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Albania Country Fiduciary Assessment

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Currency Equivalents

Currency unit = Albanian LEK
 LEK 1.00 = US\$0.0103
 US\$1 = LEK 97.08
 (As of June 30, 2006)

Government Fiscal Year

January 1st – December 31st

Abbreviations and Acronyms

BLI	Baseline Indicator
BEEPS	Business Environment and Enterprise Performance Survey
BOA	Bank of Albania
CARDS	Community Assistance for Reconstruction Development & Stabilization
CAS	Country Assistance Strategy
CFA	Country Fiduciary Assessment
CFAA	Country Financial Accountability Assessment
COM	Council of Ministers
CPAR	Country Procurement Assessment Report
DfID	UK Department for International Development
DPL	Development Policy Lending
EC	European Commission
ESW	Economic Sector Work
EU	European Union
GDAI	General Directorate of Internal Audit
GDOS	General Directorate of Standardization
GOA	Government of Albania
HRMIS	Human Resource Management Information System
IAU	Internal Audit Unit
INTOSAI	International Organization of Supreme Audit Institutions
IPS	Integrated Planning System
ISPPA	International Standards for the Professional Practice of Internal Audit
MCC	Millennium Challenge Corporation
MEDART	Albanian Center of Mediation and Arbitration
MTBP	Medium-Term Budget Program
OECD–DAC	Organization for Economic Co-operation and Development–Development Assistance Committee
PARP	Public Administration Reform Project
PEFA	Public Expenditure and Financial Accountability
PEIR	Public Expenditure and Institutional Review
PFM	Public Financial Management
PIFC	Public Internal Financial Control
PIU	Project Implementation Unit
PPA	Public Procurement Agency
PPL	Public Procurement Law
SSA	Supreme State Audit
TIPA	Training Institute of Public Administration
TSA	Treasury Single Account
USAID	United States Agency for International Development

ALBANIA

COUNTRY FIDUCIARY ASSESSMENT

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Regional Vice President:	Shigeo Katsu, ECAVP
Country Director:	Orsalia Kalantzopoulos, ECCU4
Acting Sector Director:	Sunil K. Bhattacharya, ECSPS
Sector Manager	John Hegarty, ECSPS
Task Team Leader:	Devesh C. Mishra, ECSPS

The CFA team comprised Belita Manka, Elona Gjika, Olav Rex Christensen, Johannes Stenbaek Madsen, Devesh Chandra Mishra (ECSPS) and Junghun Cho (ECSPE). The CFA team received valuable inputs from PEIR, DPL, and SWAp Education teams as well as guidance from Orsalia Kalantzopoulos, Nancy J. Cooke (ECCU4); Sunil Bhattacharya, Kevin Casey, John Hegarty, Sanjay Vani, Pascale N. Kervyn De Lettenhove (ECSPS); Nadir Mohammed (ECCAL); Alia Moubayed, Sanjay Kathuria (ECSPE); Jean-Jacques Verdeaux (LEGPR); and Pamela Bigart (OPCPR). Ilyas Butt (ECSPS) provided valuable assistance in formatting the report.

INTRODUCTION AND EXECUTIVE SUMMARY

Overview of the CFA

Objectives

1.1 The objectives of the Country Fiduciary Assessment (CFA) are twofold. First, the CFA aims to assess the strengths and weaknesses of the Public Financial Management system on issues related to procurement. Second, the CFA aims to assess fiduciary risk related to Albania's budget environment with a view toward helping the government to prioritize its actions and measure progress on PFM reforms, with the emphasis on procurement.

Sources and concurrent analytical work

1.2 The present CFA builds directly upon previous analytical work in this area, including the Country Financial Accountability Assessment (CFAA) in April 2002, the Country Procurement Assessment Report (CPAR) in January 2001, and a Public Expenditure and Institutional Review (PEIR) in 2001. This present CFA report draws upon and is in fact one component of three simultaneous, integrated Bank-prepared reports. The other two reports are under:

- **The Public Expenditure and Institutional Review, June 2006 (PEIR).** The PEIR addresses three key issues—first, fiscal sustainability and fiscal risks; second, strategic resource allocation; and third, accountability of public sector financial management. The PEIR emphasizes the PFM reform process and the PFM policy reform directions. It covers issues related to the policy and planning framework; budget formulation, including strategic resource allocation and policy-related budget execution issues. The PEIR includes a set of high-level recommendations on public financial management. One PEIR recommendation is that “in the short to medium term the government should focus to deepen the reform in public expenditure management with particular focus on annual budget preparation and execution (including curtailing use of nontransparent virement, and implementing multiyear procurement for capital projects), and strengthening capacities in line ministries”. A draft PEIR (June 2006) was sent to the Government of Albania (GOA) on July 6, 2006.
- **The Public Expenditure and Financial Accountability (PEFA) Public Financial Management Assessment, July 2006.** The PEFA assessment incorporates a set of 31 high-level indicators used to develop an integrated assessment of the PFM system against the critical dimensions of PFM performance. It evaluates the likely impact of PFM weaknesses on the three levels of budgetary outcomes—aggregate fiscal discipline, strategic allocation of resources, and efficiency of service delivery. The PEFA assessment does not contain recommendations.

1.3 Both the PEIR and CFA are envisaged in the Country Assistance Strategy (CAS) as core diagnostics supporting the CAS governance filter. The fiscal 2006/09 CAS recognizes that governance considerations should be mainstreamed into all World Bank interventions. This mainstreaming is achieved through introduction of a “governance filter.” One of four key principles of the governance filter is greater transparency in the use of public resources. This requires strengthened lines of accountability, improved transparency, broader participation in resource allocation decisions, and better access to information among all stakeholders. Specific attention needs to be given to oversight bodies, procurement, internal and external audit, transparent financial reporting, public-private partnerships, and integrated planning and budgeting processes as well as their execution by government.

1.4 The findings of the CFA, the PEIR, and the PEFA assessment will inform World Bank–supported Development Policy Lending (DPL). It will assist the program in sectors such as education, health, and infrastructure. The CFA team participated in initial missions of DPL and worked closely with the Education SWAp team to provide analytic support on the overall fiduciary environment.

1.5 The proposed DPL focus is expected to include measures to increase efficiency and accountability in public spending by improving the planning, budgeting, and execution of public investment projects; strengthening lines of accountability, including enabling better access to information by all stakeholders; building stronger monitoring and evaluation systems; and establishing competitive and transparent frameworks for government purchases. The key challenges, action points, and recommendations in these reports would support the content and sequence of PFM reforms and serve as a basis of policy dialog with the government, as well as through the proposed DPL.

Basis of the report and sequence of presentation

1.6 In preparing this report, the World Bank team worked closely with the Public Procurement Agency (PPA). It also sought views from the private sector, such as the Chamber of Commerce; and from other stakeholders, such as the Training Institute of Public Administration (TIPA), the EU delegation, the procurement section in the Ministry of Education, the Ministry of Health and Ministry of Transport, the Supreme State Audit, and the Albanian Center of Mediation and Arbitration (MEDART). Meetings were also held with advisors in the prime minister’s office, with participation by the EU delegation and USAID.

1.7 The World Bank team conducted an in-depth review of the draft public procurement law prepared by EC-funded CARDS 2002 consultant with support from Legal Procurement Department of the Bank. The World Bank team provided its analysis on the draft public procurement based on rounds of discussions held with EC and their consultants and with the director of the Public Procurement Agency. Because this law is still in draft, the current Law on Public Procurement (No. 7971) forms the basis of analysis for the legislative and regulatory framework. The World Bank had several meetings with EC representatives in Tirana. This included the consultants from CONFIRMEC, who are working on an EC-funded CARDS assignment, Support to the Public Procurement System.

1.8 Key themes and findings from this exercise are highlighted in the executive summary. The framework of assessment is briefly described below. The bulk of this report discuss how the public procurement system needs to be improved (Chapter 1) and fiduciary risk assessment (Chapter 2). Chapter 3 summarizes key recommendations and action plans for risk mitigation. The annexes present considerable supplemental information on the context, methodology, and context of this report. In particular, Annex 2 provides short examples that illustrate how procurement works in practice in several sectors.

Framework for the assessment

1.9 The CFA team carried out this assessment using an updated tool—“Guide for Assessment of Procurement Systems Based on OECD/DAC–World Bank Indicators: A Proposed Methodology.” The high-level indicators under PEFA were also used to determine the current status of public procurement system in Albania, with a view to suggesting improvements. Figure 1, in the Executive Summary (The Public Procurement System at a Glance: Four OECD/DAC Pillars—graphically sums up the results from the scoring methodology used to assess particular indicators and sub-indicators in the national system.

1.10 The Baseline Indicator (BLI) tool focuses on the national system covering the four OECD/DAC

pillars. In addition, the PEFA assessment contains one high-level indicator on procurement (Indicator 19). The BLIs on procurement are available separately, with scores on 56 sub-indicators that cover the four pillars. This report incorporates the summary of the BLI analysis and its recommendations.

Executive Summary

Improving public procurement

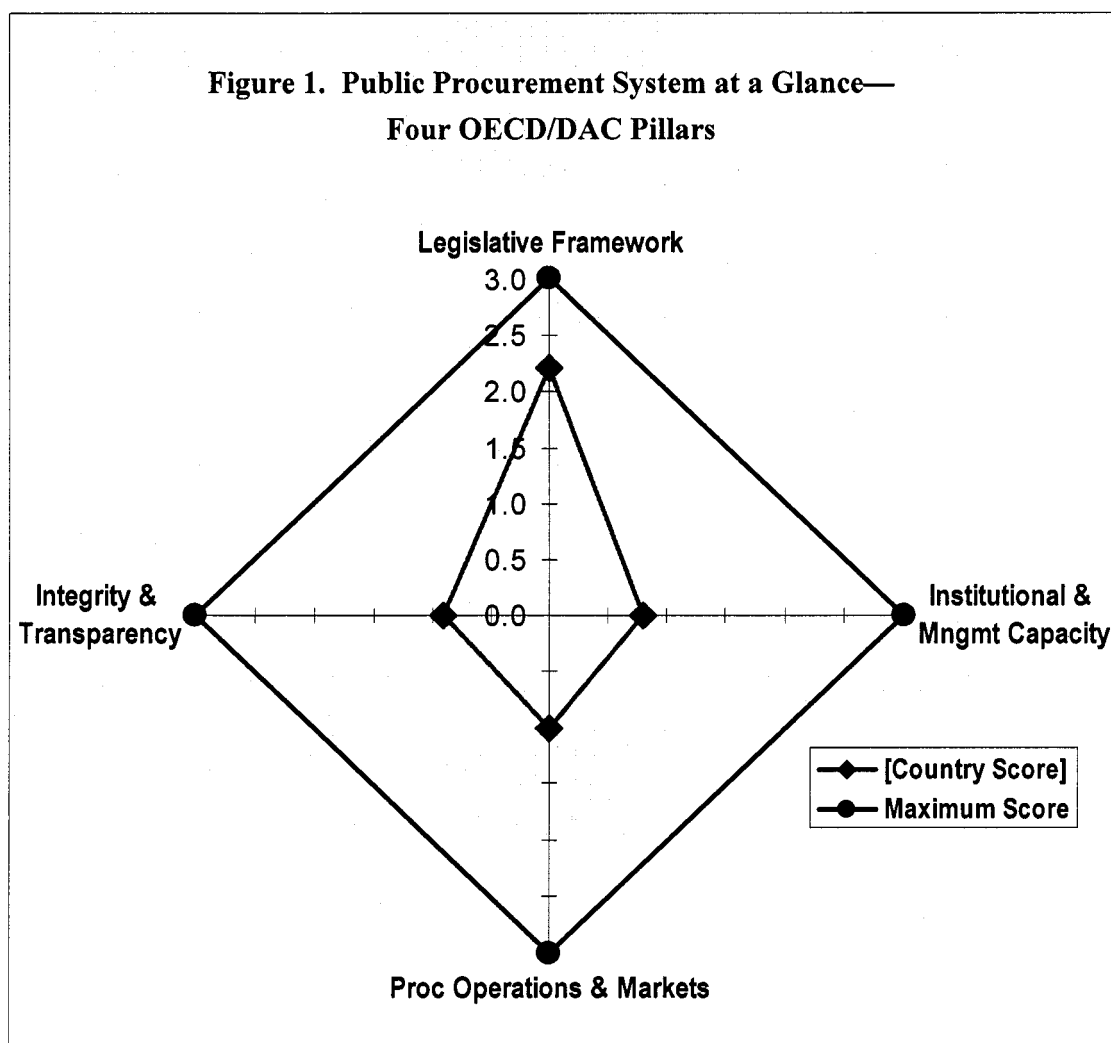
1.11 The overriding objectives of a national public procurement system are to deliver economy and efficiency in the use of public funds while adhering to fundamental principles of nondiscrimination, equal treatment, due process, access to information, and transparency.¹ These objectives were the focus of the Country Procurement Assessment Report (CPAR) of 2001; and the same objectives guided the present assessment.

1.12 The 2001 CPAR made recommendations in six key areas: (i) further legislative reforms, (ii) improving transparency and access to information, (iii) increasing competition, (iv) improving procurement practices and procedures, (v) combating corruption and strengthening enforcement, and (vi) building capacity of institutions and procurement staff. The present Country Fiduciary Assessment (CFA) report is an update of CPAR 2001. The six areas for improvement are discussed here in the context of four OECD/DAC “pillars”: The legislative and regulatory framework (Pillar I), the institutional framework and management capacity (Pillar II), procurement operations and market practices (Pillar III), and the integrity of the public procurement system (Pillar IV).

1.13 An assessment was made in each of these areas using a recently developed OECD/DAC/World Bank baseline indicator (BLI) tool. Indicators and sub-indicators were scored for each of these areas using a 0 to 3 range. A score of 3 means full compliance with the stated standard. A score of 2.0 indicates a system with less than full compliance and needing improvement in the area being assessed. A score of 1.0 indicates an area where substantive work is needed for compliance. A rating of 0 is the residual. It indicates failure to comply with the proposed standard.

1.14 Figure 1, below, conveys the Albanian public procurement system in terms of the four OECD/DAC Pillars. It compares the Albanian system against the OECD/DAC norms as possible maximum scores. The finding clearly points out that Pillar I, the legislative and regulatory framework, is well within the norm with an average score of 2.2 (although improvements are still needed). However, there are serious deficiencies on the other three pillars—institutional and management capacity (Pillar II, average 0.8), procurement operations and market practices (Pillar III, average 1.2), and on the integrity of the public procurement system (Pillar IV, average 0.9).

¹ See good practices paper, DAC guidelines, and reference series on strengthening procurement capacities in developing countries, Volume 3, www.oecd.org/dac/harmonisingpractices.



1.15 The CFA team found that the government has made serious efforts to improve the public procurement law by preparing implementing regulations and tender documents. Nevertheless, application is still seriously lacking because of attempts at high levels of government to abuse the law and lack of capacity in both the public procurement agencies and the implementing ministries. Overuse of direct procurement is continuing for several reasons—weakness in the law, the unavailability of funds until late in the year, and attempts by procuring entities to break procurement into a small values. The public procurement agency (PPA) has no reliable data on the use of noncompetitive methods or the use of open tendering. A public procurement information system does not yet exist. The complaints review mechanism is inadequate; and as a result, private sector confidence in the Albanian public procurement system is low.

