

December 2012

Capacity building in procurement

A sample assessment in the EBRD region



European Bank
for Reconstruction and Development

Abbreviations

CA	Capacity Assessment
EBRD	European Bank of Reconstruction and Development
IFI	International Financing Institution
LTT	Legal Transition Team
MDB	Multilateral Development Bank
PEFA	Public Expenditure and Financial Accountability
RA	Risk Assessment
OECD	Organisation for Economic Co-operation and Development
OL	Operation Leader
PD	Procurement Department

The Procurement Department develops and updates procurement policies, rules and methods. It is also responsible for maintaining a procurement quality assurance system, reviewing complaints and publishing information about procurement opportunities and contract awards.

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Lvov-District
Vik-Bijelina City-of-Skopje Beoland
JAVYS Ukrhydroenergo PUC-Cazin
KEGOC Toplana-NoviSad Lithuania-Post
Aktobe-District Heating Rosmorport
Subotica-Water Russian-Railways
Ukrenergo Directorate-Roads-Sarajevo ARA
OST Elektroprivreda City-of-Tirana
FCNRS Gaz-System Telekom
AIHCB Srbijagas
SERAW

Foreword

It is my pleasure to present this report covering the results of the EBRD's three-year Capacity Building in Procurement Programme including the results of a sample assessment in the EBRD region. The assessment covers work conducted from 2010 to 2012 with the overall objective of assisting Clients in improving procurement performance by carrying out a Capacity Assessment (CA) on procurement, in partnership with selected Clients in the EBRD's countries of operations.

The European Bank for Reconstruction and Development (EBRD) is an international financial institution promoting transition to a market economy in its countries of operations.

The Bank places special emphasis on institutional building in its countries of operations. Public procurement occupies a central place within its overall objective of fostering efficient use of public funds and contributes to institutional strengthening, corporate governance and capacity building.

Sound institutional capacity in procurement for the Bank's Clients is imperative for successful project implementation, the attainment of its objectives and for their sustainability. The Bank is therefore interested in strengthening the institutional capacity of its Clients to administer procurement effectively and transparently and to provide training and assistance to the Clients, to ensure they have the necessary capacity to efficiently implement Bank financed projects.

As a major investor in the EBRD region, the Bank encourages international best practice in procurement to enable efficient investment and thereby provide opportunities for successful transition.

For its part, the EBRD aims to ensure that goods, works and services procured under Bank- financed projects meet international best practice as reflected in the Bank's Procurement Policies and Rules which are aligned with the Government Procurement Agreement of the World Trade Organization.

In addition, the EBRD mission incorporates provision of technical assistance to its Clients to develop and



> Sound institutional capacity in procurement for the Bank's Clients is imperative for successful project implementation, the attainment of its objectives and for their sustainability.

ensure that basic procurement skills and procedures are in place for project implementation and to improve procurement performance. While designing and testing innovative and relevant analytical tools, for this Programme, the Procurement Department noted that data analysed and processed in the review of capacity was an invaluable asset for upstream capacity building of the Client, turning the focus of the CA towards institutional building, reform and modernisation as a matter of good governance. Consequently, institutional capacity assessment on procurement has become the road map for Clients achieving economical, efficient and transparent procurement in a manner consistent with international best practices.


Generally, international public procurement best practice calls for removing elements which reduce the efficiency and economy of public procurement. The Bank's response to this challenge has been to design a sustainable Capacity Assessment Programme including a practical Capacity Assessment Toolkit and Guide that is shared with Clients. This Capacity Assessment Toolkit has been empirically tested and fine-tuned with the participation of almost 30 selected Clients in 11 countries, in years 2010-2012. By and large, this Programme and its corresponding Toolkit focus on the Client's structure, organisation, resources and procurement practices of the institution but also takes into account the characteristics of the specific project. The final outcome of this Programme has

been a comprehensive determination of Clients' compliance in procurement against internationally accepted standards.

This report is the result of an initiative by the Bank's Procurement department that, between 2010 and 2012, implemented an intensive campaign to support procurement capacity building activities. This push came under the Capacity Building and Client Training Programme funded by the Bank's Shareholder Special Fund. However, I would especially like to extend my gratitude to the EBRD countries of operations and Clients that volunteered to actively participate and thus improved our assessment quality and contributed to empirical real life results that constitute the overall value of this report.

The extraordinary professional contribution and commitment offered by officials, Client's experts and individuals reflects the confidence attributed to the EBRD as a partner in the transformation and transition in its countries of operations.

Jan Jackholt, EBRD
Director of Procurement Department

 **Capacity assessment on procurement has become the road map for Clients achieving economical, efficient and transparent procurement in a manner consistent with international best practices.**

Executive summary

Three years ago, the European Bank for Reconstruction and Development (the “EBRD” or “the Bank”) began to implement structured and standardised procurement capacity assessments of its Clients in order to ensure that essential procurement skills and procedures were in place for the successful implementation of projects, and to improve overall procurement performance.

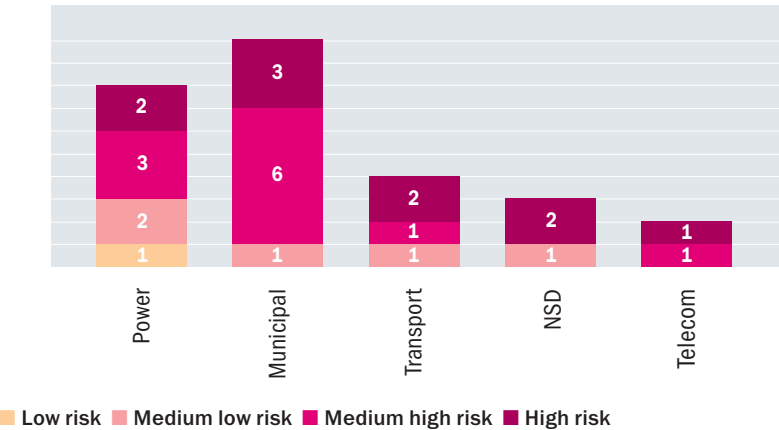
The Programme was guided by the Bank’s strategic objective to secure successful project implementation, recognising that sound institutional procurement capacity of its Clients is central to achieve this goal.

Over these three years, the results from these assessments became an invaluable asset for capacity building by way of applying the lessons to institutional reform and modernisation as a matter of good governance. The Programme has successfully contributed to strengthening the capacity of participant Clients to administer procurement effectively, economically and with increased transparency.

Starting in 2010, the Bank undertook two tasks regarding the assessment of Clients’ procurement capacity: the first was the EBRD Regional Public Procurement Assessment. This assessment was conducted in 2010 with the overall objective of reflecting the status of public procurement reform efforts in the countries of operations, as well as encouraging, influencing and providing guidance for ongoing reform of the public procurement sector. The second task was the capacity assessment and Client training programme in public procurement. This report describes the findings and recommendations of the latter task.

Lessons collected in this report were the result of a joint effort by the Bank staff and the Bank-consultant team.

Risk distribution



The Bank-consultant team produced 18 applications while the Bank-team applied the tool to nine additional Clients.

Over the course of the three years, 27 individual reports prepared for operations teams recorded and assessed Client procurement activities in the region. These reports highlight implementation gaps in the procurement operations of five sectors: Power and Energy, Municipal Infrastructure, Transport, Nuclear Safety and ICT (telecommunications). The assessments were collected through interviews and fieldwork and later used to rate the procurement risk of the Bank's Clients.

