetus for this change has been a series of findings in procurement audits, in other countries in the Region, that most abuses of the Bank's procurement guidelines are in Shopping procedures, which are generally to Post Review by the Bank. The Region is also moving toward the position that, where a Borrower's national public procurement legislation sets a financial threshold for a Shopping-type procurement method, the Bank's threshold should at least be no higher than the Borrower's. In this case, because Poland's threshold for Unlimited Tendering is €200,000 (US\$206,000), there is a clear logic in reducing the Bank's IS threshold from the level of US\$300,000 – US\$400,000 common in Loan Agreements negotiated with Poland in the past 5 years.

In general, the Prior Review threshold for Goods has followed the IS threshold fairly closely.

The Bank, through the various Loan Agreements, invariably asks to prior review the Procurement Plan for the entire project before the Purchaser issues the first invitation to bid.

However, Polish implementing agencies routinely neglect to prepare such procurement plans and the Bank's project teams has had difficulty in persuading them to do so, despite repeated reminders. This prior review requirement is, therefore, effectively being rendered meaningless in practice.

4. Do project audits/completion reports/supervision reports indicate significant procurement problems ? any cases of misprocurement? Describe.

On the Telecommunications Project (Loan No. 3319; ICR date April, 1999), the ICR rated the Borrower's overall performance as highly satisfactory and noted that all the physical components of the project, including procurement, had been completed successfully, though later than planned. Prices paid for equipment procured by the project were lower than estimated at appraisal, due to 'technological progress and competitive procurement'. The Borrower used the US\$15m saved on procurement to buy additional equipment for the project. The ICR notes that the Borrower made minor changes to the equipment technical specifications immediately after Board approval, though the Bank agreed to this and also agreed to changes in the original equipment lists to procure more fiber optic cable, instead of switching equipment.

However, procurement delays were experienced in the first few years of the project, mainly because of the implementing agency's lack of familiarity with Bank guidelines, though their performance improved with increased experience. Delays also occurred because the newly-privatized telecoms company, PTSA, proved resistant to Bank procurement methods, finding them too lengthy and against the standard industry practice of forging close relationships with a small number of suppliers, rather than opening procurement up to all bidders, as is done under ICB.

In private-sector procurement funded by the Bank through the Private Enterprise Development Project (Loan No. 3467; ICR date June, 1997), the ICR noted that those SME which borrowed funds from the national bank through the credit line provided by the project experienced considerable difficulty in implementing Bank procurement. The procurement requirements (commercial practices for Goods < US\$1.0m; IS for Goods > US\$2.0m, later increased to > US\$5.0m). although lenient by Bank standards proved to be a significant obstacle to the SME's implementation of their sub-projects, mainly because of their complete lack of experience of any kind of competitive procurement practice.

On the First Transport (Railways) Project (Loan No. 3193; ICR date June, 1997), the Bank found that the implementing agency, Polish State Railways (PKP) handled procurement professionally throughout the six-year implementation period of the project. The only significant problem recorded was in the procurement of a mainframe computer and software for the MIS. The evaluation of the quality of bidders' products by a Merit Points System was found to conflict with the strict application of awarding the contract to the lowest evaluated, responsive bid and a delay of one year resulted, whilst the Borrower and the Bank engaged in an extensive dialogue on this point. However, the ICR notes that, since the procurement, the Bank has modified its approach to the evaluation of quality in the SBD for Information Systems, citing this procurement as a learning experience for the Bank, as well as for the Borrower. PKP also performed proficiently in the selection and administration of consultants' services.

The ICR for the Environment Management Project (Loan No. 3190; ICR date May, 1997) praises the Borrower for the 'high level of attention paid to procurement and disbursement issues, procurement plans (which) had a significant positive impact on the quality of implementation and resulted in cost savings.' The PIU is described as 'fully effective, with

stability of staffing identified as a key contributing factor to its effectiveness.

5. Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe.

Most implementing agencies perform procurement in a timely and well-managed fashion.