1.16 The key findings are summarized below for each of the four pillars. Recommended improvements are shown for each.

1.17 **Pillar 1—Public procurement law and implementing regulations.** Sound legislative and regulatory framework is the starting point for an efficient and fair governance system. The previous

CPAR concluded that the Law on Public Procurement (LPP) provided a reasonably good framework for public procurement, but with notable deficiencies. Since the last CPAR, the government has amended the law, enacted implementing regulations, and issued standard tender documents. The BLI assessment, which is based on the laws and regulations currently in force, shows a score of 2.2 (maximum score 3), confirming that the present laws and regulations meet an acceptable standard. Suggested improvements are as follows.

- Strengthen provisions on the use of direct procurement by defining the *force majeure*, as well as the “emergency” and “urgent” situations (Article 17 and 19) that could lead to its misuse.
- Implement regulations to establish a mechanism for preparing cost estimates based on market trends.
- Restore and comply with the earlier provision in the implementing regulation that “there should not be upper and lower limits, below or over which the bids will be rejected.”
- Regulate the public utilities separately from other procurement, either as a separate chapter under existing law or separate law.
- Improve and strengthen consulting services provisions to select consultants based on their qualifications and quality of services, not necessarily on the lowest price (Article 21).
- Make publication of contract awards mandatory, using the website (Article 35). The PPL should be revised to include, at a minimum, the following information for contract award notice: (i) the names of bidders, (ii) bid prices as read out at the bid opening, (iii) names and evaluated prices of each bid that was evaluated, (iv) names of bidders whose bid were rejected, as well as the reasons for their rejection, (v) names of the winning bidder with the price offered, (vi) the duration and summary scope of the contract awarded.
- Create an independent complaint review body (other than PPA) in order to increase the confidence of the private sector on the fairness of bidding process. (This is explained further in Pillar II, below.)

This report considers laws and regulations as of March 31, 2006, as the basis for its analysis. The LPP is currently under review by a EU-CARDS consultant. The World Bank has commented on several drafts. At this stage, it is not clear when the revised law will come into force. The current draft version includes several unacceptable features—for example, an open procedure is not the preferred method of procurement. The condition for using negotiated procedure may lead to abusive practices. Similarly, the award criteria are not based on the lowest evaluated responsive bid. It is not clear whether unsuccessful bidders will be notified on the results of contract awards. Annex 5 provides comments on the draft version dated April 26, 2006 from the Bank’s Procurement Legal Department. These comments need to be considered in the new LPP to ensure a modern, transparent, and fair regulatory framework.

It would be necessary to revisit the BLIs ratings on OECD-DAC when new laws and implementing regulations (or any amendments) come into force. Further, the World Bank’s concerns on the draft law would need to be addressed. If not, the current BLIs rating on Pillar I may be negatively affected. The Bank, the PPA, the EU delegation, and the EC consultants would need to discuss the mechanism to implement the recommendations listed in Annex 5. This would ensure that the government incorporates good procurement practices without conflict with EU practices.

1.18 Pillar II—Institutional framework and management capacity. Pillar II looks at how the procurement system (as defined by the country’s legal and the regulatory framework) operates in practice through the existing institutions and management systems. The indicators under this pillar address several questions. Is the public procurement system mainstreamed and well integrated into the

public sector governance system through the budget process? Does a functional normative and regulatory body provide guidance and training? Do procuring entities have well-developed capacity? In this area, the CFA team found no improvements since the CPAR of 2001. For this reason, Albania has a very low average score—0.8 out of the maximum of 3.0.

The following improvements are recommended.

- Require the Medium-Term Budget Program (MTBP) and the annual budget to be linked. This will help to make the expenditure cycle realistic, thereby ensuring competitive procurement methods and efficient use of resources. Line ministries need to prepare and submit procurement registers earlier than the current practice. To do so requires that budget allocation at project levels be decided at a much earlier stage.² The procurement planning process should start at least three months before the next fiscal cycle. At the same time, multi year contracts should be allowed to all ministries for ongoing projects whose implementation period is longer than one year.³
- The PPA director and all professional staff should be civil servants; and in order to avoid political interference, PPA organization, funding, staffing should be reviewed by the government to increase its level of independence and authority (Article 8).
- The administrative and complaints review function should be given to an independent complaint review body. The present setup creates a conflict for PPA, which acts in the capacities of both reviewer of contracts and handler of complaints.
- The PPA should be tasked with developing a national strategy for public procurement training. The government should allocate adequate resources to implement this strategy over the coming 3 to 5 years.

1.19 **Pillar III—Procurement operations and market practices.** Pillar III looks at the operational effectiveness and efficiency of the procurement system at the level of individual procurement actions. It considers the market as a means of judging the quality and effectiveness of the system after procurement procedures are put into practice. This pillar is distinguished from Pillars I and II in that it look not at the legal and regulatory or institutional systems, but rather, how they operate. CPAR 2001 found that the law on public procurement provided a reasonably sound framework for conducting public tenders, but several poor practices had crept into the public sector nonetheless. The recent CFA team found no improvements in this area. Therefore, the score is still low—1.2 out of 3.

Suggested improvements are as follows.

- Make the required level of competence among procurement staff consistent with their responsibilities. The PPA needs to initiate a dialog within government. In particular, the Department of Public Administration (DOPA) should establish a separate career stream for procurement in the civil service, both at central and local government levels. This action should be supported with separate job descriptions, qualification requirements, career structures, and salary scales for procurement officers.
- Strength capacity in internal audit units in the ministries to take more active roles in ensuring compliance with public procurement procedures.
- Shift gradually from implementation through autonomous Project Implementation Units (PIUs)

² According to the government plan, the appropriation for 2008 will include projects in line ministries' budgets. This implies a procurement plan to be ready before the start of budget calendar year.

³ Currently, only road projects are allowed to sign multiyear procurement contracts.

to implementation by regular administrative structures, thus building internal capacity.

- Organize outreach programs to improve the capacity of the private sector in bidding for public procurement tenders.

1.20 **Pillar IV—Integrity and transparency of the public procurement system.** Indicators for Pillar IV address four questions. Does the country have effective control and audit systems? How efficient is the appeals mechanism? What is the degree of access to information? Are ethics and anticorruption measures in place? CPAR 2001 pointed to obstacles for information and argued that the lack of transparency concealed corruption and undermined the confidence of bidders in the fairness of public tenders. No improvements were seen in this area. The score was therefore 0.9 out of 3. BEEPS survey 2005 confirms that bribery to obtain government contracts is frequent, increasing from about 32 percent in 2002 to 41 percent in 2005.

The following improvements are recommended.

- Improve access to information by introducing e-procurement, publishing all procurement notices and award results on the PPA website. The PPA website should contain full information on the complaints and status thereof.
- Provide public access to procurement information in the interest of transparency. This creates a basis for “social audit” by interested stakeholders. Information needs to be consolidated into a single place that is easily accessible by the public. The PPA website (www.app.gov.al) is poor in content. The EU-CARDS consultant (and later, MCC) should assist in improving it.
- Provide specialized judges for procurement dispute cases who can provide for timely redress of complaints. At present, there are no specialized courts and judges for disputes in procurement contracts.
- Amend the PPL to define fraudulent and corrupt practices.
- Closely monitor attempts of misuse the public procurement law (illustrated in Annex 2), including cases of collusion.
- Post a list of debarred companies on the PPA website.

Illustrations of current procurement practices

1.21 Annex 2 of this report provides several examples of current procurement practices. These illustrate attempts of misuse of the provisions of the public procurement law as well as the inefficient use of public resources through bad procurement practices, possibly reflecting lack of capacity.

Fiduciary risk

1.22 Fiduciary Risk Assessment is presented in Chapter 2. Providing direct budget support to the government raises two significant fiduciary concerns—that funds will reach the budget and that they will be “appropriately managed” as part of county’s budget resources. Overall, the use of the government’s current budget system is considered to pose significant fiduciary risk. This assessment is based on three considerations—first, the relatively low scores of 28 Public Expenditure and Financial Accountability (PEFA) indicators with impact on fiduciary risk, notably in the areas where limited progress was made on recommendations from the 2001 CFAA⁴; second, risk associated with the public procurement system; and third, indicators suggesting significant official corruption. The fiduciary risks

⁴ See Annex 1 for an update on the 2001 CFAA recommendations—in particular, the limited progress in internal and external controls/audits.

capture the main elements of public financial management (PFM)⁵ and procurement performance.

Action plan and priorities

1.23 Recommendations summarized in this executive summary are presented in greater detail in Chapter 3. See the table showing key recommendations and the risk mitigation action plan. Priorities and agencies responsible for implementation are also shown. Action to mitigate these risks will require sustained policy dialog with the government.

⁵ This diagnosis was borrowed from the PEIR and the PEFA assessment

1. PUBLIC PROCUREMENT

1.1 The overriding objectives of a national public procurement system are to deliver economy and efficiency in the use of public funds while adhering to the fundamental principles of nondiscrimination and equal treatment, due process, access to information and transparency.⁶ These objectives were the focus of the last CPAR of 2001 and they are unchanged in this update. This chapter begins by highlighting progress since the last CPAR of 2001 on key recommendations, and it then presents an analysis for further actions under the framework of the OECD/DAC.

1.2 There is a strong link between the performance of the PFM system and the achievement of social and economic objectives. Budgets are translated into procurement of goods, works and services; and assets are built for use by the public. Public procurement spending is estimated to account for about 15 percent of global GDP (Good Practices Paper–DAC guidelines). This varies greatly by country. In the case of Albania, there are no reliable data on annual volume of public procurement. In 2005, capital expenditure under public expenditure budget (including operation and maintenance) was about 60 billion LEKs, which constitutes about 7.1 percent of GDP (approximately LEK 836 billion). Without doubt, a sound public procurement system would translate into substantial savings and higher economic growth.

Scale of public expenditure, 2004–06

1.3 No data are available from PPA on the annual volume of public procurement in terms of goods, works and services. Table 1 provides an indication of the scale of public expenditure.

Table 1. Scale of Public Expenditure, 2004–06

Category of expenditure (in LEK million)	2004	2005	2006 (budget)
1. Operation & Maintenance	23,974	24,499	21,319
2. Capital expenditure, of which:	38,266	34,848	46,255
Domestic financed	27,590	24,292	23,733
Foreign financed	10,676	10,556	22,522
Total O&M + Capital expenditure	62,240	59,347	67,574
GDP	766,379	836,833	899,683
O&M as % of GDP	3.1	2.9	2.4
Capital expenditure as % of GDP	5.0	4.2	5.1

Source: Ministry of Finance

Progress since CPAR of 2001

1.4 The key recommendations of the CPAR 2001 included: (i) the need for further legislative reform; (ii) the need to improve transparency and access to information; (iii) the need to increase competition; (iv) the need to improve procurement practices and procedures; (v) the need to combat corruption and strengthen enforcement; and (vi) the need to build capacity of institutions and

⁶ Good practices paper (DAC Guidelines and reference series on strengthening procurement capacities in developing countries, volume 3, www.oecd.org/dac/harmonisingpractices).

procurement staff. The following paragraphs bring out the progress since 2001, including reasons why some recommendations may have worked while the others did not.

Further legislative reform

1.5 CPAR 2001 concluded that the Law on Public Procurement (LPP) provided a reasonably good framework for public procurement, but certain provisions could be strengthened further with the objective of increasing competitiveness, transparency, and enforceability. The World Bank had informed the government in the past that there is an overuse of direct procurement and legislation needs to be strengthened to prevent this misuse. A few of these recommendations could be implemented through amendments to the PPL and others through implementing regulations. The PPL is currently under review by an EU-CARDS consultant, and the World Bank has provided its comments on several drafts. At this stage, it is not very clear when the revised law would come into force. This report considers laws and regulations in force as of March 31, 2006, as the basis of analysis.

1.6 Regarding recommendation on strengthening the position of Open Tendering (OT) as the basic method of public procurement, the legislation improved; but practices continued to be weak, possibly due to weak capacity. It was recommended that provisions be bolstered in the PPL against breaking down procurement into smaller values. It was recommended that fewer exceptions be provided to the OT method, making all applications of procurement methods other than OT (above specified financial thresholds) subject to PPA prior waiver. The CFA team found that incidences of OT increased from 31 percent in terms of number of contracts in 2003 to 38 percent in 2005—not a substantial increase and well below 50 percent for a B score on PEFA. The remaining procurement is mostly conducted through restricted tendering and requests for quotations. PPA had no reliable data on the extent of direct procurement, as the procuring entities do not provide such information to PPA. Current PPL Article 17/4, however stipulates that requirements for a given quantity of goods, construction and services shall not be split up in order to avoid competitive procurement.

1.7 On bringing clarity in the PPL on the conditions for use of restrictive procurement methods—including Restricted Tendering and Request for Quotations, and strengthening of the requirements for the minimum number of bids—the CFA team found that the law envisages the conditions for use of these two methods being also associated with financial thresholds. Law Article 18 defines the conditions in which restricted tender should be used—first, when the goods, construction, or services are available only from a limited number of subjects; second, when the estimated value of the contract does not meet the threshold set forth in the procurement regulations. In addition, PPL Article 22 states that request for quotation be used for purchase of readily available goods and for procurement of construction or services for which there is an established market so long as the estimated value of the contract does not exceed the amount stated in the procurement regulations.

1.8 On the increased use of the Request for Proposals (RFP) method for the procurement of consultant services by removing the current threshold, the CFA team found that PPL Article 21 does not envisage any threshold.

1.9 On more effective control the Direct Procurement method by tightening the conditions for its use in the PPL and making this method subject to prior waiver by the PPA, the CFA team found that the law specifies conditions for use of this method. In practice, however, there are distortions in interpreting the “force majeure” or “emergency” clauses. Furthermore, PPA lacks data of its use. The agency does not know if contracts are split into small values in order to use Direct Procurement.

Improving transparency and access to information

1.10 CPAR 2001 pointed to obstacles to the acquisition of information by interested parties. This lack of transparency concealed corruption and undermined bidders' confidence in the fairness of public tenders. Therefore, CPAR recommended application of internet technology to improve dissemination of information on bidding opportunities. This included launching a PPA website, advertising bidding opportunities, providing records of bid openings and announcements of contract awards. The CFA team found that a PPA website was established two years ago; however, it is not maintained or regularly updated because of lack of resources. It is expected that the EC-funded CARDS 2002 consultant would assist the PPA in bringing needed improvements.

1.11 On the earlier recommendation for resuming regular publication of the *Public Procurement Bulletin*, the CFA team found that the PP bulletin is published every five days. All procurement-related information, such as tender notices and contract awards, are published in the bulletin.

1.12 Regarding the recommendation that all procuring entities publish an indicative statement at the beginning of each year on their major procurement requirements, the CFA team found the *Annual Forecasts Register*, which is prepared by PPA and includes all procurement to be carried out by the procuring entity during the year. However, this requirement list is not updated periodically throughout the year.