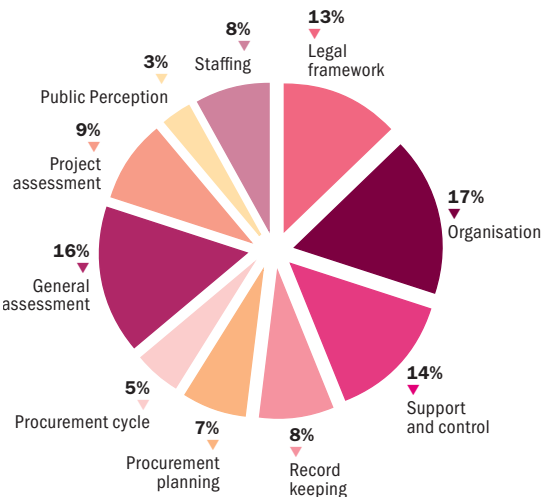
Most Clients in the sample were classified in the higher risk group; fewer were classified as moderately low risk; while one Client met practically all compliance standards, giving a unique opportunity to detail a low risk Client in the Bank's portfolio.

> The capacity assessment toolkit is innovative and easy-to-apply yet flexible to customise to Clients of different institutional size and resources availability.

The assessments also highlighted a large number of areas of opportunity for improvement within the region. The contributing factors to these areas of opportunity are detailed in the main body of this report. The frequency of such areas of opportunity shows that there are several systemic issues in need of improvement, specifically elements of the legal framework, anti-corruption initiatives, organisational arrangements and support and control instruments. These are all elements in which the Bank can proactively influence the procurement function more effectively.

The overall objective of the Programme was to engage the Bank and selected Clients in a capacity building effort in procurement. Secondary objectives included: providing the Bank with an expert toolkit to assess the capacity of public sector Clients, to provide the Bank with a training package to further improve the dialogue with clients in areas of opportunity identified in the assessment, and to provide the baseline of a Bank database about Clients strengths and opportunities in public procurement in the region. The main and secondary objectives were achieved in excess of expectations, as will be presented in this report.

Frequency of areas of opportunity



In order to achieve the technical goals of the Programme, the Bank adopted a simple methodology: to develop and apply a uniform toolkit in a sample of 12 Clients that would allow understanding and consolidate findings and to draw conclusions about the state of procurement governance at the Client level. The toolkit consists of about 60 statements of compliance based on internationally recognised standards. Through a combination of several positive factors, the Programme applied the toolkit in 27 Clients in 11 countries hence enhancing the knowledge base on capacity.

The sample included at least two Clients in each sector of the Bank lending portfolio involving public infrastructure.

The capacity assessment toolkit is innovative and easy-to-apply yet flexible to customise to Clients of different institutional size and resources availability: from small district heating departments to nuclear plant operators. By virtue of this adjustability, the model was successfully applied to all types of Bank Clients

The study went beyond examining the arrangements in place to support public sector projects. The assessment entered into the Clients procurement organisation, protocols and systems for their day-to-day operations as well. One finding is that in spite of Project Implementation Units in charge of the implementation of Bank-financed projects in the region, the procurement process of the projects appears to rely heavily on critical aspects of the Clients' own supply chain management.

Absolute ring fencing of the procurement implementation is not possible and it is not convenient for capacity building. Many steps of the procurement process under the project still must be run through Clients' internal systems and procedures such as legal framework, support and control, planning, filing procedures, auditing and staffing thus imprinting the project implementation with many of the institutional protocols, for example, preparation of tender documents, clarifications and recordings, composition of the tender committee, handling of tenders upon reception, resolution of complaints and so on.

The results of this Programme added positive value to Clients and the Bank. For the Bank, it is an invaluable knowledge asset to gain insight of internal operations and how the project implementation connects with the Clients' organisation drawn by the numerous Client capacity assessment and training carried out under the Programme.

For the Clients, the Programme activities are a unique opportunity to measure their progress in developing stronger procurement capacity against the internationally recognised parameters brought about by the Programme; they also found results from the training provided towards the objective of improving procurement performance.

Taken all together, the results of the study suggest that the Bank's technical assistance should centre on five specific aspects of procurement implementation:

- securing the availability of internal manuals and support systems
- devising methods to monitor and evaluate procurement operations
- supporting the combining of procurement plans and financial management platforms in order to (a) improve management and (b) facilitate monitoring and evaluation
- assisting the development of an anti-corruption strategy to benefit good governance
- strengthening internal and external audit procedures to establish reporting and follow-up practices.

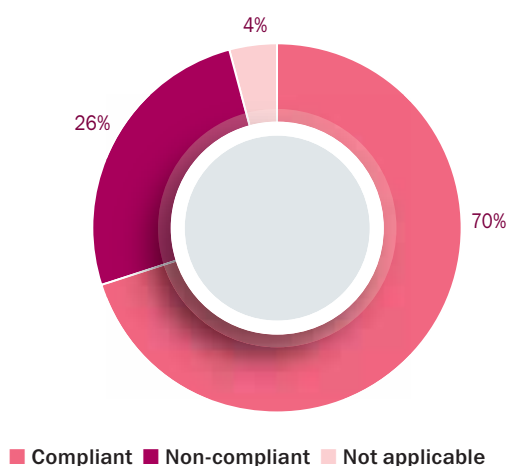
Introduction, objectives and background

Every day the countries in the region, and specifically the countries featured in the Bank's pilot capacity assessment, are taking steps to improve their public procurement performance. This report will provide managers and procurement units of the Bank's Clients with a professional assessment of their current procurement practices. Moreover, it provides a roadmap to improve areas identified as opportunities.

This paper has three main objectives:

- To provide an account of the Bank's mandate to engage in policy dialogue and provide technical advice that builds open and democratic market economies.
- To contribute towards the knowledge base of capacity building in procurement implementation.
- To report on the results of a three-year programme of capacity building activities and associated risk determination assessment designed to improve due diligence when lending to EBRD public sector Clients in the region.

Distribution of scores



The assessment results suggest that public procurement in the region is emerging from a systematic high-risk condition towards better practices. The assessments found numerous examples of improving performance. In particular, there are three encouraging sets of indicators from an enquiry covering more than 1,500 public procurement aspects reviewed in the assessment:

- In 70 per cent of enquiries, the Clients provided explanations leading the Bank team assessors to rate the performance as compliant as presented in the Distribution of scores chart:
- In seven items (11 per cent of the number of items enquired), Clients were compliant at a rate of 96-100 per cent. These items included:
 - a clear legal institutional framework that removes uncertainties of the market
 - the availability of quality legal advice to support procurement decisions
 - the use of standard forms for local procurement to facilitate consistency
 - the clarification processes that are properly recorded and handled quickly using e-mail
 - the production of tender evaluation reports that are clear and plainly explain the reasons for disqualification of contractors and suppliers, particularly those tendering low prices.
- In nine items (15 per cent of the number of items enquired), Clients were compliant in more than 88 per cent of enquiries including:
 - clear procurement laws and regulations
 - adequate filing techniques
 - periodic procurement planning

- evaluation criteria that adhered to terms and conditions in the tender documents
- award to the lowest evaluated and competent tenderer and hold no negotiations
- most disagreements solved amicably and early in the process
- availability of skilled contract managers
- no recurrent issue with closure procedures and final payment.