Bank TTLs report that, at the start-up of a new loan, they have to invest a considerable amount of time and management effort into familiarizing Polish PIUs with Bank procurement guidelines but that this investment has been rewarded with the current situation - a number of experienced and effective PIUs, well-versed in the application of Bank procurement guidelines and able to execute procurement in a timely and efficient manner.

6. Does the Bank receive a large number of complaints about procurement procedures, selection decisions in the country?

The number of complaints received is not unusually high. Such complaints as have been received have mostly been of a technical nature, related to the Purchaser's evaluation of the technical specification of the complainant's equipment, and not about the procurement performance of the implementing agency per se.

Most complaints received have been handled in a timely manner and have been resolved with the complainant's acceptance of the outcome.

There have been a small number of cases where complaints have been intractable and have taken a long time to resolve. These have invariably been of a technical nature, requiring much communication between the bidder, the Purchaser and the Bank over a period of up to six months in the worst case. However, these complaints have not been occasioned by any failure in the Purchasers' management of procurement, but rather about fine-balanced judgements on the admissibility of certain technical characteristics of the equipment offered. In these cases, also, the complainant eventually accepted the Purchaser's resolution of the complainant.

7. Are contracts generally awarded within the planned, usual timeframe required for similar operations by experienced and efficient organizations?

Procurement performance is generally timely, with contracts awarded within acceptable time frames, by comparison with the Bank's experience of other borrowers. A frequently-reported weakness is that many implementing agencies fail to prepare procurement plans at the outset of a project or of an individual procurement exercise. Thus, although procurement is generally implemented within a reasonable time scale, the implementing agencies have to formal mechanism for monitoring the time aspects of procurement.

8. Are there serious problems or conflicts between local practices and World Bank Guidelines which should be addressed on an interim basis pending implementation of recommended long-term action plans?

The most pressing issues which should be in order to align Polish practice more closely with World Bank guidelines are:

- i. *the assessment of bidders' qualifications should be separated from evaluation of their bids;*
- ii. *evaluation methodologies should be changed to make them more objective and based on mathematical formulae, rather than on the widely-used, subjective Merit Points Systems.*
- iii. *standard bidding documents should be developed for the major types of application: goods, civil works and consultants' services;*
- iv. *a separate set of selection methods should be developed for consultants' services;*
- v. *public bid openings should take place on the same day as submission of bids and, preferably, promptly thereafter.*

Annex G – Private Sector Procurement

1. Is there a reasonably developed private sector? Which areas the private sector operates most?

The private sector in Poland has developed substantially during the last nine years. The privatization of small and medium state-owned enterprises and a liberal law on establishing new firms marked the rapid development of a private sector now responsible for 70% of economic activity. The private sector employs over 60% of the labor force and generates at least 50% of GNP. Between 1990 and 1994, the level of employment in private enterprises increased by approximately 1.5 million jobs. Primary private-sector activities are manufacturing, assembly, construction and various services.

2. Are any private sector contracts comparable in size to those in the public sector?

Yes. The private sector is a major user of goods, works and services.

3. Who are the main importers of raw materials and finished goods?

Manufacture of consumer goods, durable goods, computers and computer accessories, automobile industry are the main importers of raw materials, and finished goods, including components used for assembling different products. Polish subsidiaries of large foreign manufactures are major importers of finished goods.

4. Are there established commercial practices (i.e. as practiced in a competitive market place?)

Yes.

5. Are these practices normally based on competition?

These practices are normally based on competition which the private sector firms apply to ensure best value for their money while at the same time ensuring that they purchase the best product.

6. Under what circumstances is direct contracting used?

Direct contracting is used only when there is no other source of supply. Direct contracting is generally avoided.

7. Do private sector companies utilize market surveys and other appropriate techniques in planning procurement for their operating needs?

Yes.