1.13 Regarding the need for PPA to collect, disseminate, and publish comprehensive information on annual expenditures of public funds on public procurement, the CFA team found that the recommendation had not been implemented. PPA prepares an annual report for the Council of Ministers, though the report is not comprehensive, accurate, or public.

1.14 On recommendation for a series of regular outreach programs to the local business community (badly needed to restore bidders confidence), the CFA team found no such programs. The private sector (for example, the chamber of commerce) is apparently not ready to take the lead itself; so it has no voice in reforming the procurement legislation. In addition, recent reports reveal scant bidder confidence in the system. A 2005 perception survey for Corruption in Albania (Casals and Associates, and Institute for Development Research and Alternatives, June 2006) reported "almost 65 percent of those who answered (almost one third of the sample) say that in order to receive a procurement contract, it is necessary to offer a bribe. Forty percent say that this payment ranges from 1 percent to 10 percent of the value of the contract, while another 25 percent say that the payment is more than 10 percent of contract value."

Increasing competition

1.15 CPAR 2001 concluded that participation in public tender was low because bidders did not perceive the procurement system as fair. The CFA team found no evidence of improvement in this area. This situation is supported by the perception survey described above.

1.16 It was recommended that the arbitrary distinction between domestic and international open tendering be abolished. This would allow foreign bidders to compete more freely with domestic bidders. It was also recommended that international OT be applied through appropriate financial thresholds. This would be controlled. Consideration would be given to levels of domestic price preference to encourage Albanian bidders to participate in competitive tendering. The CFA team found improvements in this area. Current legislation includes the financial thresholds, which distinguish domestic open tendering from international open tendering. International competitive bidding is applicable for contracts estimated at more than 200 million LEKs (equivalent to more than US\$ 2 million). Interviews with the business community revealed that domestic bidders perceived the qualification criteria as too high

relative to the value of contracts. However, examples presented to the team reflected evaluation and qualification criteria that were realistic and conducive to international participation.

1.17 Regarding the recommendation that the bidding periods for domestic tenders be lengthened, the CFA team found that a minimum of 20 days is allowed for domestic tenders. More time—at least to 28 days—should be allowed for preparation of tenders.

Improving procurement procedures and practices

1.18 As pointed out earlier, despite a reasonably sound framework for conducting public tenders in terms of law, several bad practices had crept into the Albanian public sector. CFA team found no improvement in this situation. Case examples at Annex 2 of the report illustrate: (i) attempts of misuse of the provisions of the public procurement law; and (ii) inefficient use of public resources through bad procurement practices, possibly due to lack of capacity.

1.19 CPAR recommended that all procuring entities governed by the PPL make mandatory use the standard procurement documents that had been developed with previous World Bank financial assistance. These standard documents should include standard prequalification documents and standard bidding documents for goods, works, and services. The CFA team found evidence of progress in this area. Bidding documents were developed for prequalification, goods, works, and technical services, including a request for proposal.

1.20 CPAR recommended a stop to the practice of evaluating bidders' qualifications at the time of initial bid evaluation. This leads to the arbitrary rejection of bids that may subsequently be found to be responsive. It was also recommended to apply prequalification for large, complex contracts and post-qualification for all others.) The CFA team found that although in the legislation bid opening and evaluation process are defined as separate stages of procurement, in practice the procuring entities still reject bids at the time of bid opening. Prequalification is done very rarely, while the post-qualification is carried out not only for the lowest evaluated bid but for others as well. Doing so wastes effort and results in delays.

1.21 On the recommendation for the introduction of objective methodologies for the evaluation of bids and that contract for goods and works should be awarded to the lowest evaluated, responsive bidder, the CFA team found improvement as far as the PPL is concerned. Article 32 of PPL envisages that “the contract is awarded based on either lowest tender price or best financial bid, evaluated based on the elements specified in the bid documents, which shall be objective and explicit in quantitative and qualitative terms for the purpose of the bid evaluation, expressed in monetary terms.” However, in practice the contract is awarded to the lowest price, not to the lowest evaluated price. This is mainly because the Supreme State Audit considers that contract awards to the second or third offered bids to be violations of the PPL. This view evidently reflects lack of training of SSA officials.

1.22 Regarding the recommendation to discontinue the practice of revealing the estimated price to bidders in the bidding documents (which produces uneconomic contract awards and facilitates bid-rigging), the CFA team found continuing practice. This hampers competition and transparency.

1.23 On the recommendation for public bid opening and bids to be opened immediately after the deadline for submission in all competitive procurement, the CFA team found evidence of compliance.

Combating corruption and strengthening enforcement

1.24 CPAR 2001 concluded that a good procurement law is being undermined by poor application and no enforcement. Weakness of the PPA mad the law easy to ignore, resulting in uncompetitive procurement methods, poor value for money, and corruption. The CFA 2006 team found no improvement in this situation. The government appears to have made no effort to enforce the application of the public procurement law.

1.25 As an interim measure (until the capacity and control environment could improve within procuring entities), it was recommended that the number of high-value contract awards (subject to PPA review and clearance) be increased. According to the implementing regulations, PPA only needed to review contracts greater than LEK 200 million. The CFA team found that PPA is now required to review evaluation reports and award recommendation for contracts above 100 million LEK. This is not necessarily an improvement because the inadequately trained PPA staff is unable to handle such reviews in a timely manner.

1.26 Regarding the recommendation that all bidding documents issued by public procuring entities should contain specific provisions against fraud and corruption, the CFA team found that the General Section of bidding documents includes clauses against corrupt practices (“ineligible actions”) and submission of false documents (fraudulent practices). But it is not clear whether these provisions were enforced.

1.27 On the recommendation for an administrative procedure to debar companies and individuals who have engaged in procurement-related fraud and corruption from participation in public tenders, the CFA team found that a provision in the PPL (Article 12) that envisages the debarment of bidders engaged in corrupt and fraudulent practices. There is, however, no corresponding administrative procedure. Again, this is a case of lack of enforcement.

1.28 On the need for (i) auditing measures to be strengthened at all levels of the system (both internal auditing in procuring entities and external auditing by the appropriate bodies at central and local government levels), (ii) auditors to be trained specifically in procurement auditing, and (iii) publication of procurement audit reports, the CFA team found that the internal audit units are not effectively controlling procurement procedures within the government entities. Their activities are limited to some financial audits and cash payments. In regard to SSA, they are the only entity carrying out some procurement audit, though not in full compliance with the PPL. This mainly reflects the lack of training and knowledge needed to interpret the PPL.

1.29 The CPAR 2001 observed that public procurement is a particular target of corruption, with more than half of all firms stating that they did not participate in government procurement because competition is unfair. Expert surveys found that Albania is perceived to have one of the highest rates of corruption among transition economies and exceptionally weak rule of law. The 2005 BEEPS survey reports that the percentage of firms saying that bribery is frequent to obtain government contracts has rose from about 32 percent in 2002 to about 41 percent in 2005. The seriousness of this situation is illustrated in Figures 2 through 6, which compare perception of unofficial payments and corruption in Albania with other countries in the southeast and central Europe.

*Unofficial payments and corruption—Albania compared with other countries in the region
(2005 BEEPS Survey)*

Figure 2. Bribe Tax

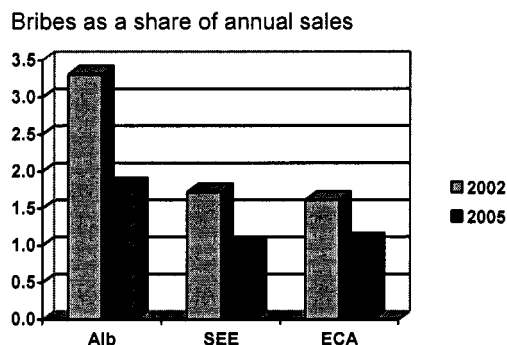


Figure 3. Bribe Frequency

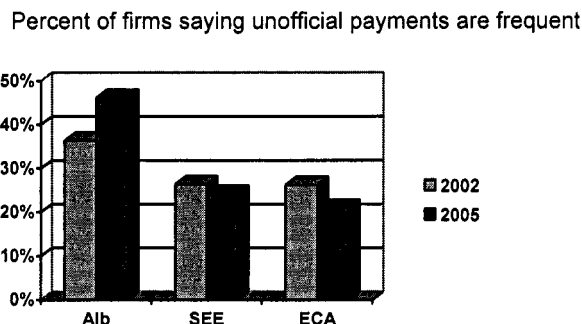


Figure 4. Unofficial Payments in Sectors over Time

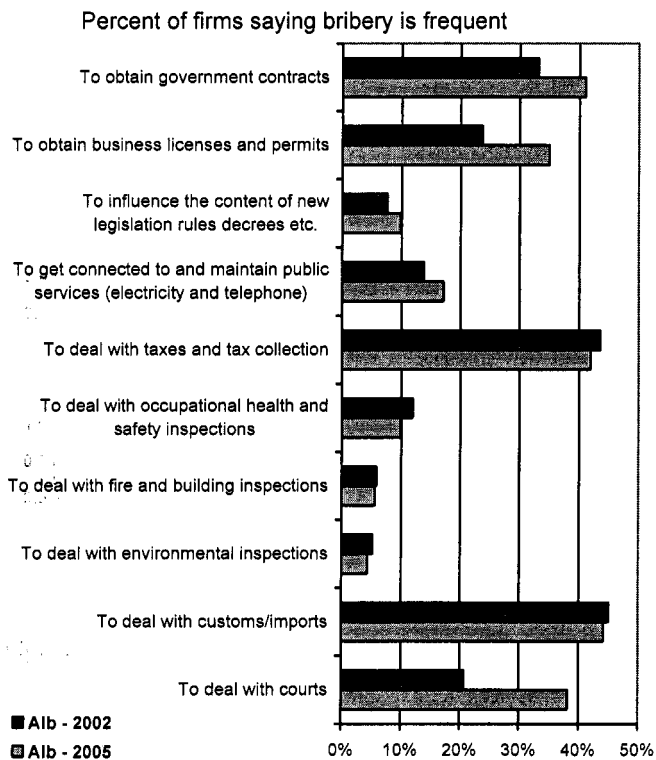


Figure 5. Unofficial Payments in Sectors across Countries

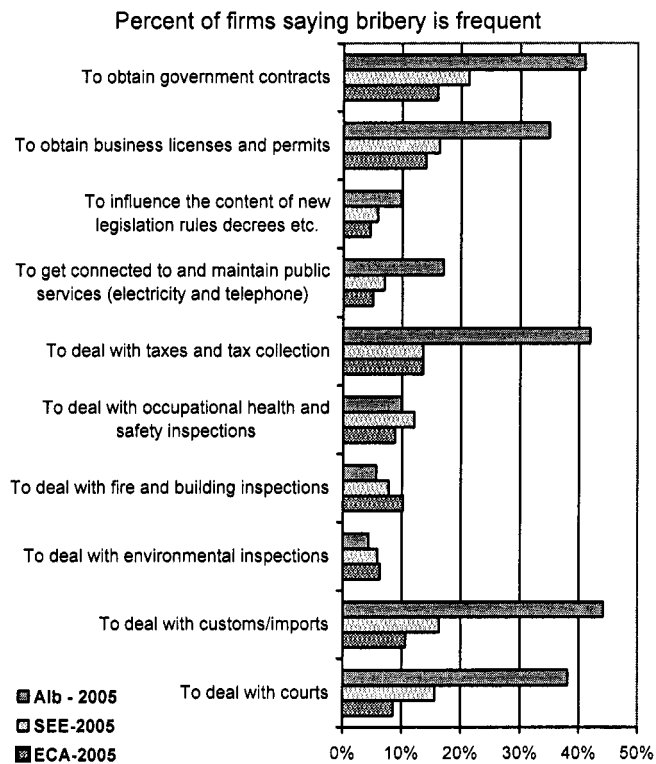
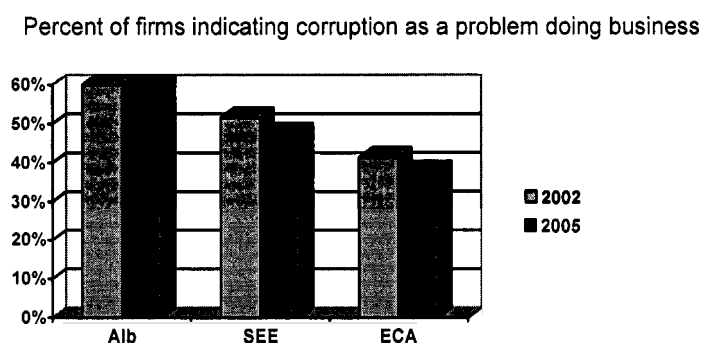


Figure 6. Corruption as a Problem Doing Business

Building capacity of institutions and procurement staff

1.30 CPAR 2001 pointed out that the Public Procurement Agency suffered from a lack of qualified staff, lack of equipment, and resources. There was no strategy on training or recruitment. The CFA team found no evidence of progress in these areas.

1.31 On the earlier recommendation that (i) PPA should be tasked with developing a national strategy for public procurement training and (ii) the government should devote adequate resources to such a strategy over the next 3 to 5 years, the CFA team found that PPA has only recently taken the initiative of creating a training unit. However, there is as yet no strategy on public procurement training. The EC-CARDS consultant or MCC are expected to prepare such a strategy.

1.32 Regarding recognition of procurement as a profession in its own right within the civil service (thus providing procurement officers with their own career path), the CFA team found that procurement staffs are hired as engineers, lawyers, or economists who then carry out procurement work. Procurement is considered as part of their other tasks, not a specialized function.

1.33 On PPA developing an accreditation system for accrediting procurement officers working in government service, the CFA team found that PPA has not developed an accreditation system for procurement professionals.

1.34 On the recommendation that (i) existing educational resources, including technical universities and business schools be encouraged to develop vocational courses in procurement, leading to the award of professional qualifications; and (ii) the government to accredit selected institutions to conduct these courses, the CFA team found no such initiative on the part of the government.

Assessment of Procurement Systems Based on OECD/DAC–World Bank Indicators

1.35 The previous section provides a progress report on what has happened since the last CPAR. There is no quantification or benchmarks to track progress over time. To improve its analytic capacity, the CFA team carried out an in-depth assessment on the status of public procurement system using an updated tool, “Guide for Assessment of Procurement Systems Based on OECD/DAC–World Bank Indicators: A Proposed Rating Methodology.” This tool was obtained from Procurement Policy and Services Group (OPCPR) of the World Bank on March 23, 2006. This Base-Line Indicators (BLIs) methodology was developed by OECD-DAC-World Bank in a Joint Workshop in Manila in February 2006 on Strengthening Procurement Capacities in Developing Countries. A final version of this guide

will be available soon. A detailed report based on this methodology is available separately; however, a brief summary of the methodology is incorporated into this section of the report. The scoring system ranges from 3 to 0 for each baseline sub indicator, with 3 representing full compliance with the stated standard. A score of 2.0 is for cases where a system exhibits less than full compliance and needs some improvements in the area being assessed. A score of 1.0 indicates an area where substantive work is needed for compliance. A rating of 0 is the residual, indicating a failure to comply with the proposed standard. The scores for all indicators and sub-indicators are included in Annex 3. Figure 1 (see Introduction and Executive Summary) provides a composite overview of the main findings in a graphic format.