On the other hand, there are six items (10 per cent of items enquired) for which there is still a long way to go until Clients reach international standards. The most significant aspects relate to the lack of a clear anti-corruption strategy. In this category, between 55 per cent and 62 per cent of the Clients failed to comply. Specifically they fell short with:

- a lack of debarment practices at the agency level or elsewhere in the country
- no clear anti-corruption framework in place

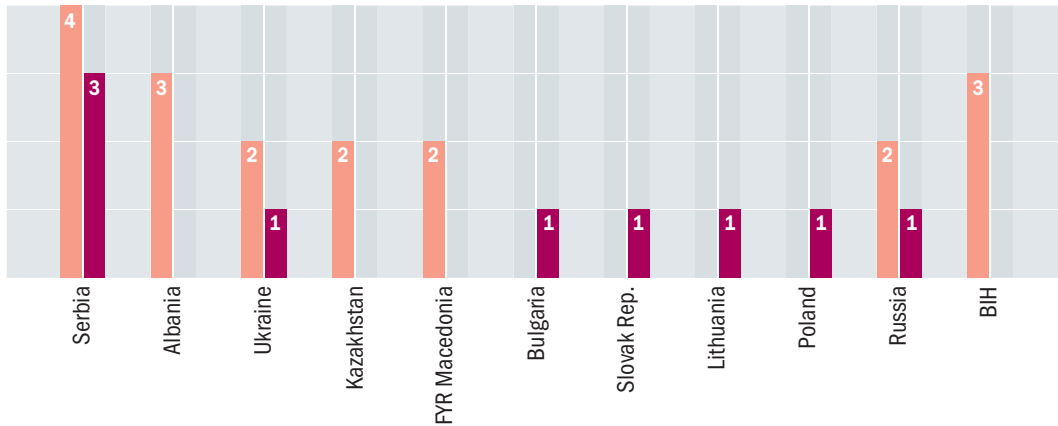
- a lack of whistle-blowing mechanisms
- the absence of an anti-corruption strategy in specific regards to combating fraud, bribes, and collusions or any elements of such a strategy reflected in the tender documents
- a lack of skills needed to identify collusive arrangements.

Good practices may be canalised to projects within the country and within the region if the Bank acts as the change agent.

The capacity assessment mechanism detailed in this report will help with that purpose. In effect, by recording and reporting the results of the capacity assessments, the Bank is providing a snapshot - or a baseline - of the current procurement capacity in the region, thus facilitating the monitoring of how capacities evolve over time.

The findings of this report are based on 27 applications in 11 countries of the assessment toolkit and 15 Client training activities provided by two teams: Bank-consultant team and a Bank-staff team.

■ Bank-consultant team (18) ■ Bank-staff team (9)



EU member countries are not eligible under the Shareholder Special Fund.
No expenses of the Fund were incurred by the Programme in such countries.

Objectives

Between 2010 and 2012, the Bank implemented an extensive campaign to support procurement capacity building activities. This push came under the Capacity Building and Client Training Programme funded by the Shareholder Special Fund.

The programme was guided by the strategy statement: a sound institutional procurement capacity combined with motivated and well-informed contractors, suppliers and consultants is fundamentally important for successful project implementation.

The programme has successfully strengthened the capacity of its Clients to administer procurement effectively, economically and with increasing transparency.

> One of the more significant findings to emerge from this study is that Clients in the sample comply with high international standards in about 60 per cent of the cases, hence giving confidence that the procurement implementation capacity in the region has evolved towards government procurement systems more aligned to best practices.





The overall objective of the campaign was to develop a sustainable Capacity Assessment Programme that will enable the Bank to achieve six specific goals:

- Evaluate the adequacy of current systems to administer procurement (goods, works, services and consulting services) in general and Bank-financed procurement in particular.
- Assess the competitiveness of Clients' sector operations.
- Assess the risks (institutional, political, organisational, procedural and so on) that may negatively affect the ability of the Client to carry out the procurement process including the identification of practices unacceptable for Bank-financed projects.
- Develop a plan to address deficiencies detected by the capacity analysis and to minimise these risks as necessary.
- Link the Bank's procurement supervision plan for the operation with consideration to the relative strengths, weaknesses and risks identified by the assessment.
- Develop material for a comprehensive and sustainable Client Training Programme.

Background of this study

To date, there has been little agreement on the true capacity of the Clients to deliver government procurement activities.

The past decade has seen the rapid development of laws and regulations overseeing procurement in the region.

Debate continues about the impact of these new laws on the actual and practical performance of government procurement operators. Central to the transformation of these nations into modern market economies is government procurement.

The capacity assessment programme presented in this study is a unique opportunity to shed light on the discussion.

The pages that follow will attempt to demonstrate that changes in government procurement practices (specifically in staff capacity, system availability, procurement unit organisation and other aspects of the procurement function) that have taken effect over the past decade are now measurable against internationally accepted standards. Moreover, there has been a marked improvement in conducting procurement processing or tendering.

In particular, it will be demonstrated that the study has been instrumental for the Bank to define strategies in procurement needed to support transition economies toward better procurement implementation.

1

Chapter



Procurement capacity assessment

1.1 Introduction

Procurement capacity assessments of Clients by multilateral development banks (MDBs) and International Financing Institutions (IFIs) became structured and standardised in 2000 in an attempt to establish a more objective methodology to determine whether basic procurement skills and procedures were in place at the time of project implementation. This qualitative method was created in response to a demand by stakeholders to enable measurement of project's procurement performance.

The capacity assessment of other fiduciary responsibilities such as financial management and safeguards also began adopting structured forms and checklists. Initially, these checklists aimed to identify whether the prospective Client had knowledge of the IFIs' procurement guidelines. At that time, two or three days of dedicated staff work were considered sufficient to determine if a Client possessed the skills, resources and systems to take up procurement responsibilities under a prospective project.

Around 2004, MDBs and IFIs adopted the procurement plan as a mandatory requirement to guide procurement implementation. The procurement plan thus became a management tool rather than a simple report. As time went on, the guidelines for procurement financed by the IFIs evolved to include a section on procurement planning. Subsequently, with the increased use of electronic procedures in procurement and the integration of budget and cost controls, instructions were added in the assessment to verify the level of integration of such systems.



By 2006, development agencies (MDBs and IFIs) added requirements regarding fraud and corruption into their procurement rules, which led to further additions in the capacity assessment checklist. In 2008, the OECD- DAC released a methodology awarding points to the assessment of the country clients' procurement systems.

At about the same time, a detailed implementation audit for one of the development banks in India raised awareness regarding the need to ensure that contract management issues be identified early in the capacity assessment.

Increased use of risk assessment by the MDBs and IFIs to allocate scarce supervision resources in a manner consistent with the fiduciary and reputation risk, added the requirement to conclude evaluations with a risk-based assessment.



> The EBRD procurement capacity tool developed under this Programme is a simple but effective package of fact-finding that will provide a comprehensive picture of the Client's institutional capacity to implement procurement and to define an action plan.

Notably, the detailed identification of both strengths and areas of opportunity led to the practical use of the report as a tool to define action plans to improve the procurement function of the Client beyond that of the project organisation.

Subsequently, the MDBs and IFIs understood that data analysed and processed in the assessment was an invaluable asset for capacity building, and could be further utilised towards institutional reform, modernisation and other matters of good governance.