8.	Are there usually price negotiations with selected suppliers and contractors?
<i>Yes.</i>	
9.	Is private sector procurement overall efficient and economic?
<i>Yes.</i>	
10.	Do private sector companies maintain updated lists of approved vendors?
	<i>Some do, others prepare list of vendors to invite them for a particular purchase. These list are prepared after interviews with vendors visits to manufactory assembly facilities, etc.</i>
11.	Do private sector companies purchase commodities through brokers or by competition linked to the international commodity markets?
	<i>Both. Important commodities such as petroleum and petroleum products, etc., are procured through commodity markets.</i>
12.	Do private sector companies utilize modern accounting methods?
<i>Yes.</i>	
13.	Are there procedures to ensure that procurement officers are accountable for their actions?
	<i>Normally purchasing offices in small firms or purchasing departments in large firms are responsible for procurement. However, decisions are made by management or supervisory boards.</i>
14.	Do private sector companies monitor contract implementation efficiently?
<i>Yes</i>	
15.	Is the procurement function in private sector companies reasonably automated?
<i>Yes.</i>	
16.	Could some of the private sector procurement practices be adopted by the public sector, keeping in mind the different needs, responsibilities, and obligations which are unique to the Government? Indicate desirable adaptations.
<i>Yes</i>	
17.	Has there been any in-country experience with private sector provision, operation or maintenance of infrastructure for public services (Built-own-operate-transfer concessions, etc.)?
<i>Yes</i>	

Annex H - Checklist comparing National Competitive Bidding Procedures and World Bank Policy

	Yes	No	Bank Policy
1. Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?		X	Not allowed
2. Are there primary boycotts which are established by law?		X	Only primary boycotts are acceptable
3. Are bidding opportunities advertised in the local press? <i>Opportunities are published in the Public Procurement Bulletin and on the OPP's website.</i>	X		Required
4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?	X		Required
5. Are contractors/suppliers pre-qualified for large/specialized contracts?	X		Required
6. Are minimum experience, technical and financial requirements (for pre -or post-qualification) explicitly stated in the documents?	X		Required
7. Is an invitation to pre-qualify advertised for each procurement involving large or complex potential contracts?	X		Required
8. Are joint ventures with local firms required for foreign firms' eligibility?		X	Not allowed
9. Are joint venture partners jointly and severally liable?	X		Required
10. Are there set limitations to the number of firms who can bid for a contract?		X	Not allowed
11. Are parastatals allowed to bid?	X		Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law and (iii) are independent from borrower and its purchasing/contracting authority

	Yes	No	Bank Policy
12. Are bidders required to register with a local or federal authority as a prior condition for bidding?		X	Should be discouraged. Acceptable only if registration criteria, process and cost reasonable/efficient and qualified foreign firms not precluded from competing
13. Are extensions to bid validity allowed?	X		Acceptable only if justified by exceptional circumstances
14. Are there restrictions on the means of delivery of bids?		X	Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.
15. Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?		X	Not allowed
16. Are there restrictions on sources of labor and material?		X	Not allowed, except for unskilled labor, if available locally
17. Is public bid opening required? Does it occur immediately or closely following the bid submission deadline? <i>Required but the Law does not specify a maximum interval between submission of bids and bid opening.</i>		X	Required
18. Is a "two envelope" bid opening procedure permitted for procurement of goods or works? ¹		X	Not allowed
19. Is automatic rebidding required if too few bids are received?	X		Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result
20. Is "bracketing" used in bid evaluations? ²		X	Not allowed

¹ All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round.

² Rejection of bids outside a range or "bracket" of bid values.

	Yes	No	Bank Policy
21. Is award made to lowest evaluated qualified and responsive bidder? <i>The Act requires that award should be made to the 'best offer.' However, because procuring entities mostly use a merits system of evaluation, award decisions are often subjective.</i>		X	Required
22. Are price negotiations conducted with “winning” bidders prior to contract signature?		X	Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price. (See Guidelines para. 2.60)
23. Are price adjustment provisions generally used?	X		Not required, but recommended for works contracts of 1 year or more in duration when domestic inflation rate is high
24. Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?	X		Required (to be acceptable they should be balanced, reasonable and clearly address the most important issues that lead to problems during performance, e.g. risk allocation, payment, inspection, completion/acceptance, insurance, warranties, changes, contract remedies, force majeure, governing law, termination, etc.)
25. Are contract scope/conditions modified during implementation?		X	Acceptable, but advance Bank approval of changes subject to prior review needed if required under the Loan Agreement.