Legislative and regulatory framework (Pillar I)

1.36 A legislative and regulatory framework is the starting point for a sound governance system. This is covered in Pillar I of the OECD-DAC/ World Bank Baseline Indicators (BLI) assessment. Pillar I encompasses two indicators—a legislative and regulatory framework for public procurement that meets agreed-upon standards and complies with applicable obligations (Indicator 1), and the existence of implementing regulations and documentation (Indicator 2).

1.37 The BLI (Baseline Indicator) summary assessment and scores in the area of legislative and regulatory framework are shown in Table 2. Scores in the third column pertain to the zero to 3 scale, as explained above.

Table 2. Summary of BLIs in Legislative and Regulatory Framework (Pillar I)

Indicator/ Sub-indicator	Summary Assessment	Score
<i>Indicator 1.</i> Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations		
1(a). Scope of application and coverage of the legislative and regulatory framework.	The legislative and regulatory framework is adequately recorded and organized hierarchically with precedence of different legal instruments established clearly in the law. Law covers all goods, works, and services (including consultancy services) except for reasons of national security, national defense, or for public funds used for scientific activity or technological development (Article 3) and for the Central Bank of Albania, which has its own rules and procedures.	3
1(b). Procurement method.	The law prescribes the criteria for the use of procurement methods (Article 17-22). The procurement law defines open tender as the preferred method of procurement (Article 17). The other methods are used based on the criteria specified in the law and based on the financial thresholds specified in the implementing regulations. In the case of direct procurement, Article 19 “urgent need” needs to be defined more clearly to prevent potential misuse.	2

Indicator/ Sub-indicator	Summary Assessment	Score
1(c). Advertising rules and time limits.	Contracts, other than direct procurement and request for quotation, are publicly advertised in the public procurement bulletin and in at least two national newspapers with a wide distribution (Article 25). Depending on method of procurement, the time limits vary between 15 days to 45 days.	3
1(d). Rules on participation and qualitative selection.	No exclusion on the basis of nationality (Article 9). No price preference for domestic bidders in international open tender. Exclusion of firms who have engaged in corrupt or fraudulent practices (Article 12 and 16).	3
1(e). Tender documentation and technical specifications.	Implementing regulations (Directive No.1 of January 1, 1996) specify content of the tender document. Article 14 lays the requirement of clear and, where possible, performance-based technical specifications to create conditions of fair and open competition. But national technical standards are missing.	2
1(f). Tender evaluation and award criteria.	Article 32 of PPL requires award to be made on the basis of either the lowest price or best financial bids evaluated on the basis of elements specified in the bid document. These are to be objective, expressed in monetary terms, and pre-disclosed. The process of evaluation is to be kept confidential from bid opening till award (Article 33).	3
1(g). Submission, receipt and opening of tenders.	Tender documents specify date, time, and manner of submission. Tenders are to be opened immediately after the final deadline for submission. Tenders received after the deadline must be returned unopened. Bidders or their authorized representatives are allowed to attend the opening of tender. Name of bidder and total amount for each tender are to be read aloud and recorded in minutes (Article 30, 31).	3
1(h). Complaints.	Chapter VIII (Article 43-45) of PPL provides for administrative review of complaints by appealing to heads of procuring entities and PPA within a timeframe (Implementing regulation Decision No. 335, of June 2000) and establishes matter that is subject to review. But the complaint review body is not separate from PPA, which is involved in policy and also reviews large-value contracts.	1
Indicator 2. Existence of Implementing Regulations and Documentation		
2(a). Implementing regulation that provides defined processes and procedures not included in higher level legislation.	Higher level legislation is supported by implementing regulations in the nature of instructions, decisions, bidding document and user's manual. There are certain anomalies when implementing regulation mandates disclosure of limit fund (estimated cost) though not required by the law. (please see details below the table)	2

Indicator/ Sub-indicator	Summary Assessment	Score
2(b). Model tender document for goods, works, and services.	There are standard bidding document for goods, work and services. Quality of documents needs to be improved based on feedback from users.	2
2(c). Procedures for prequalification.	Article 13 of PPL requires prequalification in case of complex contract with criteria set forth in the prequalification document. The standard prequalification document stipulates pass/fail criteria. Time limit for submission is from 10 to 20 days (Directive # 1, January 1, 1996).	3
2(d). Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion.	Article 39 of PPL requires that request for proposal document must contain criteria for evaluating proposals and relative weight given to price and other criteria. Article 39 is not very clear that technical capacity/quality is the main criteria. Implementing regulation (Chapter III of Directive # 1, January 1, 1996) is also not clear on this aspect.	1
2(e). User's guide or manual for contracting entities.	User's manual (in Albanian) is available on PPA website, and it is understood that the quality is good. This requires regular update based on feedback from users.	2
2(f). General Conditions of Contract(GCC) for public sector contracts covering goods, works and services with national requirements and, when applicable, international requirements.	GCC is mandatory, but there are weaknesses in the document on dispute resolution system, insurance, quantity and price variation provisions.	2

Note on 2(a). There is a practice of disclosing “limit funds” (estimated cost) in bid notices. This clearly prevents efficient competitive bidding. All the bidders tend to quote close to the disclosed limit amount. At the same time, these estimates themselves are not realistic, as they are not based on market-prevalent conditions. This practice adversely affects import of electricity (which, incidentally, is defined as “goods” in the Public Procurement Law, under Article 2, “Definitions”). It led to bidders not submitting bids in the round of bidding held in November 2005 as they found that the limit funds were unrealistic. The government later amended the law by a normative act (dated December 18, 2005) by making an exception for electricity purchase. In addition, one of the implementing regulations (Directive No. 1, dated January 1, 1996, Chapter II, Point 2) explicitly stated “there should not be upper and lower limits, below or over which the bids will be rejected.” The current Public Procurement Law contains no provision on disclosure of estimated cost. The practice of disclosing limit fund was obviously and consistently in violation of the Directive No. 1 until January 2006, when it was amended and this provision was removed. Further, unrealistic cost estimates for major programs leads to an excessive number of budget transfers/reallocations (virements) during implementation.

1.38 To improve the legislative and regulatory framework (Pillar I), the following actions in regard to public procurement law need to be taken.

- Strengthen provisions on use of direct procurement by defining the “force majeure” and “emergency” “urgent” situations (Article 17 and 19).
- PPL should be revised to regulate the public utilities separately from other procurement, either

as a separate chapter under existing law or separate law.

- Improve and strengthen consulting services provisions to select consultants not based on the lowest price, but based on qualifications and quality of services (Article 21).
- Revise PPL to include, at a minimum, the following information for contract award notice: (i) names of persons who submitted bids; (ii) bid prices as read out at bid opening; (iii) names and evaluated prices of each bid that was evaluated; (iv) names of bidders whose bids were rejected and reasons for rejections; (v) names of winning bidder, and price it offered, as well as the duration and summary scope of the contract awarded. Publication of this information on the website should be made mandatory (Article 35).
- Amend PPL to fully define nondiscrimination,—including any grounds, not just on the basis of nationality (Article 9).
- Amend PPL to indicate the method of delivery of bids, whether by mail, hand, courier, or any other modality (Article 30-31).
- Create a separate complaint review body other than PPA.

1.39 The following improvements need to be made to the implementing regulations.

- The time for preparation of bids in local open tenders is relatively short “minimum 20 days.” This should be increased to 28 days (Decision No. 335).
- Bidders should be given the opportunity to appeal debarment decisions (Decision No. 335).
- Limit fund (estimated price) should be calculated realistically based on market prices. Also, national standards on cost analysis for construction works should be updated regularly and then used (Instruction No. 1).
- There is a need to prepare high quality technical specifications to promote the broadest possible competition following internationally accepted standards. CPAR 2001 had pointed out that the Law on Standardization (Law No. 3864, dated November 3, 1999) establishes General Directorate of Standardization (GDOS) as the body responsible for managing the country’s activities in the areas of standardization, certification, and quality assurance, including the drafting and approval of national standards. In reality GDOS is under-resourced and has made little progress in developing a set of national standards or with adopting other standards (CEN or ISO) into Albanian legislation.
- SBDs should be amended to mandate signing of the minutes of bid opening by bidders, in order to avoid subsequent changes by procuring entities.
- SBDs should be amended to specify that the bids for all tenders, if submitted before the deadline for bid submission, should be kept safely.
- SBDs for goods should be improved to decrease changes in quantities after the contract signing. Maximum allowance could be up to 15 percent increase/decrease of offered quantity. The current limit of 30 percent is very high.

Institutional framework and management capacity (Pillar II)

1.40 Pillar II looks at how the procurement system, as defined by the legal and regulatory framework, is actually operating in practice. Three indicators assess the institutions and management systems that are part of the overall public sector governance of the country. First, is the public procurement system mainstreamed and well integrated into public sector governance? In other words, does a well-functioning procurement system linked to the budget process bring efficiency in use of

funds (Indicator 3)? Second, does the country have a functional normative/regulatory body (Indicator 4)? Such organization provides guidance on interpretation of rules, support training, and capacity development. Third, performance is dependant on capacity of various stakeholders. Is there evidence of institutional development capacity (Indicator 5)?

1.41 Table 3, below, summarizes the respective indicators and sub-indicators for Pillar II. The third column shows the corresponding 0 to 3 score.

Table 3. Summary of BLIs in Institutional Framework and Management Capacity (Pillar II)

Indicator/Sub-indicator	Summary Assessment	Score
<i>Indicator 3.</i> The public procurement system is mainstreamed and well integrated into public sector governance system.		
3(a). Procurement planning and data on costing are part of the budget formulation process and contribute to multiyear planning.	Procurement planning reflects budget availability rather than prioritization of institutional needs. The procurement planning starts too late to ensure that the actual procurement process can start as soon as budget is available. Annual forecast and realization register do exist, but links between multiyear estimates and subsequent setting of annual ceilings and a procurement plan are not clear. There is a pattern of low spending at the beginning of fiscal year and a last-minute surge for all types of public expenditure at the end of fiscal year. (See below for further details.)	1
3(b). Budget law and financial procedures support timely procurement, contract execution, and payment.	There are inadequacies in the linkage in budget and financial procedures. These linkages are needed to support timely procurement, contract execution, and payment.	1
3(c). No initiations of procurement actions without existing budget appropriations.	No procurement can start until budget appropriations are made (Directive No. 1, dated January 1, 1996), but enforcement is weak	2
3(d). Contract execution is subject to budgetary controls to ensure sufficient funding for contract.	Budget institutions do in some cases maintain records of commitments, but there is no central reporting or monitoring of commitments to ensure that funds are available to pay contracts (covered in 3 (b)).	
3(e). Budgeting system provides for timely release of funds to make payment against contractual obligations.	Two-month cash ceilings are set, but cash forecasting is generally weak (covered in 3 (b)).	-
3(f). Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	Reliable information about cash availability for budget institutions is not available beyond the two-month ceilings set by the MOF. Procurement system is not set up to provide information on completion of contract, except on annual basis.	1

Indicator/Sub-indicator	Summary Assessment	Score
Indicator 4: The country has a functional normative/regulatory body.		
4(a). The status and basis for the normative /regulatory body is covered in the legislative and regulatory framework.	The normative body is the Public Procurement Agency; but in addition to policy, PPA also reviews contracts above a threshold and handles complaints. (See below.)	2
4(b). The body has a defined set of responsibilities that include but are not limited to a set of 8 identified functions.	Article 8 of PPL lists all the tasks, but there are conflicts—in particular, PPA handling both the review of contracts above LEK 100 million (US\$ 1 million) and complaint reviews.	1
4(c). The body’s organization, funding, staffing, level of independence, and authority (formal power) to exercise its duties should be sufficient and consistent with its responsibilities.	The body is under-resourced. As the head of PPA is not competitively selected and does not have the status of a civil servant, its level of independence is low.	1
4(d). The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transaction.	The body does not meet this requirement as explained above in 4(b). The Bank has supported the establishment of general conflict of interest law. This indicator would need to be reviewed once the law comes in to force	0
Indicator 5: Existence of institutional development capacity		
5(a). The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information.	No procurement information system is in place.	0
5(b). A sustainable strategy and training capacity exists to provide training, advice, and assistance to develop the capacity of the government and private sector participants to understand the rules and regulations and how they should be implemented.	PPA has no national strategy for procurement training. The training offered is inadequate.	1
5(c). The country has systems and procedures for collecting and monitoring procurement statistics.	No system exists.	0
5(d). Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.	Procurement is not recognized as a profession, and there is no systematic annual performance evaluation despite understanding that a system exists	0

Comments on 3(a). The budget formulation process is not efficiently aligned with the procurement planning process. The CPAR 2001 reported that “the effective operation of the public procurement system is being severely hampered by the Government’s budget planning and management system, particularly by the release to procuring entities of budgetary allocations late in the fiscal year, sometimes as late as November. The effects of these practices on procurement include procuring entities avoiding the use of Open Tendering, as the timing of their receipt of budget allocation comes too late in the year to allow them to complete this procedure by the end of the financial year.” The urge to spend the budgeted allocation, by whatever means, effectively hampered consideration of economy and efficiency in the procurement process. Decision No. 675 (December 12, 2002) of the Council of Ministers was issued to avoid tenders being called by the end of fiscal year. However, this decision required procuring entities to complete procurement as well as signing of contracts by July 31 of each year. Given the fact that January and February are spent discussing and negotiating the list of projects to be funded between the Ministry of Finance and line ministries, there was an inadequate window of four months for the procurement process, which encourages overuse of direct procurement. This in practice leaves only 6 months to execute the budget. Links between multiyear estimates and subsequent setting of annual budget ceilings are not clear. MOF and line ministries do not strictly adhere to the ceilings from MTBP in annual budget preparation. Little explanation is provided to account for the differences. Accordingly most of the expenditures against procurement contracts tend to occur during second half of the year⁷. This impacts adversely on the efficiency of public spending.

Comments on 4(a). The lack of independence of PPA arises because the director of public procurement is not a civil servant. The current provisions of the PPL, Article 8 states; “the Director of the Public Procurement Agency is appointed, released and dismissed by the Prime Minister.” The CPAR of 2001 observed that PPA is chronically understaffed and under-resourced and therefore not able to perform its function effectively. The 2004 annual report of PPA highlighted these “status” and “resource” constraints as challenges during 2004. This report also states that numerous requests were made to the Public Administration Department in order to comply with Article 8 of the PPL, requiring that “for the employees, management, and experts of the Public Procurement Agency, the provisions foreseen by the law ‘on the status of civil servant’ shall apply.” Further, there is a need to instill confidence in the business community on the transparency of the public procurement system and existence of a fair complaint review mechanism.

1.42 Significant actions are required in the area of institutional framework and management Capacity (Pillar II), as follows:

- The procurement planning process should start at least three months prior to the upcoming fiscal year. The MTBP and annual budget should be linked, and expenditure cycle made realistic so that competitive procurement methods and efficient use of resources are ensured.
- Implementation should be followed through better reporting and a commitment should be made to establish a control system.
- The PPA director and all other professional staff should be civil servants in order to avoid political interference (Article 8).
- An independent Procurement Review Body should be established to handle complaints (Article 8).
- Web-based procurement information should be published with a provision for system for systematic update of tender invitations, RFPs, and contract awards, and so forth.