Consequently, it is not surprising that the state-of-the-art tool in capacity assessment in public procurement is a detailed (and quantifiable) list of questions, data, compliance standards and rating of more than 150 parameters gauging all aspects connected to procurement implementation with a scope that ranges from legal frameworks to risk assessment of the Client system.

In the last ten years since applying these procurement capacity assessments, many conclusions can be drawn. One is that the extent of the review and the details offered by the assessments would definitely not determine institutional willingness or political will to commit to reformation and system modernisation.

The results produced by an extended capacity assessment report may be useful if and when the institution wishes to invest in improving several of the categories of the review simultaneously.

Often, a simpler review would allow a qualified assessor to point out critical aspects impeding good procurement practices. Shorter assessments will also facilitate the formation of an action plan with proposed solutions and mitigating measures as well as instilling procedures that were overlooked (or disregarded) in the past that are frequently critical to the procurement performance. For example, the handling of complaints, a procedure considered critical to the quality of government procurement, but was often overlooked by Clients.

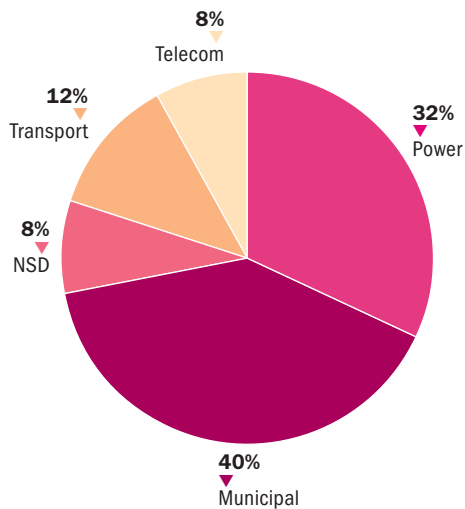
The EBRD procurement capacity tool developed under this Programme is a simple but effective package of fact-finding that will provide a comprehensive picture of the Client's institutional capacity to implement procurement and to define an action plan (and additionally, a supervision plan consistent with the risks). It also identifies the level of procurement preparedness to undertake the project implementation.

In 2009, with those concepts in mind, the EBRD decided to make a meaningful contribution to Client capacity trends by developing its own capacity assessment methodology and toolkit.

Between 2010 and 2012, an EBRD team conducted 27 applications of the adopted capacity assessment methodology in member countries as follows: Albania, Bosnia and Herzegovina, Bulgaria, Former Yugoslav Republic - FYR Macedonia, Kazakhstan, Lithuania, Poland, Russia, Serbia, Slovak Republic and Ukraine. The distribution of those applications by sector is presented in chart 1.1.



Chart 1.1
Distribution of applications by sector



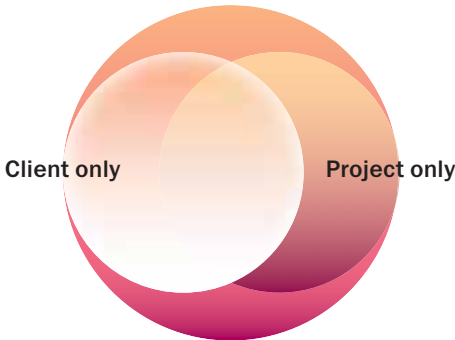
1.2 The role of capacity assessment in the Bank

The Bank places special emphasis on institution building in the countries in which it operates. Public procurement occupies a central place within the overall objectives of fostering efficient use of public funds to strengthen institutions, good corporate governance and capacity building.

Sound procurement capacity for the Bank's Clients is imperative for successful project implementation and sustainability. The Bank is understandably interested in strengthening the institutional capacity of its Clients to effectively and transparently administer procurement, and to provide training and assistance to efficiently implement Bank-financed projects.

The Bank developed its own methodology to assess capacity in procurement. The model is known as "CA" (Capacity Assessment); the model looks either at the national procurement or the project financed by the Bank or both.

Chart 1.2
Capacity Assessment



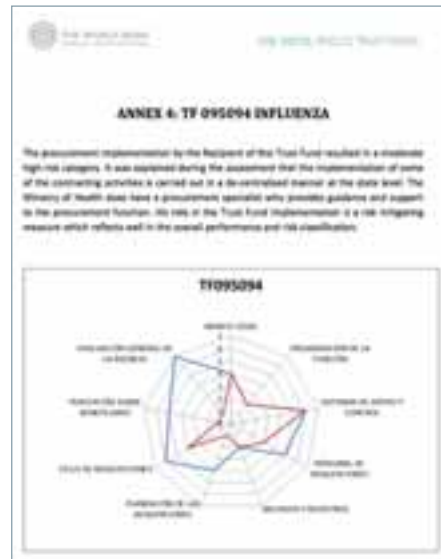
62 items in 9 categories

- **Project Assessment**
51 items in 9 categories
- **Client Assessment**
52 items in 8 categories
- **Project and Client**
37 items in common

1.3 Consistency of the instrument with good practices

Number-based performance models are commonly used to assess fiduciary responsibilities in the "IFI" domain. PEFA¹ in financial management and the methodology of OECD-DAC to assess government procurement have proven the benefits of using this quantifiable approach, namely minimising subjectivity and effectively convincing Clients of the results of the assessment. In the Bank, the CA assessment and the Legal Review of the Procurement Laws and Regulations in the region followed the same path by adopting numerical models.

The screenshot shows a table with columns for 'Client only', 'Project only', and 'Both'. The table contains various rows of data, including 'Project Assessment' and 'Client Assessment'.



¹ Public Expenditure and Financial Accountability:
<http://www.pefa.org/>



Between 2011 and 2012, in collaboration with the Bank, the World Bank's procurement units for Latin America and the Caribbean (for trust funds) and UNDP developed risk determination toolkits largely along the lines of the EBRD capacity assessment toolkit.

These two sister organisations adopted for their own capacity assessment utilising similar methodologies that quantifies both strengths and areas of opportunity, affirming that this number-based methodology as a best practice in this field.

1.4 How to establish a meaningful dialogue with the Client on capacity building

The CA application is the gateway to a sound dialogue between the Bank and its Clients to improve procurement capacity. It holds true that many beneficiary Clients have aligned their national rules and regulations to the EU directives in procurement. However, there remains a gap between intended rules and practical decisions taken by operators that have only three or four years of experience implementing procurement under new governmental rules.

This study provides both an account of, and the reasons for, the gap between law/regulations and actual implementation. This two-fold approach is also recommended by the OECD-DAC methodology to assess government procurement. The evaluation should analyse the systems critically, but should also practically test the statements of compliance to corroborate veracity and actual implementation.

Chart 1.3



Within the time limitations of these live dialogues with Clients, the CA team was able to develop practical applications from the procedures by looking into procurement plans, manuals, tender documents, evaluation reports and actual filing systems.

Clients graciously acknowledged that the best practices—many times represented by the EBRD PP&R—differentiated from the EU directives in procurement and national procurement rules. The next chart representing variations in the procurement cycle was always well received:

Debate continues about the best strategies to assess Client capacity in a cost-effective manner. Sister organisations such as the World Bank, for example, invest heavily during project preparation to assess the capacity of their borrowers. While the UNDP assesses data from the information systems of the de-centralised offices. Other units in the EBRD run questionnaires with Clients. The CA team opted for a model consisting of a two-day site visit by a team, at times composed of three members, but generally represented by a senior procurement specialist and a procurement consultant.