⁷ Paragraph 3.34 of PEIR (PFM chapter)

- The website should also contain annual statistics on procurement, which should be updated regularly.
- The PPA should be tasked with developing a national strategy for public procurement training, and the government should allocate adequate resources to implement such a strategy over the next 3 to 5 years.
- PPA organization, funding, and staffing should be reviewed by the government to increase its level of independence and authority.

1.43 Table 4 shows the present institutional setup of public procurement functions in Albania.

Table 4. Present Setup of Public Procurement Functions in Albania

Functions	Carrying out procurement functions (executive function)	Administrative and complaint review	Procurement policy and legislation development
Institutions			
Public Procuring Agency (PPA)	Review of contracts above US\$ 1 million (LEK 100 million)	Final stage of administrative review of complaints	√
Procuring entity (PE)	√	First stage of complaint review	

1.44 In contrast to the present setup, the recommended setup is as follows. First, the administrative and complaints review function should be delegated to an independent body. Second, as procuring entities demonstrably increase their capacity, the threshold requiring PPA review of high-value contracts should be correspondingly increased. This step would gradually increase the capacity of procuring entities, make procuring entities more accountable. By reducing one level of review, the time to award a contract would be reduced.

Procurement operation and market practice (Pillar III)

1.45 This pillar looks at the operational effectiveness and efficiency of the procurement system at the level of implementation responsible for issuing individual procurement actions. It looks at the market as one means of judging the quality and effectiveness of the system. This pillar is distinguished from Pillars I and II in that it does not look at the legal/regulatory and institutional systems, but rather, at how they operate. As shown in Table 5, this pillar III consists of three indicators—first, whether the country’s procurement operations and practices are efficient (Indicator 6); second, the functionality of the public procurement market (Indicator 7); and third, the existence of contract administration and dispute resolution provisions (Indicator 8).

Table 5. Summary of BLIs in Procurement Operation and Market Practices (Pillar III)

Indicator/Sub-Indicator	Summary Assessment	Score
Indicator 6. The country's procurement operations and practices are efficient.		
6(a). The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.	The government has made no effort to recruit procurement professionals who can handle complex procurement tasks. There are certain agencies where capacity exists.	1
6(b). The procurement training and information programs for government officials and for private sector participants are consistent with demand.	There are training programs, but these are deficient in terms of content and supply (see note at foot of the table.)	1
6(c). There are appropriate administrative systems for public procurement operations, and information databases to support performance monitoring and reporting and to respond to the information needs of other related government systems.	(This indicator was substantially covered by Indicator 5, above.)	
6(d). The entity has internal control mechanisms governing procurement operations at the contracting level, including a code of conduct, separation of responsibilities as a check/balance mechanism, and oversight/control of signature/approval authority.	(This indicator will be scored under Indicator 9).	
6(e). There are established norms for the safekeeping of records and documents related to transactions and contract management.	The administrative system is weak. Under the PPL (Article 10) and the Directive No. 1 (January 1, 1996), procurement records are to be kept for a period specified for each procuring entity under the Law of Archives and Law on Public Information.	1
6(f). There are provisions for delegating authority to others who have the capacity to exercise responsibilities.	The PPL (Article 7) and decision No.335 (June 23, 2000) stipulate that review of procurement decisions is made according to amount of contracts. But PPA is consulted more than required, and there are delays.	2
Indicator 7. Functionality of the public procurement market.		
7(a). There are effective mechanisms for partnerships between the public and private sectors.	There is no private sector consultation, and private sector confidence in public procurement is low.	0
7(b). Private sector institutions are well organized and able to facilitate access to the market.	Private sector institutions are not well established, except for the construction industry.	0

Indicator/Sub-Indicator	Summary Assessment	Score
7(c). There are no major systemic constraints (e.g., inadequate access to credit, contracting practices, and so forth) inhibiting private sector capacity to access the procurement market.	The private sector has not yet matured; and although credit to the private sector is increasing dramatically, access to credit is still limited.	1
7(d). There are no major systemic constraints that inhibit competition (e.g., technical, labor, and other standards).	Not scored separately, as it is covered under 7(c).	
7(e). There are clear and transparent rules for determining whether to engage international or national markets, based on a sound development and business logic.	There are no legal constraints for participation by foreign firms. However, these firms approach Government more on concessions rather than in public procurement tenders.	2
Indicator 8. Existence of contract administration and dispute resolution provisions		
8(a). Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.	Contract administration responsibilities, including inspection and tests, are defined clearly; but substandard goods, works, and services are accepted in practice. There are payment delays	1
8(b). Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.	Conflicts and disputes arising from the procurement contracts are resolved based on Civil Code of Albania. The country accepts UNCITRAL or Paris Chamber of Commerce for contracts disputes when the government is a party. SBDs contain no information on ADR mechanism, but refer only to court.	2
8(c). Procedures exist to enforce the outcome of the dispute resolution process.	Albania is a member of the New York Convention on Enforcement of International Arbitration Awards. But court enforcement in is weak.	2

Comments on 6(b). There is a need for a sustainable strategy and training capacity in all areas of PFM, including procurement. The targeted recruitment and professional development of accountants, financial controllers, inspectors, procurement specialists, and auditors should be enhanced in accordance with the objectives of the Government's Policy Paper for PIFC (March 2005). There is a need to train auditors on procurement law and regulations to ensure that these rules are applied correctly. Until last year, the Training Institute of Public Administration (TIPA) offered basic procurement training for central government procurement staff. The course three-day course was offered three times a year. According to the TIPA training plan of 2006–08, they will be offering a one-day awareness-raising training on public finance to newcomers in the civil service, and a two-day program on budgeting procedures. These trainings are inadequate. In the area of procurement, the CONFIRMEC–CARDS consultant offered 14 modules of training of trainers as part of its capacity building. The training curricula consists of introduction to public procurement policy objectives, a review of conflict management; public procurement methods and strategies; the public procurement tendering process; notices of invitation, tender documents and evaluation; and public procurement ethics. This is not sustainable as the contract

with CONFIRMEC is expected to end by October 2006, and a recently established training unit in PPA has only limited staff available

- 1.46 Actions needed to improve procurement operations and market Practices (Pillar III) include:
- The level of competence expected of procurement staff should be made consistent with their responsibilities. PPA should initiate a dialog within government, particularly with the Department of Public Administration (DOPA) to establish procurement as a separate career stream within both the central and local government civil service. This action should be supported with separate job descriptions, qualifications requirements, career structures, and salary scales for procurement officers.
 - Capacity in internal audit units in the ministries should be strengthened to take a more active role in assuring compliance with public procurement procedures.
 - Standard bidding documents should include an alternative dispute resolution mechanism, such as arbitration.
 - The private sector should be seen as a development partner. More outreach programs should be organized to improve private sector capacity in bidding for public procurement tender.
 - Adequate access to credit should be ensured through suitable policy changes by government.
 - Contract administration should be strengthened through suitable training of staff.

Integrity and transparency of the public procurement system (Pillar IV)

1.47 Pillar IV covers four indicators that are considered necessary to provide for a system that operates with integrity, has appropriate controls to support implementation in accordance with the legal and regulatory framework, and has appropriate mechanisms to address the potential for corruption. It also includes stakeholders as part of the control system. This pillar takes aspects of the procurement system and governance environment and seeks to ensure that they are defined and structured to contribute to integrity and transparency. As shown in Table 6, this pillar consists of the following four indicators—the country has effective control and audit systems (Indicator 10); efficiency of an appeals mechanism (Indicator 10); degree of access to information (Indicator 11); and ethics and anticorruption measures in place (Indicator 12).

Table 6. Summary of BLIs in Integrity and Transparency (Pillar IV)

Indicator/Sub-Indicator	Summary Assessment	Score
Indicator 9. The country has an effective control and audit system.		
9(a). A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.	Basic regulations for processing transactions and approving contracts exist; but comprehensive written procedures, including detailed job descriptions, are generally lacking in the budget institutions. At the level of the treasury, procedures for controls and release of all types of non-salary expenditure exist and are followed. Internal audit is at an early stage of development, and their work on procurement audit is limited. Supreme State Audit (SSA) has a broad mandate to audit revenues and expenditure of all bodies financed wholly or partially by state budget. Procurement is a core part of SSA audit work.	1
9(b). Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.	Within the past 1 to 2 years, the Supreme State Audit has noted a general improvement in responsiveness. 50-70 percent of recommendations are acted upon by the government.	1
9(c). The internal control systems provide timely information on compliance to enable management action.	Procedures for following up on recommendations of other IAUs are not harmonized across the government administration. A fair degree of action is taken by many managers on major issues, though often with delays.	1
9(d). The internal control systems are sufficiently defined to allow performance audits to be conducted.	Performance audits are hampered by the lack of comprehensive written procedures.	1
9(e). Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.	Auditors are generally familiar with procurement rules and procedures despite some cases of misunderstanding of rules. More training is needed.	1
Indicator 10. Efficiency of the appeals mechanism.		
10(a). An independent complaint review system gives participants in the public procurement process a right to file a complaint within the framework of an administrative and judicial review procedure.	Scored under 1(h).	

Indicator/Sub-Indicator	Summary Assessment	Score
10(b). Decisions are deliberated based on available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	PPA is the appeals body. Its decision is final. If parties are not satisfied, they can bring the case to court. There are no specialized courts and judges for procurement disputes.	1
10(c). The complaint review system has the capacity to handle complaints efficiently and can enforce the remedy.	The system is very weak and the complaints are handled by the Legal and Procurement Unit in the PPA. There are no defined terms for resolution, and the means to enforce the decision is through whichever court has jurisdiction in that that dispute.	1
10(d). The system operates in a fair manner, with outcomes of decisions balanced and justified with available information.	PPA could not provide data on this.	0
10(e). Decisions are published and made available to all interested parties and to the public.	No decisions are published.	0
10(f). The administrative review body or authority is independent from the regulatory body, executing agency, and audit/control agency.	There is no independent procurement review body independent from the legislative function.	0

Indicator 11. Degree of access to information

11(a). Information is published and distributed through available media with support from information technology when feasible.	Information is published in <i>Public Procurement Bulletin</i> . Only open tender notices are published on the website, standard bidding documents, the Public Procurement Law, and user's manual (see details below).	1
11(b). Systems are in place to collect key data related to performance of the procurement system and to report regularly.	Covered under 1, 4 and 5.	
11(c). Records are maintained to validate data.	Covered under 6(e)	
11(d). There is clear legal basis providing access to information for the public.	Covered under 1 and 2	1

Indicator/Sub-Indicator	Summary Assessment	Score
Indicator 12. The country has ethics and anticorruption measures in place.		
12(a). The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior; it sets out (directly or by reference to other laws) the actions that can be taken with regard to such behavior.	The PPL includes provisions on fraud and corruption (Article 16 for corrupt practices and Article 12 for fraudulent practices). Furthermore, there is a code of ethics for civil servants. But “fraud” and “corruption” is not defined in PPL.	2
12(b). The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.	PPL (Articles 12, 16) envisages actions for fraudulent practices, which provide for debarment of companies from government tenders for 1 to 3 years.	2
12(c). Evidence of enforcement of rulings and penalties exists.	Laws exist, but evidence of enforcement is weak.	1
12(d). Special measures exist to prevent and detect fraud and corruption in public procurement.	Anticorruption program that gives responsibility to an organization exist within government, but the program is not coordinated. More information is required from the government on this sub-indicator.	1
12(e). Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behavior.	There is no evidence of public involvement in the system. Few NGOs are active, and some are helping BEEPS survey. In BEEPS 2005, the perceived frequency of unofficial payment to obtain government contracts has gone up from about 32 percent in 2002 to about 41 percent in 2005.	0
12(f). The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	Until recently, there was no hotline for reporting fraud and corruption cases. This was recently settled within the Council of Ministers. The public can now report cases of fraud or unethical practices by government officials. Whether or not the mechanism is secure is not yet known.	1
12(g). Existence of codes of conduct and codes of ethics for participants in the public financial management systems. Disclosure is provided or those in decision-making positions.	The relevant legislation is included in Law No. 9131 (September 2003) on Rules of Ethics for Public Administration, and the Law No.8549 (November 11, 1999) on Status of Civil Servants. Financial disclosure of personal assets for those who deal with public financial management is required by law.	1

Comments on 11(a). Public access to procurement information is essential for transparency and creates a basis for “social audits” by interested stakeholders. Information needs to be consolidated into a single place easily accessible by the public. The PPA website (www.app.gov.al) is very weak in content. Most procurement information is only available in hard copy through the weekly *Public Procurement Bulletin*, including information on tenders, contract awards, debarred companies, and changes in

procurement legislation. The PPA website contains only open tender notices, standard bidding documents, public procurement legislation, and a user's manual. This is grossly inadequate. There is no update of the information on procurement legislation. No information is available on the website related to the number and value of contract awards under various methods of procurement, or incidences and rationale of direct procurement. No information is available on timeliness on the resolution of complaints.

1.48 The following actions are needed to improve the integrity of public procurement system (Pillar IV).

- A number of judges should be specialized for procurement dispute cases.
- The PPA website should contain complete information on the complaints and status of the complaints.
- A beginning in e-procurement should be made by publishing all procurement notices and award results on the PPA website.
- The PPL should be revised to establish an Independent Procurement Review Body (also covered in Pillar I) to increase the confidence of the private sector and other stakeholders in the system.
- The PPL should be amended to define fraudulent and corrupt practices.
- A list of debarred companies should be posted on the PPA website.
- PPL (Articles 12, 16) envisages actions for fraudulent practices. These provide for debarment. But procedures need to be defined for debarment of companies.

2. FIDUCIARY RISK ASSESSMENT

2.1 This chapter contains a definition of fiduciary risk, a brief presentation of the World Bank portfolio and activities in Albania, and a summary of the fiduciary risk assessment based on the findings of this report and the PFM performance indicators. Risk-mitigating remedies for the Bank’s portfolio are also presented.

Definition of fiduciary risk

2.2 Definitions of fiduciary risk vary in the literature and in donor statements; but generally, they all include some of the following elements: (i) Risk that donor funds may not reach the budget; they may be diverted beforehand for unknown or unauthorized purposes and not flow through the partner country’s central bank to the MOF; (ii) Funds may reach the budget but without reliable and timely reporting on overall budget execution; thus donors do not know how (or even whether) their funds (as part of the budget) have been spent; and (iii) Funds may reach the budget but are misspent, because the budget is not adequately implemented, or budget funds (including donor assistance) are used for inappropriate, unauthorized, unknown, or “corrupt” purposes.

2.3 As reflected in various guidelines, the World Bank has two prime fiduciary concerns in providing direct budget support to partner governments—first, that funds reach the budget, and second, that they are “appropriately managed” as part of the country’s budget resources. Key factors contributing to the fiduciary risk are PFM systems issues—for example, that the budget is not implemented as passed, that significant activities are off budget, that information on budget implementation is late and unreliable, and that financial control rules are not enforced. These factors are captured through the assessment and scoring of the PEFA indicators.