Chart 1.4

■ National Rules ■ EBRD Rules ■ EU Rules



EBRD Regional Office staff and operations leaders assisted with early contacts with Clients. Actions included the facilitation of interpreters, translation of key documents and forwarding agenda and introductory materials to Clients in advance. Copies of all presentations, briefing and de-briefing materials and a suggested work plan for the improvement of the procurement function were always left behind with the Clients.

This structured, professional and respectful approach to the Clients was well received and proved to be an effective model to establish and maintain a meaningful dialogue about the procurement function. This remains one of the most relevant accomplishments of the EBRD in improving procurement capacity, in part due to the fact that Clients readily take ownership of the assessment outcome and welcome its results.

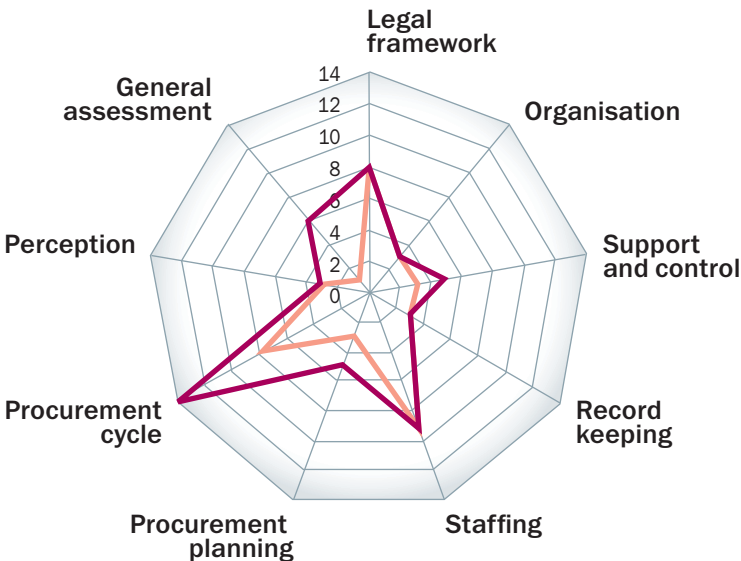
1.5 Assessment toolkit

By and large, the toolkit focuses on the Client's structure, organisation, resources and procurement practices, but will take into account the characteristics of the specific project.

The compliance degree will be determined by comparing the Client's characteristics against a minimum standard of compliance, customised for each client or sector. The exercise will require that the Client provide self-assessed input elements, thus gaining ownership of the assessment. The legal framework assessment will rely on existing recent reports such as CPAR, OECD-DAC, PEFA to avoid duplication.

The assessment model includes compulsory items that require Clients' full compliance with specific standards in order to be considered apt to manage the procurement processes.

Chart 1.5

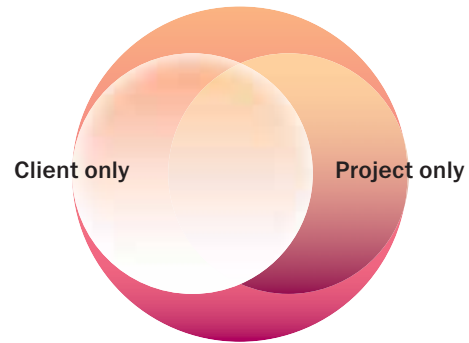


By using simple 'yes' or 'no' answers, the assessment minimises subjectivity. The application of the assessment tool generally requires one day of work from an experience and specialised assessor.

The design of the toolkit is consistent with another tool used by the Bank to evaluate commercial law in the countries of operation².

The model used in the CA follows a similar set of procedures: the procurement cycle is broken up into 62 items; benchmarks are provided by the OECD-DAC methodology; Clients are evaluated on a 'yes' or 'no' basis against the benchmark; results are converted into points; accrued points will determine the risk of the Client in conducting procurement while identifying areas of opportunity for improvement.

Chart 1.6
Capacity Assessment



62 items in 9 categories

- **Project Assessment**
51 items in 9 categories
- **Client Assessment**
52 items in 8 categories
- **Project and Client**
37 items in common

The assessment model used by the EBRD to evaluate commercial law has five stages

- Establish international best practices
- Produce benchmarks
- Translate benchmarks into a questionnaire
- Recalculate questionnaire into a numeric database
- Use this database as basis for evaluation

Page 14 of EBRD Public Procurement Assessment Review of laws and practice in the EBRD region

²Public Procurement Assessment Review of laws and practice in the EBRD region 2011

1.6 Gap analysis

A supply chain is a system of organisations, people, technology, activities, information, and resources involved in providing Clients with the inputs (materials and services) needed to deliver outputs (government services to customers).

Under a Bank-financed project, EBRD Procurement Policies and Rules (PP&R) regulate such procurement activities, which normally include open international tendering for larger works, and other simpler methods for smaller procurement activities.

The institutional framework that supports the procurement processing (internal control framework, filing practices, training, anti-corruption measures, support systems and so on.) is subject to the capacity assessment.

The assessment will test the capabilities of the Client to conduct international procurement consistent with best practices and the PP&R. When there is a deviation or gap from the Client's practices and the internationally recognised standards of compliance in any aspect of the assessment, there is an area of opportunity for improvement.



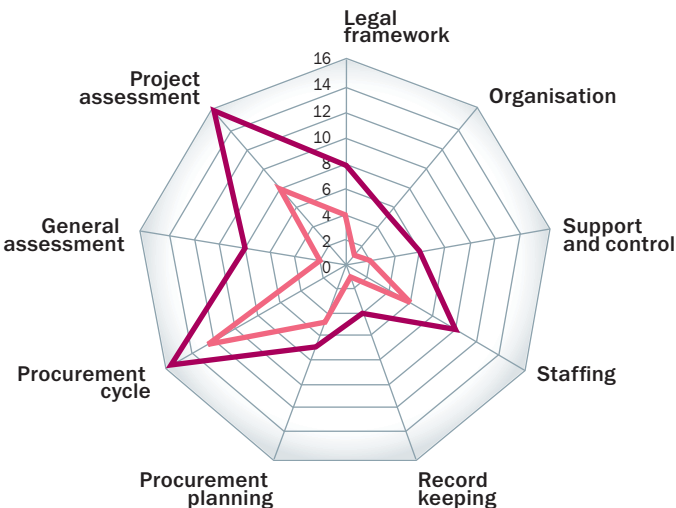
The depth of these gaps along the supply chain is represented by the difference between the maximum possible score and the score given by the assessor. This calculation can be visualised in the spider web chart below.

The methodology used by the Bank to assess Client capacity is consistent with best international practices in the field. Results are quickly converted into numerical results, charts and risk levels that are easily understood by the Clients. One of the most effective visual tools provided by the toolkit is the gap chart that pinpoints both strengths and areas of opportunity within the Client's supply chain.

Chart 1.7
Depth of gap to determine priorities

- Inner line is assessment of Client agency
- Outer line is maximum score attributed by best practice

Generally best practice is OECD relevant indicator of public procurement



1.7 Action plan

The toolkit is used to determine an action plan that includes proposed solutions and mitigating measures, for example, instilling new procedures, adopting systems or fine-tuning existent instructions in order to reach better practices.

The action plan is a joint effort undertaken by the Client and the Bank team to improve procurement performance. The suggested action plan, if accepted by the parties, constitutes the roadmap for improvement.

1.8 Example of suggested action plan

The following is an example of a five-point suggested action plan for a Client that was determined to be moderately high-risk:

An important caveat must be mentioned about the suggested action plan. The action plan includes a list of possible resources needed to implement the suggested ideas; as a good practice, the action plan includes an estimated cost of such actions.

The list of resources or the cost estimate will not imply endorsement or further commitment of the Bank to support the implementation of such a plan through lending or technical assistance.

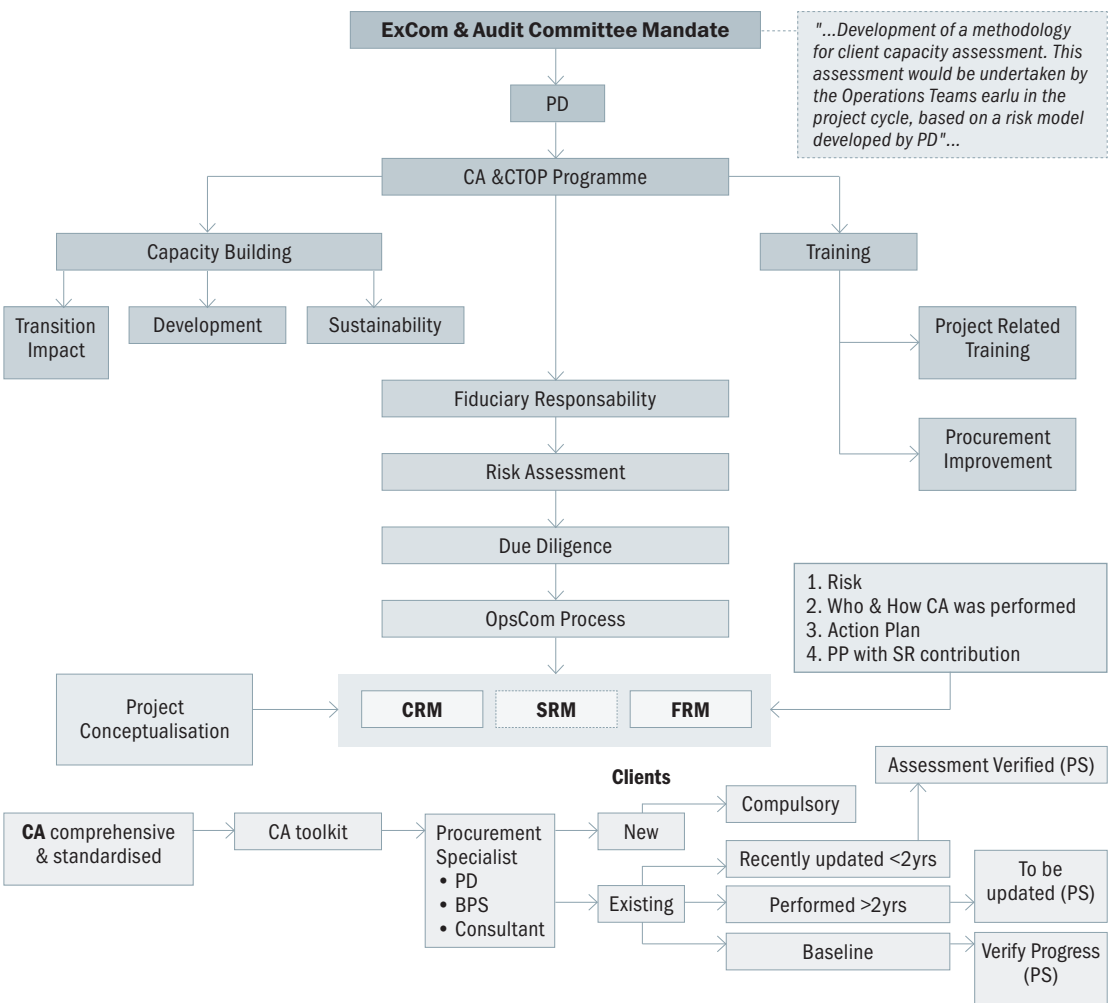
The plan with or without cost may be useful to the Bank's Client to catalyse other sources of funding to invest in the suggested or other similar ideas which, in fact, would make sense only if accepted or approved by the relevant authorities within the institution.

	Issue	Risk	Mitigating measure	Bank support	Time frame	Resources	Cost
1	No preventive measures against corruption	Corruption acts inadvertent	Campaigns, posters, codes, disclosure, debarment policy, complaints register, anti-collusion drives	Examples and guidance	1 year	Consultant	€ 20k
2	Procurement planning not a management tool	Evaluation monitoring	Adopt a system	Advice	1 year	Consultant	€ 20k
3	No price, procurement or contract management monitoring systems	Surprises, over cost, delays	Adopt systems	Advice	1 year	Consultant	€ 40k
4	Procurement methods chosen case by case	Transparency, efficiency	Training and changes in format of procurement plan; need to integrate to financial platform	Advice	Six months	Consultant	€ 10k
5	Procurement processing need improvements	Consistency, economy	Training and manual; qualification criteria, appointment of members of tender evaluation committees	Advice	Six months	Consultant	€ 20k

1.9 Assessment is part of the Bank's due diligence

As of 1 July 2011 the EBRD has incorporated the CA method for the procurement assessment and has deemed it mandatory for all operations involving public procurement unless the operations leader (assisted by an experienced procurement specialist) justifies that earlier assessment or knowledge is equivalent to the objectives sought by the toolkit application.

> The action plan is a joint effort undertaken by the Client and the Bank team to improve procurement performance.

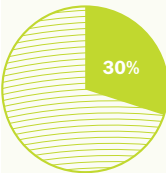


1.10 Sample of countries and projects

EBRD Annual Report 2011

EBRD COMMITMENTS BY SECTOR 2011

CORPORATE



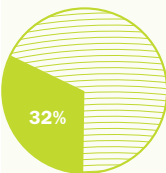
Agribusiness, manufacturing and services, property and tourism and telecommunications.

ENERGY



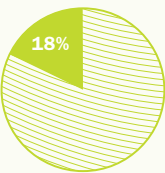
Natural resources and the power sector.

FINANCIAL INSTITUTIONS



Investments in micro, small and medium-sized enterprises via financial intermediaries.

INFRASTRUCTURE



Municipal environmental infrastructure and transport.

The selection of the Clients used in the study followed a judgmental sampling method. Judgmental sampling is a process in which selections are made subjectively rather than statistically or randomly.

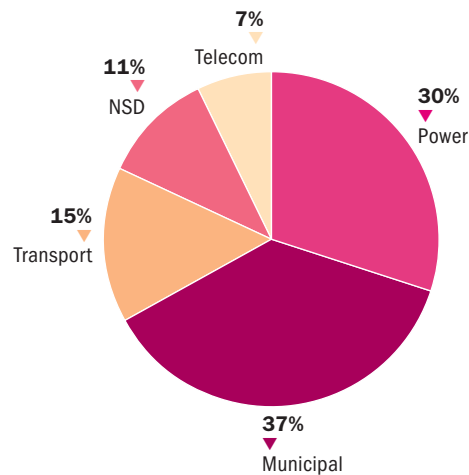
The sampling relied solely on the Bank's judgment and was guided by three "tests":

- a cross sector test to ensure that countries and sectors were represented in the sampling
- a purposive test to include countries and projects that management considered were facing difficulties in implementing procurement
- a convenience test in response to the demand of countries and projects to apply the assessment tool.

> The results produced by an extended capacity assessment report may be useful if and when the institution wishes to invest in improving several of the categories of the review simultaneously.