2.4 PFM is but one component of the overall fiduciary risk. The others are risk related to the public procurement system (traditionally reflected in the CPAR) and risk of misuse of Bank funds through corruption (drawn from anticorruption diagnostics by the World Bank and others). In this report, the assessment of the fiduciary risk associated with procurement will be an integral part of the assessment of the fiduciary risk associated with the PFM system through the use of the PEFA indicators.

2.5 In assessing the overall fiduciary risk associated with the government budget system, the report considers all aspects and all three components of fiduciary risk. In doing so, the fiduciary risk will be deemed to be Low, Moderate, Significant, or High.

Fiduciary Risks Associated with the Current World Bank Investment Portfolio

2.6 The World Bank active portfolio in Albania amounts to some USD 225 million. Currently the World Bank project portfolio in Albania includes 15 active projects for a total amount of USD 225.3 million. The data in table 3 below provides an overview of the active project portfolio in Albania.

Table 7. World Bank Portfolio in Albania, end of 2005

Project	Principal	Disbursed
<i>(in \$US million equivalents)</i>		
Municipal water	15.0	5.0
Agriculture	9.9	7.5
Social services	10.0	1.5
Road maintenance	30.0	26.0
Fishery	5.6	4.1
Public administration	8.5	4.4
Power sector rehabilitation	29.9	8.6
Power sector generation	25.0	0.5
Energy APL	27.0	0.0
Ecosystem	4.9	0.1
Community works	15.0	6.3
Water resources	15.0	1.5
Natural resources	7.0	0.0
Natural resources (GEF)	5.0	0.0
Coastal zone	17.5	0
Total	225.3	65.6

2.7 Project-specific financial management and procurement arrangements have mitigated the overall fiduciary risk attached to the World Bank portfolio. The overall relative fiduciary risk attached to the portfolio is considered “significant” under the financial management and procurement arrangements established specifically for the projects. Additional control measures, over and above those in the public administration, are typically designed for individual Project Implementation Units (PIUs). World Bank projects have typically been implemented through standalone PIUs. Disbursement, procurement, financial reporting, and auditing arrangements are agreed with the Bank. Also, the PIU staff has typically been paid with project funds and more generously remunerated than civil servants. The CAS encourages “a gradual shift from implementation of projects through autonomous Project Implementation Units toward implementation through regular administrative structures of government to ensure strengthening of the public administration, capacity building, and the sustainability of interventions.” However, the mitigating measures have mostly remained the same. Projects approved in 2006 will utilize the treasury system. The education SWAp pools funds with other donors and government. Additional mitigating measures have been designed, as discussed below.

2.8 All projects in Albania received unqualified audit opinions in respect to their 2004 project financial statements. However, all audit reports were delivered after the due date of June 30 2005 on a portfolio-wide agreement with a private external audit company financed by the government. All audit reports were received by the end of October 2005.

2.9 The existing manual treasury system has not normally included the detailed accounting data that is needed to monitor investment projects. The Ministry of Finance is implementing a computerized treasury system. Projects starting in late 2006 will fully utilize the new system’s funds flow and payment facilities. They will be able to obtain financial reports oriented toward project management from the system.

Foreign Exchange and Funds Flow Arrangements

2.10 With respect to determining the adequacy of arrangements for the management of foreign exchange reserves, internal World Bank rules state that Bank staff will primarily rely upon assessments undertaken by the IMF. If IMF indicates that low risk is attached to the operations of the central bank, Bank staff need take no further action; and no additional fiduciary safeguards are required to protect Bank funds. Similarly, World Bank staff need take no further action if the IMF indicates that the risk is higher but a remedial action plan has been established with periodic reports indicating that the plan is being satisfactorily implemented.

2.11 The IMF assessment of the Bank of Albania is favorable. Under the Fund safeguards assessment policy, the Bank of Albania is subject to a full safeguards assessment with respect to the Poverty Reduction Growth Facility (PRGF) arrangement (June 2002) that takes into account prior safeguards work, including an assessment report issued in May 2001 and a monitoring mission in March 2002. The assessment noted that the Bank of Albania has made significant progress in implementing the recommendations of the first safeguards assessment, and that in general, the bank has adequate safeguards to reduce the risk of misuse and misreporting of Fund resources. Nevertheless, the assessment noted minor weaknesses in the World Bank (Bank of Albania) internal auditing, financial reporting, and internal control systems—all of which the Bank of Albania management has agreed to address.

2.12 The imposition of additional fiduciary safeguards appears unwarranted. Based on the above, the imposition of additional fiduciary safeguards on the National Bank (Bank of Albania) also appears unwarranted, particularly the use of a ring-fenced account in another bank to hold foreign currency received from the World Bank.

Assessment of Fiduciary Risk

2.13 Table 8 provides an overview of the PFM performance scores of the PEFA indicators (see PEFA assessment). The fiduciary risk associated with Public Financial Management, including public procurement, is considered significant. Areas of transparency, comprehensiveness of budget and accounts, as well as control and oversight, are considered to have most impact on fiduciary risk. Given the relatively low scores in these areas, the fiduciary risk for PFM is deemed significant.

2.14 Albania's poor ranking in international country surveys on perceptions and control of corruption suggests that the fiduciary risk associated with corruption is high. Albania's score in Transparency International's Corruption Perception Index (CPI) of 2.4 (on a scale from 1–10) gives it a rank as 126 among 158 countries. Compared with other countries in the region, Albania is ranked after Serbia and Montenegro, Macedonia, Belarus, Moldova, and Ukraine. It is ahead of only 32 other countries in the survey.⁸ In the World Bank Institute global survey of Corruption Control in 2004, Albania scored -0.72 on a scale from -2.5 to 2.5, placing it among the bottom 30 percent globally.⁹ For procurement, the percentage of firms saying that bribery to obtain government contracts is frequent rose from about 32 percent in 2002 to 41 percent in 2005. These indicators suggest that the fiduciary risk associated with official corruption is high.

⁸ Transparency International Corruption Perception Index 2005 (www.transparency.org).

⁹ Governance Matters IV: Governance Indicators for 1996–04, World Bank Institute, May 2005. Data available from www.worldbank.org/wbi/governance/govdata.

Table 8. PFM Performance and Fiduciary Risk Indicators

		Score
A. PFM-OUT-TURNS: Credibility of the budget		
		B
PI-4	Stock and monitoring of expenditure payment arrears	D
B. CROSSCUTTING FEATURES: Comprehensiveness and Transparency		
PI-5	Classification of the budget	A
PI-6	Comprehensiveness of information included in the budget documentation	C
PI-8	Transparency of inter-governmental fiscal relations	C+
PI-9	Oversight of aggregate fiscal risk from other public sector entities	C+
PI-10	Public access to key fiscal information	B
C. BUDGET CYCLE		
C(i) Policy-Based Budgeting		
PI-11	Orderliness and participation in the annual budget process	A
	budgeting	
C(ii) Predictability and Control in Budget Execution		
PI-13	Transparency of taxpayer obligations and liabilities	-
PI-14	Effectiveness of measures for taxpayer registration and tax assessment	-
PI-15	Effectiveness in collection of tax payments	-
	funds for commitment o	
	h balances, debt and guarantees	B
PI-20	Effectiveness of internal controls for non-salary expenditure	B
PI-21	Effectiveness of internal audit	C+
C(iii) Accounting, Recording and Reporting		
PI-22	Timeliness and regularity of accounts reconciliation	B*
PI-23	Availability of information on resources received by service delivery units	D
PI-24	Quality and timeliness of in-year budget reports	C+
PI-25	Quality and timeliness of annual financial statements	B+
C(iv) External Scrutiny and Audit		

2.15 The overall fiduciary risk associated with the government budget system is considered significant. Given the relatively poor scores on PFM performance indicators with impact of the fiduciary risk, including the risk associated with the public procurement system and indicators

¹⁰ Indicator numbers starting with the letters “PI” and “DI” refer to the indicators listed in the PEFA report, “Public Financial Management: Performance Measurement Framework,” June 2005, page 9.

suggestion a significant level of official corruption, the fiduciary risk is considered significant. Regarding procurement, the above conclusion of significant risk is supported by the scores on the four pillars of OECD-DAC.

Use of Country Systems—Public Financial Management

2.16 The recent changes in the framework for determining the eligibility of Bank-funded expenditures introduces the possibility of borrowers relying upon their own systems for future project implementation and monitoring. The recent changes in the framework for determining the eligibility of expenditures and the introduction of Country Financing Parameters for Albania (permitting up to 100 percent financing of project costs) enable the World Bank to streamline disbursement procedures—for instance, a project might have a single disbursement category. This could in turn simplify the reporting and accounting requirements, negating the need for the borrower to track expenditures by component and expenditure type, specifically for World Bank-funded activities. This introduces the possibility that the World Bank, subject to a full assessment of the financial management environment within the Ministry of Finance and Treasury, might begin to use the borrower’s financial systems to control and monitor project implementation. However, the ministry is still reluctant to accept one category for the Bank-financed projects. The argument has been that the categories give the ministry a handle on any reallocation of funds, especially increases on the allocation used for technical assistance (consultants). To fully utilize the normal reporting systems of the government for Bank-financed projects, a mechanism should be established for Ministry of Finance control over reallocation in donor-funded projects.

2.17 The CAS from January 2006 agreed to support the use of the normal government structures in implementing World Bank-funded projects. The CAS states, “The implementation of projects through PIUs/PMUs has reduced the potential impact of projects on institutional development and sustainability. Agreements have been reached with the Government in FY05 for implementation by the existing government structures. The most notable change is the appointment of an authorized government official (Director, Director General, or Deputy Minister) to oversee the implementation of each project. Additional skills (e.g., financial management and procurement specialists) will be contracted when necessary but these specialists will report to the Project Authorizing official and the concerned government agency or ministry.” The two lending operations approved in Albania in 2005 (Coastal Zone and Natural Resource Development) have integrated project implementation into the normal government structures. Because financial management, disbursement, and procurement largely follow the World Bank rules, consultants were hired to perform these specialized functions. Projects prepared in 2006 have started utilizing the treasury system. Most notably, Bank support to the education sector has been designed as a Sector Wide Approach (SWAp), with pooling of funds for the reform program between the government, the Bank, and other donors. Additional mitigating measures in procurement, use of the work of internal audit departments, targeted capacity-building of fiduciary staff, use of SSA with the assistance from a European SSA twinning partner, and operational reviews have been agreed with the government to ensure that funds are used for the agreed purposes. (The CAS governance filter is a safeguard mechanism on anticorruption.)

2.18 Treasury management, disbursement, internal control systems, and internal and external audit are being improved; but they cannot yet be relied on for managing all Bank-funded investment projects. The new treasury system is an important step in utilizing the government’s payment and accounting system. The flow of funds can pass directly from treasury to the suppliers. The change in flow of funds would also enable that government’s internal control procedures to be applied as far as possible. These procedures are continuously being improved through the work of the internal and external auditors and through the introduction of a Public Internal Financial Control (PIFC) framework supported by the EU. The internal audit units are now functioning and they are starting to prepare useful audits, including of

Bank-funded projects. The use of the internal audit units in new projects needs to be institutionalized during project preparation. Although the external audit has improved the State Supreme Audit (SSA) is not expected to be able to do financial certification audits in the short term without additional external support. An amendment to the current law for the SAI will enable them to carry out audits of donor-funded projects. These audits, including the audit of the education sector support, should be monitored to assess when closer cooperation could be started using the SAI's audits more broadly.

2.19 Considerable efforts have been invested into harmonizing donors' financial management practices and budget support, using the Bank of Albania and the budget execution system. Regarding the donor simplification agenda, the Country Financing Parameters have been approved with possibility of financing up to 100 percent. Report-based disbursement has been introduced for some newly approved lending operations. As mentioned, the Ministry of Finance has insisted on the "old" categories in lieu of a simplified solution using one category. The use of treasury, simplification of categories, and pooling of donor funds operations will need to be continuously monitored and discussed with the government. An Integrated Planning System is being implemented to integrate the many strategies the government needs to work with. This will also improve the management of donor-funded projects and enable an advance in the harmonization between donors and the government. Project assistance provided through lending, including the World Bank, has been reflected in government budget and accounts, while this has not been the case for all grant assistance. According to the CAS upstream paper, "the World Bank will also be looking for opportunities to coordinate with all donors to move to SWAp-like approaches in the social sectors through the formulation of clear sectoral strategies and investment plans." This work has so far benefited the education sector support. Three recent PRSCs and a recently completed two-tranche FSAC have been using the country system based on a satisfactory IMF safeguard assessment of the Bank of Albania as well as clean audit reports for the deposit accounts used. Because of the new policy on development policy lending, the PRSC 3 (disbursed in 2004) did not require an audit of the deposit account.

Use of Country Systems—Public Procurement

2.20 The World Bank policy in this respect is still evolving. However, the thresholds for national competitive bidding and for prior review are being increased gradually in Bank-funded projects.

2.21 The unacceptable NCB conditions for Bank-funded projects are based on current public procurement law. These are discussed on a project-by-project basis. For the Education SWAp, project development partners have outlined specific procurement procedures compatible with Bank procurement guidelines. Annex 5 provides "Good Practices Provisions for National Competitive Bidding vs. Status in Albania." Based on this analysis, the NCB exception for the education SWAp project is as given below. These exceptions will require modifications based on the Public Procurement Law in force at the time of loan negotiation for future projects.

2.22 The National Competitive Bidding procedures shall be based on the open tendering procedures as defined in the Public Procurement Law of Albania and the following additional provisions:

- "Open Tendering" procedures as defined in Public Procurement Law shall apply to all contracts.
- Foreign bidders shall not be precluded from bidding, and no preference of any kind shall be given to national bidders in the bidding process. Government-owned enterprises in Albania shall be permitted to bid only if they are legally and financially autonomous and operate under commercial law of the borrower.
- Procuring entities shall use sample bidding documents approved by the Association.
- In case of higher bid prices compared with the official estimate, all bids shall not be rejected

without the prior concurrence of the Association.

- A single-envelope procedure shall be used for the submission of bids.
- Post-qualification shall be conducted only on the lowest evaluated bidder, and no bid shall be rejected at the time of bid opening on qualification grounds.
- Bidders who contract as a joint venture shall be held jointly and severally liable.
- Contracts shall be awarded to the lowest evaluated, substantially responsive bidder who is determined to be qualified to perform in accordance with predefined and pre-disclosed evaluation criteria.
- Post-bidding negotiations shall not be allowed with the lowest evaluated or any other bidders.
- Contracts of long duration (more than 18 months) shall contain appropriate price adjustment provisions.

3. KEY RECOMMENDATIONS AND ACTION PLAN FOR RISK MITIGATION

3.1 Several actions are recommended to mitigate fiduciary risk by:

- Giving priority to the areas associated with the most significant fiduciary risk.
- Concrete actions to address weaknesses in budget realism.
- Coverage of government reporting, arrears, and internal and external audit
- Addressing weakness in procurement related to the legislative framework and, in particular, integrity and transparency, institutional and management capacity, and procurement operations and market practices.

3.2 Based on the fiduciary risk assessment above, the team has proposed the risk mitigation actions show in Table 9. These are to be taken by the government and other stakeholders. These recommendations drawn upon PEIR and PEFA, as well as the present analysis.

Table 9. Key Recommendations for Mitigating Risk

Recommendation and key actions (Relevant indicator/ paragraph of the CFA report)	Priority			Implementing agency
	Immediate	Medium	Long term	
A. Cross-cutting issues				
Improve the coordination between procurement planning process and budget formulation process. To achieve this, the procurement planning process to start at least three months prior to the next fiscal year, MTBP and annual budget is required to be linked and expenditure cycle made realistic so that competitive procurement methods and efficient use of resources are ensured.		X		MOF
Improve institutional framework and administrative capacity in public financial management, including in procurement, at all levels of government. To improve the institutional framework, strengthen the linkage between policy development and budget planning processes, requiring: (i) close collaboration between the DSDC and General Directorate of Budget in the implementation of the IPS initiative; (ii) establishment in line ministries of a Standing Committee on Strategy, Budgeting and Integration; and (iii) bringing responsibility in line ministries for sector level policy, program and budget planning within a single central department. Establishment of a PFM reform and development committee or working group chaired by the MoF to actively engage all stakeholders in coordinating the implementation of the PFM reform agenda under the IPS. To develop and implement a strategy for addressing capacity constraints across the PFM system, develop a comprehensive framework for human resource management in the field of public finance, including all financial services functions: (a) Specific standardized recruitment criteria; (b) Qualification criteria and training programs based on relevant, contemporary professional curricula; (c) Specific standardized job-descriptions; (d) Legal and other safeguards to appropriately protect staff against undue pressures from management or providers of goods and services. In the area of procurement, there is a need to have more trainers available in PPA, with additional professional input provided by a training Institute or through a faculty in a university, such as law or economics, to make it sustainable.	X	X		MOF/ PPA/LM/IPS
A gradual shift be made from implementation of projects through autonomous Project Implementation Units (PIUs) toward implementation through regular administrative structures of government. This will strengthen public administration, capacity building, and the sustainability of interventions.		X		GOA

Recommendation and key actions (Relevant indicator/ paragraph of the CFA report)	Priority			Implementing agency
	Immediate	Medium	Long term	
<p>Strengthen internal and external accountability for use of funds to ensure greater impact of audits. This implies, first, modernizing and strengthening of internal audit and control based on the measures set out in the recent policy paper on Public Internal Financial Control—in particular, to develop and implement comprehensive written procedures for key financial controls in all budget institutions in line with the recommendation made in the Public Internal Financial Control (PIFC) Policy Paper of March 2005; and second, developing rules and procedures to formalize and ensure appropriate follow-up on recommendations made by IAUs and SSA, applicable to all budget institutions.</p> <p>To achieve a stronger and more informed engagement of Parliament and civil society on PFM, (i) revise the Organic Budget Law (OBL) to allow additional time for discussion of the Budget in Parliament; (ii) strengthen the Budget Analysis Unit that has been established in the Parliamentary Secretariat; (iii) ensure more timely follow-up on external audit report queries and recommendations; and (iv) improve the presentation of information on fiscal management and public spending plans and outcomes so that it is more readily accessible to civil society.</p>	X	X		MOF/ Parliament/ Line ministries
<p>Improve credibility and predictability of budget, and efficiency of budget execution process.</p> <p>To improve budget preparation, strengthen (a) macroeconomic and fiscal forecasting; (b) budget medium-term focus and strategic links.¹¹</p> <p>To strengthen cash management, (i) provide mechanisms for short-term lending to cover revenue flow fluctuations, (ii) consider extending the spending ceilings for Budget Institutions beyond two months, (iii) ensure that cash management and budget releases are better matched to requirements for timely implementation of the annual budget plan; (iv) ensure stricter enforcement of spending ceilings by issuing clear and transparent procedures for virement and revision of annual budgets consistent with the integrity of the annual budget and providing budget users with flexibility in managing their budgets.</p> <p>To strengthen integrity of budget execution, (i) focus on completion of the ongoing modernization of the Treasury system, including linkage with payroll module; (ii) record contract-related commitments to enable monitoring of and keeping expenditure arrears under tighter control; (iii) prepare and adopt an action plan for computerization of the accounting functions of Budget Institutions in close coordination with ongoing reforms of the Treasury system.</p>	X	X		MOF

¹¹ Specifically the PEIR recommends government approval of the initial macroeconomic framework, strategic medium-term spending priorities and MTBP resource ceilings at the outset of the MTBP preparation; further development of the macro-fiscal forecasting model, focusing on the MoF's main requirement for more detailed and better justified fiscal forecasts; a greater focus on the outer year MTBP resource ceilings for them to provide a realistic and credible basis for medium-term budget planning at sector and agency level; further development of the program-based budget classification in order to provide for more explicit linkage between the sector strategies and the budget; and improvement of classification and grouping of capital projects given the government's plan change the level of appropriation from program to project.

Chapter 3. Summary of Key Recommendations and Risk Mitigation Action Plan

Recommendation and key actions (Relevant indicator/ paragraph of the CFA report)	Priority			Implementing agency
	Immediate	Medium	Long term	
B. Procurement				
<p>Enhance the independence of the Public Procurement Agency and create an independent complaint review mechanism, the Procurement Review Body (Pillar I and II).</p> <p>It is recommended that PPA Director and its entire professional staff should “in practice” have the status of a civil servant to avoid political interference. An independent administrative organization, namely the Public Procurement Review Body (PPRB), should be established with its members as independent judges. These members should be professionals, competitively selected and appointed by the Parliament.</p>	X			MOF
<p>Establish a mechanism for preparation of estimated cost and discontinue the practice of disclosing this estimated cost (Pillar I). This requires that Implementing regulations should establish a mechanism for preparing the cost estimate based on market trend and the earlier provision in implementing regulation (“There should not be upper and lower limits, below or over which the bids will be rejected”) should be restored and cost estimates should not be disclosed in bid notices.</p>		X		PPA
<p>Improve access to Public Procurement Information (Pillar I and IV). This requires that PPL and implementing regulations be amended to publish all procurement-related information, including bid notices, contract awards, and timeliness of complaint review process on a publicly available website. PPA website should contain full information on the complaints and status thereof.</p> <p>Website should also contain annual statistics on procurement, which should be updated regularly. This can be the starting point for e-procurement in future</p>	X	X		MOF/ PPA
<p>Improve the quality of technical specifications as part of bidding Document for goods, works and services (Pillar I and III). This requires a comprehensive set of national standards.</p>		X		PPA
<p>Other improvements needed on Pillar I – Legislative and Regulatory Framework. (i) Strengthen provisions on use of direct procurement by defining the “force majeure” and “emergency” “urgent” situations; (Article 17 and 19) to prevent its misuse; (ii) Regulate the public utilities separately from other procurement, either as a separate chapter under existing law or separate law; (iii) Improve and strengthen consulting services provisions to select consultants not based on the lowest price, but based on qualifications and quality of services. (Article 21).</p>	X			MOF/PPA
<p>Other improvements needed on Pillar III. Level of competence among procurement staffs to be made consistent with their responsibilities. PPA needs to initiate a dialog within government, particularly with the Department of Public Administration (DOPA) to have procurement established as a separate career stream in the civil service, both at central and local government levels. This action should be supported with separate job descriptions, qualifications requirements, career structures and salary scales for procurement officers; (ii) capacity in Internal audit units in the ministries be strengthened to take over a more active role in assuring the compliance with Public Procurement procedures; (iii) SBDs should include an Alternative Dispute Resolution</p>		X	X	MOF/PPA

Chapter 3. Summary of Key Recommendations and Risk Mitigation Action Plan

Recommendation and key actions (Relevant indicator/ paragraph of the CFA report)	Priority			Implementing agency
	Immediate	Medium	Long term	
mechanism such as arbitration; (iv) more outreach programs for the private sector should be organized to improve their capacity in bidding for public procurement tender				
Other improvements are needed on Pillar IV: (i) Appoint number of judges specialized for procurement dispute cases; (ii) Begin e-procurement by publishing all procurement notices and award results on the PPA website, which should contain full information on the complaints and status thereof; (iii) Amend PPL should to define fraudulent and corrupt practices; (iv) List debarred companies on website of PPA; and (v) Monitor attempts of misuse of the provisions of the public procurement law (examples in Annex 2) and cases of collusion.		X	X	MOF/ PPA

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Annex 1. Implementation Status of 2002 CFAA Recommendations

Area	Recommendation in 2002 CFAA	State of affairs end 2005
Budgeting	<p>Strengthening skills of the line ministry staff to undertake programmatic budgeting, now adopted by the Government, by conducting extensive training programs.</p> <p>Specifying clear-cut criteria for selection of capital projects, including specifying technical, economic, financial, environment, and social criteria.</p>	<p>A number of initiatives, funded by various donors, have been taken in this area. A lot of work is still needed before program budgeting can be effectively implemented. Details provided in the PEIR.</p> <p>Some improvements have been observed during the preparation of the 2004 and 2005 budgets but as it is pointed out in the PEIR there is still a lot of work to be done to improve capital budgeting. Details provided in the PEIR.</p>
Treasury and Cash Management	<p>Introducing budget evaluation function for proper evaluation of budget outcomes, thus enabling the results to be factored into the capital budgeting process and also increasing the accountability of project managers.</p> <p>Implementation of the treasury automation project being financed under the PARP.</p> <p>Computerization of employee payroll by creating centralized and secure employee database.</p>	<p>TA is provided through the Public Administrative Reform Project (PARP), DFID and others, but it is a big task to implement fully. Details provided in the PEIR.</p> <p>The project is on-going. It is scheduled to be completed by June 2006 but likely to be delayed till end of 2006.</p> <p>This is comprised in the HRMS part of the ongoing PARP. While not yet fully implemented, the HRMS will gradually start operating in the course of 2006.</p>
Accounting and financial reporting	Build capacity in the Accounting Department (MOF) to prepare consolidated financial statements for the Government.	Consolidated financial statements are produced and audited by SAI as part of the audit of the MOF. A consultancy to assist in introducing the appropriate international standards in the methodology has assisted the MOF with the PARP. This was a PRSC III trigger.

Area	Recommendation in 2002 CFAA	State of affairs end 2005
	<p>Enact a new law on accounting clearly differentiating between banks, insurance companies, listed companies, non-listed companies, and other entities for determining applicable accounting standards.</p>	<p>Law has been adopted by Parliament in 2004.</p>
	<p>Uniform and integrated accounting and reporting software in budget spending units that will use the same database as the Treasury and adhere to the one transaction – one data entry – one record principle.</p>	<p>This is not yet planned as the Government wants to await the benefits from the computerized treasury system. The issue of uniform and integrated accounting and reporting is also covered by the 11 recommendations of the PARP Public Accounting Consulting services (see above)</p>
Internal control and internal audit	<p>Enact Law “On the internal audit in the public sector”</p> <p>Strengthen internal controls including internal controls in the treasury. Strengthen treasury cash management function, more specifically by establishing daily reconciliation of district treasury payment requests with the reimbursement by the Bank of Albania to the agent banks, and by daily reconciliation between revenue collections transferred by the agent banks with the taxpayer filled payment forms.</p> <p>Strengthen internal audit capacity by establishing effective internal audit structures in the line ministries, preparing rules and methodology for conducting internal audits in the public sector, and providing extensive training to the internal audit staff. In addition, strengthen capacity of HSC by pursuing twinning arrangements with a well-established SAI in the region.</p>	<p>The Law on Public Sector Internal Audit was approved in February 2003. In 2004, the COM issued an internal audit manual mandatory for Government Internal Audit Units (IAUs) (COM Decision no. 345/2004).</p> <p>Though this is a PRSC condition, progress has been modest due to lack of reporting from the manual systems used by the treasury offices and lack of commitment from the agent banks involved. PIFC policy paper issued and will be assisted by EU.</p>
		<p>Internal audit structures are established and reporting done on a regular basis. Comprehensive training has been undergoing since 2004 onwards as part of the CARDS 2001 project. The EU has also supported the SAI with twinning funded from Phare 1999 and is also planning to provide support through CARDS 2004. Both the internal audit training and twinning arrangements were PRSC III triggers.</p>

Area	Recommendation in 2002 CFAA	State of affairs end 2005
External audit and scrutiny	<p>Strengthen internal audit capacity within the Social Insurance Institute (SII) and introduce computerized pension and accounting systems in districts.</p> <p>Strengthen the Parliamentary Commission on Economic, Finance, and Privatization (CEFP) to provide effective oversight over the executive arm of the Government by building research and analytical capacity and by providing exposure to internal best practices in the legislative scrutiny.</p> <p>Improve audit capacity in dealing with Bank-funded projects.</p>	<p>This was discussed in the context of the preparation of PRSC III. Audit has been performed.</p> <p>This is still a weak area in need of support.</p> <p>Concrete actions are considered in connection with preparations of new investment projects</p>

Annex 2: Case Examples from Sectors and Lessons Learned

Case Example 1: Single Source Procurement in Construction of Railway Project (Not Bank-funded)

There is a provision in the law where by the council of Ministers can decide to waive the application of law on a case-by-case basis. An attempt was made to award a high-value contract (\$280 million) for construction of a railway line linking Durres, Tirana and the airport by Direct Contracting. This was objected to by the Bank as being not in accordance with the Public Procurement Law and finally not awarded

Lesson learned: the condition for use of direct procurement needs to be defined more clearly to prevent its misuse and attempts of “State Capture” to be watched.

Case Example 2: Publishing Limit Funds in Purchase of Electricity

During 2005, a procuring entity called a number of tenders to purchase a public utility. This failed due to insufficient number of bids (at least 2 bids as required under PPL for open tenders). In order to accommodate the needs of this procuring entity, the PPL was amended through a normative act, (given the emergency situation). The normative act envisaged removal of limit fund from the Invitation for Bids as one of the main reasons for failure of repeated tenders. Though PPL was amended for this purpose the new tender failed. Given the high need for that utility, the Government allowed use of a number of direct procurements. During last tender, seven foreign firms and one domestic submitted bid but only six of the candidates were qualified.” The tender commission has decided to consider valid the offers submitted by six companies only. Since none of the bidders offered price for total quantity under each lot, the bid evaluation commission ranked the offers by price for each of the three quarters. The procuring entity will sign contracts with the suppliers based on the demand, starting with the bidder that offered the lowest price and then go to the second and third ranked bidders. The PPL of Albania treats public utilities as other goods. Under such conditions, it is advisable that public utilities are not procured as “common” goods but separately, through a directive or a separate chapter in the PPL.

Lesson learned: Amend Implementing regulation to that requires disclosure of Limit Funds (Estimated Cost) in tender notices. To watch incidences of Direct Procurement.

Case Example 3: Procurement in Lots for Textbooks

Last year the Ministry of Education and Science organized the tender for the purchase of the textbooks for grades 5, 6, 7 and 8 of primary education. The textbooks were procured in lots divided by grade for example: one supplier was awarded the contract for all textbooks of grade 6. Supplier for grade 6 failed to deliver textbooks on due time, affecting the program of children of that grade for a considerable part of the academic year. Lesson is that though they did slicing by lots, the slicing and packaging was not done properly. Slicing should have been done by subject, say mathematics for all grades and this would not jeopardize the viability of academic year for that grade.