The sampling set out to determine a distribution by sector³ as illustrated in the next chart:

Chart 1.8
Distribution of applications by sector



³ EBRD sectors are: agribusiness, natural resources, climate finance, nuclear safety, equity funds, natural resources, power & energy, financial institutions, property & tourism, legal reform, information technology, manufacturing and services, transport and municipal infrastructure. Those sectors included in the sample carry government procurement of infrastructure in a larger proportion.

2

Chapter

Risk in procurement

> The Risk assessment (RA) is a technical output made by the procurement specialists and operation leaders (OLs) in respect to the risk classifications as identified by application of the toolkit.

2.1 Introduction

One source of weakness in this study, which could affect the measurements, was that the review time was overly short: one day only. The most important resulting limitation being that the Bank and the Clients did not have sufficient time to enter into a detailed discussion of the processes at the Client's procurement unit.

The total scores resulting from the assessment define the Client's risk as determined by the Bank.

A number of caveats need to be noted regarding the risk determination:

- it is based on the information provided by the Clients at the time of the review. Procurement capacity evolves and improves every day as the staff gain experience and the Client adopts support systems
- the risk score is given by a point system that is extremely sensitive to the absence of compulsory items
- benefit of the doubt was granted by the assessors when there was not enough adequate information available regarding the Client's actual performance in respect to a given compliance standard
- in borderline cases, it stimulates opportunities for improvement.

	High risk	Moderate high risk	Moderate low risk	Low risk
Score	< 50%	Between 51 - 64%	Between 65 - 84%	> 85%

Chart 2.1

Risk Mitigating Methodology		
Client and project assessment	Action plan in agreement with Client	Supervision plan
<ul style="list-style-type: none">• Defines risk classification• Identifies mitigating measures• Monitoring through a web based application	<ul style="list-style-type: none">• Address areas of opportunity• Training• Improved performance• Periodic monitoring of progress	<ul style="list-style-type: none">• Selective review• Frequency of inspections

The chart summarises the elements comprising the risk assessment methodology adopted by the Bank as used in the programme.

While the project and capacity assessment will clearly provide mitigating measures in two dimensions (business and control risks), the Bank will mitigate further risks in project implementation by adopting a supervision plan.

Consequently, on the Bank side, the main tool for mitigating risk is a simplified, hands-on risk assessment methodology used to prepare a multi-dimensional matrix of the Client and the project defined by the implementation of a supervision plan. The risk determination will be based chiefly in the findings of the capacity assessment and its main outcome, which is the risk classification.

The basic rule of risk classification used in the model is as follows: the higher the risk of the Client as defined by the toolkit, the closer the Bank supervision. In particular, a more intensive selective review by the Procurement Department (PD) will be required when the risk is higher. Projects that are classified as low risk will have little or no selective review by the Procurement Department of the Bank.

Risk assessment (RA) is a technical output made by the procurement specialists and operation leaders (OLs) in respect to the risk classifications as identified by application of the toolkit.

RA is equally critical for the preparation and approval stage, as well as for proper oversight to be secured during project implementation. RA serves as a guide to operation teams and the Procurement Department of the Bank to allocate resources and focus greater emphasis towards activities or projects burdened with greater procurement risk. RA is a tool for procurement specialists and OL to prepare for, and mitigate against procurement risks (endemic high risks identified).

Most frequent areas of opportunity

Laws and regulations not clear: manual, rulebook, guidelines

Selection of procurement method

Procurement plan a report: little use as management tool

Procurement planning

Little or poor internal audit

Part of procurement process

Opening of tenders, disqualification, registration

Anti-corruption initiatives

Chart 2.2

```
graph TD
    subgraph Risk_determination [Risk determination]
        CR[Concept review] --> IS[Initial statement on capacity short form]
        IS --> DTA[Determination type of assessment]
        DTA --> CTKA[CA tool kit application]
        CTKA --> SOSF[Statement on risk short form]
        SOSF --> HML[High, MH, ML, Low]
        HML --> CA[CA report]
        CA --> AP[Action plan]
        AP --> CT[Client training]
        CT --> CB[Capacity building]
        CB --> IDP[Improved document performance]
        IDP --> LCF[Less complaints  
Faster implementation]
    end

    subgraph Implementation
        FRA[Final review and board approval] --> LA[Legal agreement]
        LA --> SRD[Selective review determination]
        SRD --> SPSR[Supervision plan and selective review]
        SPSR --> PI[Procurement implementation]
        PI --> PA[Procurement arrangements]
        PA --> PC[Project completion]
    end

    CR --> FRA
    IS --> LA
    DTA --> LA
    CTKA --> LA
    SOSF --> LA
    HML --> SRD
    CA --> SRD
    AP --> SRD
    CT --> SRD
    CB --> SRD
    IDP --> SRD
    LCF --> SRD
```

The flowchart illustrates the Capacity Assessment Process, organized into four main sections: Risk determination, Implementation, Client support and TC, and Results.

Risk determination (Pink header) includes the following steps:

- Concept review
- Initial statement on capacity short form
- Determination type of assessment
- CA tool kit application
- Statement on risk short form
- High, MH, ML, Low
- CA report
- Action plan
- Client training
- Capacity building
- Improved document performance
- Less complaints
Faster implementation

Implementation (Orange header) includes the following steps:

- Implementation and monitoring
- Project implementation
- Supervision plan and selective review
- Procurement implementation
- Procurement arrangements
- Project completion

Client support and TC (Purple header) includes the following steps:

- Final review and board approval
- Legal agreement
- Selective review determination

Results (Orange header) includes the following steps:

- Project completion

The process flow is as follows:

- Concept review leads to Initial statement on capacity short form.
- Initial statement on capacity short form leads to Determination type of assessment.
- Determination type of assessment leads to CA tool kit application.
- CA tool kit application leads to Statement on risk short form.
- Statement on risk short form leads to High, MH, ML, Low.
- High, MH, ML, Low leads to CA report.
- CA report leads to Action plan.
- Action plan leads to Client training.
- Client training leads to Capacity building.
- Capacity building leads to Improved document performance.
- Improved document performance leads to Less complaints
Faster implementation.
- Final review and board approval leads to Legal agreement.
- Legal agreement leads to Selective review determination.
- Selective review determination leads to Supervision plan and selective review.
- Supervision plan and selective review leads to Procurement implementation.
- Procurement implementation leads to Procurement arrangements.
- Procurement arrangements leads to Project completion.

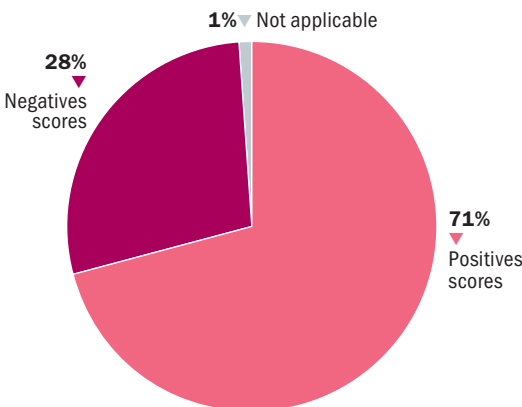
2.2 Risk in procurement: results

In the course of the pilot assessment, 27 Clients provided information about their procurement capabilities, which the Bank used to identify areas of opportunity.