Lesson learned: To do packaging and slicing of contracts in a practical way that meets the needs of the users.

Case Example 4: Splitting of Contracts for Water Enterprise and Drainage Project

In one of the Bank-financed projects in Albania, a review was conducted for expenditures incurred by the Water enterprise and Drainage Boards using Government money by following PPL. It was found that poor procurement and weak supervision led to overcharging and waste of scarce financial resources in the Ministry of Agriculture, Food and Consumer's Protection; In civil works the procurement was split into small contracts and possibly there was collusion among bidders, leading to contracts over-priced by about 20 percent compared to internationally funded projects; some of the item purchased were procured with a price of more than 9 times of market prices; tenders typically attracted only 3 bidders; winning bids were within 98 percent of the budgeted amount available and rarely did any bidder win more than one contract per year; lowest bids was about 99 percent of the budgeted amount, pointing out possible collusion among bidders.

Lesson learned: Bank should build capacity in the administrative ministries to carry out procurement effectively and transparently through suitable training. Cases of collusion to be watched.

Case Example 5: Technical Specifications for a Judicial Reform Project

It was found in one of the World Bank-funded projects that for refurbishment of office premises as part of procurement of furniture several items such as flower vases, paintings were included in the Bill of Quantities. Proper procedure of International Competitive bidding was followed but technical standards and specifications for certain items were not indicated in the bidding document.

Lesson learned: Department could have made better use of credit funds and technical specification should have been written clearly for all items. There is also a need for developing technical standards for all categories of goods and works.

Annex 3: Albania-Public Procurement System at a Glance			
BASIS of Rating: OECD/DAC–World Bank Indicators			
	Indicator Score	Average Score	Pillar Average
Pillar I – Legislative and Regulatory Framework			
Indicator 1. Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.		2.5	2.2
Sub-indicator 1(a) - Scope of application and coverage of the legislative and regulatory framework.	3		
Sub-indicator 1(b)- Procurement Methods	2		
Sub-indicator 1(c) - Advertising rules and time limits	3		
Sub-indicator 1(d) - Rules on participation and qualitative selection	3		
Sub-indicator 1(e) - Tender documentation and technical specifications	2		
Sub-indicator 1(f) - Tender evaluation and award criteria	3		
Sub-indicator 1(g) - Submission, receipt and opening of tenders	3		
Sub-indicator 1(h) - Complaints	1		
Indicator 2. Existence of Implementing Regulations and Documentation.			
Sub-indicator 2a) - Implementing regulation that provides defined processes and procedures not included in higher-level legislation	2		1.8
Sub-indicator 2(b) - Model tender documents for goods, works, and services	2		
Sub-indicator 2(c) - Procedures for Prequalification	2		
Sub-indicator 2d) - Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion.	1		
Sub-indicator 2(e) - User's guide or manual for contracting entities	2		
Sub-indicator 2(f) - General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements	2		
Pillar II. Institutional Framework and Management Capacity			
Indicator 3. The public procurement system is mainstreamed and well integrated into the public sector governance system.		1.3	0.8
Sub-indicator 3(a) - Procurement planning and data on costing are part of the budget formulation process and contribute to multiyear planning	1		
Sub-indicator 3(b) - Budget law and financial procedures support timely procurement, contract execution, and payment.	1		
Sub-indicator 3(c) - No initiation of procurement actions without existing budget appropriations.	2		

Sub-indicator 3(f) - Systematic completion report are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	1
Indicator 4. The country has a functional normative/regulatory body.	1.0
Sub-indicator 4(a) - The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.	2
Sub-indicator 4(b) - The body has a defined set of responsibilities that include but are not limited to the following:	1
Sub-indicator 4(c) - The body's organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities.	1
Sub-indicator 4(d) - The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions. (Due to the nature of this sub-indicator, scoring is either a 3 or a 0).	0
Indicator 5. Existence of institutional development capacity.	0.3
Sub indicator 5(a) - The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information.	0
Sub-indicator 5(b) - A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.	1
Sub-indicator 5(c) - The country has systems and procedures for collecting and monitoring national procurement statistics.	0
Sub-indicator 5(d) - Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.	0
Pillar III. Procurement Operations and Market Practices	1.2
Indicator 6. The country's procurement operations and practices are efficient.	1.3
Sub-indicator 6(a) - The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.	1
Sub-indicator 6(b) - The procurement training and information programs for government officials and for private sector participants are consistent with demand.	1
Sub-indicator 6(c-e) - Administrative system, code of conduct, oversight, signature control and record keeping	1
Sub-indicator 6(f) - There are provisions for delegating authority to others who have the capacity to exercise responsibilities.	2
Indicator 7. Functionality of the public procurement market.	0.8
Sub-indicator 7a) - There are effective mechanisms for partnerships between the public and private sector.	0
Sub-indicator 7(b) - Private sector institutions are well organized and able to facilitate access to the market.	0
Sub-indicator 7(c) - There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market.	1

Sub-indicator 7 (e) - There are clear and transparent rules for determining whether to engage international or national markets, based on a sound development and business logic.	2	
Indicator 8. Existence of contract administration and dispute resolution provisions.	1.7	
Sub-indicator 8a) - Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.	1	
Sub-indicator 8(b) - Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.	2	
Sub-indicator 8(c) - Procedures exist to enforce the outcome of the dispute resolution process.	2	
Pillar IV. Integrity and Transparency of the Public Procurement System	0.9	
Indicator 9. The country has effective control and audit systems	1.0	
Sub-indicator 9a) - A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.	1	
Sub-indicator 9b) - Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.	1	
Sub-indicator 9(c) - The internal control system provides timely information on compliance to enable management action.	1	
Sub-indicator 9(d) - The internal control systems are sufficiently defined to allow performance audits to be conducted.	1	
Sub-indicator 9(e) - Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.	1	
Indicator 10. Efficiency of appeals mechanism.	0.4	
Sub-indicator 10b) - Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	1	
Sub-indicator 10(c) - The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed.	1	
Sub-indicator 10(d) - The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information.	0	
Sub-indicator 10(e) - Decisions are published and made available to all interested parties and to the public	0	
Sub-indicator 10(f) - The administrative review body or authority is independent from the regulatory body, executing agency, and audit/control agency	0	
Indicator 11. Degree of access to information.	1.0	
Sub-indicator 11a) - Information is published and distributed through available media with support from information technology when feasible.	1	
Sub-indicator 11(d) - There is clear legal basis providing access to information for the public.	1	
Indicator 12. The country has ethics and anticorruption measures in place.	1.1	

Sub-indicator 12(a) - The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.	2
Sub-indicator 12(b) - The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.	2
Sub-indicator 12(c) - Evidence of enforcement of rulings and penalties exists.	1
Sub-indicator 12(d) - Special measures exist to prevent and detect fraud and corruption in public procurement.	1
Sub-indicator 12(e) - Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.	0
Sub-criteria 12(f) - The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	1
Sub-criteria 12(g) - Existence of Codes of Conduct/Codes of Ethics for participant that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions.	1

Annex 4: National Competitive Bidding—Good Practice versus Actual Practice in Albania

Good Practice Provision	Status in Albania
<p><i>Eligibility</i></p> <p>Any firm, national or foreign can participate in the tendering process except if the firms are excluded by legal provisions:</p> <ul style="list-style-type: none"> • On corruption charges prosecuted and found guilty in court, including any appeals process. • Prohibition of commercial relations with the country of the participant. • Adherence to the UN Security Council Sanctions 	<ul style="list-style-type: none"> • There are no primary or secondary boycotts known by law. • Companies charged with corruption charges are excluded from participating in government tenders; • Companies which are debarred for a certain period can not participate in tenders;
<p><i>Registration.</i></p> <p>Registration requirement acceptable if all those who wish to register (nationals or foreign) can do so at any time before contract award. The registration system should not constitute a barrier to participation and should not discriminate. Registration should not substitute publicity in wide circulation media. Registration must remain open and accessible during the bidding process.</p>	<p>Registration is not a requirement to participate in the bidding according to Albanian legislation</p>
<p><i>Publicity</i></p> <p>Must advertise in a national circulation news paper or in a unique government web site freely accessible.</p>	<p>For domestic open tendering, the invitation for bids should be published in at least two newspapers of national circulation. Invitations for bids are also published in PPA website and Public Procurement Bulletin which is published every 5 days.</p>
<p><i>Prequalification</i></p> <ul style="list-style-type: none"> • All those pre qualified should be invited (except in the case of short lists of consultants where pre selection is acceptable or in restricted procurement.) • Criteria should be of the pass/fail type precisely defined 	<ul style="list-style-type: none"> • There are no prequalification official lists. All pre qualified firms are invited to submit tenders at the bidding process. • Criteria are of pass/fail type, precisely defined in the pre-qualification documents.
<p><i>Associations between firms</i></p> <p>Firms who wish to bid on their own should not be obliged to associate with any other firms.</p>	<p>No mandatory to join with national firms.</p>
<p><i>Bidding</i></p> <p>Minimum 20 days between advertisement and submission. Short time is a barrier to competition.</p>	<ul style="list-style-type: none"> • Open tendering (domestic)- min 20 days allowed; • Open tendering (international)- min 45 days • Restricted tendering – min 15 days
<p>Bids submitted by mail must be accepted provided that they meet all the other requirements.</p>	<p>The law is silent on the mode of bid submission; in open domestic tenders the bids should be submitted at the time specified in BDs, which can be interpreted as that can not be sent through mail (you can never be sure when it will</p>

Annex 4: Goods Practice Provisions for National Competitive Bidding Vs. Status in Albania

Good Practice Provision	Status in Albania
	arrive); In international open tendering, it can be submitted earlier than the specified time in the BDs, which means that can be sent through mail.
Bids must be opened publicly.	Public opening of bids is stated in the PPL (article 31)
With the exception of late bids that should be returned unopened, all the others must be examined before disqualifying them in accordance with the requirements.	In practice when there are few bids in small procurement, bids are evaluated in presence of bidders at the time of bid opening and if not qualified are rejected.
Preferences should be stated in quantitative predictable terms. Preferences must have an adequate economic justification and should not be so large as to become discriminatory or an effective deterrent to competition.	There is no price preference envisaged by the law.
<ul style="list-style-type: none"> • Evaluation criteria should be quantifiable in monetary terms and must be known before bid submission. • Award criteria must be to the lowest evaluated responsive bid. • Criteria such as to “the most convenient bid to the interest of the government” should not be acceptable. Quantifiable criteria are preferred except when technical proposals are to be evaluated along with price and in the case of consulting services when the use of scored criteria is acceptable. 	<p>The PPL stipulates two criteria for contract award:</p> <ul style="list-style-type: none"> • lowest offer; • Best economically value. <p>Post qualification as process is not clearly stated in the law. In practice qualifications and technical acceptability of all bids are checked and verified. After this, the lowest is selected.</p>
Bracketing or lottery systems detract from economy and rarely result in award to lowest evaluated bid. They also introduce opacity and stifle the complaints process.	Not applicable
Information can be disclosed to those legitimately interested after the evaluation is completed. Due protection for proprietary or confidential financial or other sensitive information must be granted.	By law the confidentiality of evaluation process is regulated through a separate clause (article 33). In practice, one of the main problems is the disclosure of information to bidders during the evaluation process
Negotiations should only be acceptable in exceptional circumstances such as modifications of scope or risk allocation to meet available funds.	There are not legislative provisions to allow negotiations with winning bidder. Since in Albania the limit fund is disclosed, there are no surprises at the bidding time as all the bids are quoted closely below the limit fund.
Provisions for price adjustment should be available for contracts of more than one year of duration.	There is no legislative provision for the price adjustment. In almost 90 percent of the cases, the contracts are less than one year, this linked with the budgeting and limitations in legislation for multi-year contracts.
Use of two envelopes should only be acceptable when price envelopes are submitted after the technical evaluation has been concluded and notified to participants or when priced envelopes are kept secure in a separate place.	Two-envelope system is not envisaged in the PPL or other regulations and is not used.

Annex 5. Comments from Bank's Procurement Legal Department on the Draft Public Procurement Law, Dated April 26, 2006

[Bank's recommendation on the improvements required in the current public procurement laws and implementing regulation is covered in detail under "Actions required for improvement on Legislative and regulatory Framework –Pillar I' in the text of this report.]

It appears that Albanian Authorities have implemented some of our comments without addressing critical issues such as award criteria, types of procedure, consultant services and requirement of subcontracting. On the other hand, other modifications have been introduced that were not necessarily justified such as the removal of "competitive dialogue".

In a nutshell the issues that have been addressed in this new version:

- i. Framework agreements do not appear anymore in this new version
- ii. Secret contracts are now limited in scope
- iii. The functions of the Public Procurement Authority have been revised to avoid a conflict of interest situation
- iv. Non-discrimination is no more based only on nationality
- v. Shorter time-limit for bid submission has been reviewed
- vi. "debarment commitment" in lieu of a tender security has been removed

This new version did not modify the following aspects that should have been revised to ensure a modern, transparent and fair procurement regulatory framework:

- i. Open procedure is not the standard preferred method of procurement
- ii. The use of restricted procedure is not limited by specific conditions; art.24.2 apparently mix the notion of restricted procedure and pre-qualification
- iii. Conditions attached to the use of negotiated procedure may lead to abusive practices
- iv. Design contest is not limited to esthetical projects
- v. Official lists of pre-qualified firms have been maintained
- vi. Award criteria is still either the "lowest price" or the "most economically advantageous tender" and not the "lowest responsive evaluated bid"
- vii. Award criteria include criteria such as esthetic and environmental considerations without consideration for criteria expressed in monetary terms or pass/fail requirements
- viii. It is still unclear if award is notified to unsuccessful bidders
- ix. Subcontracting of third parties may still be imposed by contracting authorities.

Annex 6: List of Persons Met

Klodiana Cankja	Public Procurement Agency
Loreta Krriqi	Public Procurement Agency
Greta Pagra	Public procurement Agency
Fatbardh Kadilli	Advisor to Prime Minister
Neritan Sejamini	Advisor to Prime Minister
Robert Hall	EU Delegation, Albania
Una Kelly	EU Delegation, Albania
David Thompson	USAID, Albania
Suzana Cullufi	USAID, Albania
Sokol Aliko	USAID, Albania
Ermira Mitrushi	Training Institute for Public Administration
Fatmir Demneri	Training Institute for Public Administration
Liam Heaven	CONFIRMEC- CARDS Company
Valerie Robert	CONFIRMEC
William O'Brian	CONFIRMEC
Zamira Caushaj	Ministry of Education and Science
Edi Vesho	Ministry of Health
Agron Tavo	Albanian Center for Mediation and Arbitration
Agron Tyli	Ministry of public Works, Transport and Telecommunications
Fatos Dega	Chamber of Commerce
Iva Seseri	Chamber of Commerce
Vaso Pano	Head of concessions in METE
Alfred Rushaj	Advisor in METE
Juliana Parangoni	KESH
Pjeter Beleshi	Supreme State Audit
Elvana Tivari	Supreme State Audit
Auron Pasha	IDRA (NGO)
Nikoleta Lilo	OSCE, Albania

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