Most Clients achieved positive scores in a majority of assessed items. In accordance with the established methodology, Clients will be classified as a moderately high-risk or higher risk condition when the positive points are around 70 per cent.

The above factor may vary depending upon the calibration of the maximum possible score that a particular Client can achieve compared to the Client, as determined by its size, line of business, sector and other characteristics before conducting the assessment.

Chart 2.3
Example of scores obtained by a Client



Four risk categories: H, MH, ML, L

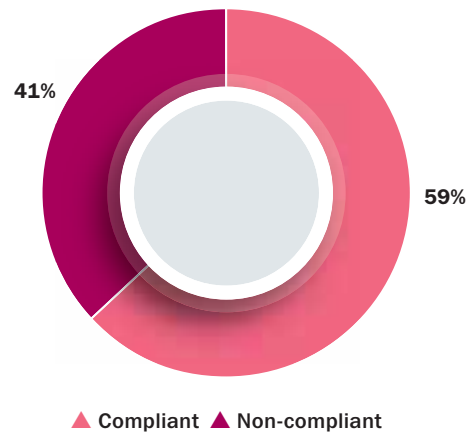
- Risk of the agency in the example is moderately high

In accordance with the adopted methodology, a Client will not meet international standards if it does not reach at least 60 per cent of the possible points in any category.

Clients in the sample met 59 per cent of the standards while failing to comply in 41 per cent of the categories examined.

Out of 243 categories assessed in 27 Clients, the results show that Clients failed to meet international standards of compliance in 99 categories.

Chart 2.4
Level of compliance



> It becomes apparent from the data that Clients in the region are in general applying best practices in government procurement.

The following chart summarises the areas or opportunity identified in the assessment:

The top four, most frequent categories where Clients showed shortcomings when compared against international standards are:

- organisation of the procurement function
- general assessment
- support and control mechanisms of the procurement function
- legal framework.

All other categories had three or more Clients in need of improvement in such categories of the assessment.

The four categories in which Clients showed broader strengths are:

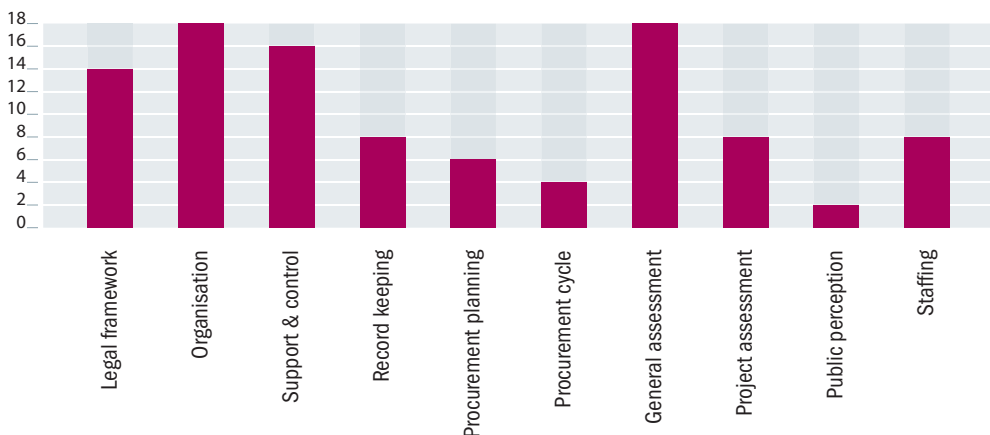
- procurement cycle
- record keeping
- procurement planning and
- staffing.

One of the more significant findings to emerge from this study is that Clients in the sample complied with high international standards in about 60 per cent of the cases, hence giving hope that the procurement implementation capacity in the region is moving towards government procurement systems more aligned to best practices.

It becomes apparent from the data that Clients in the region are in general applying best practices in government procurement.

Further studies, taking these initial results into account and applying the same standard methodology, will need to be undertaken in order to demonstrate progress in the coming years.

Chart 2.5
Frequency of areas of opportunity in 27 Clients



> The toolkit helped to facilitate a risk determination for each category based on Clients' overall score in the assessment

2.3 Risk classification

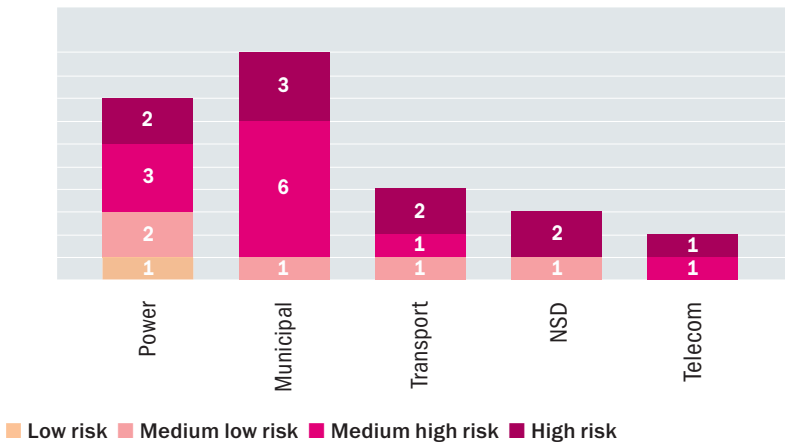
Four sectors of Bank operations in the public sector were examined in the Programme: (a) power, (b) municipal infrastructure, (c) transport, and (d) ICT - telecommunications. A fifth area of Bank activity, NSD or nuclear safety, contributed data from three projects, which were collected using the CA methodology, but were not officially part of the programme.

The toolkit helped to facilitate a risk determination for each category based on Clients' overall score in the assessment.

The following chart summarises the risk distribution by sector.

The results suggest that transport and municipal infrastructure sectors carry the highest procurement risk. The classification of the transport sector as risk-prone is consistent with widely known characteristics in accordance with consulted sector studies⁴.

Chart 2.6 Risk map

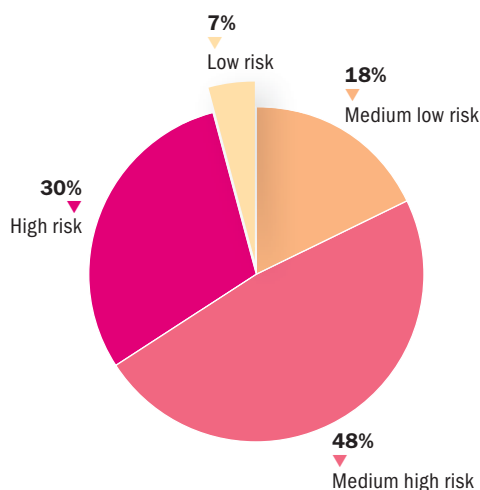


⁴http://siteresources.worldbank.org/INTDOI/Resourses/Roads_Paper_Final.pdf: Curbing Fraud, Corruption and Collusion in the Roads Sector. The World Bank Integrity Vice Presidency. June 2011

The majority of Clients were classified as moderately high-risk as presented in this accompanying chart.

In the sample, only one Client, in the power sector, classified as low-risk, while eight Clients classified as high-risk. NSD did not find any Clients in the high-risk condition.

Chart 2.7
Risk classification of 27 applications



> The assessment identified good practices in several projects. Many Clients in the region have demonstrated high standards of international procurement.

2.4 Good practices observed

The assessment identified good practices in several projects. Many Clients in the region have demonstrated high standards of international procurement. For example, filing and archiving practices are exemplary in a municipality in Belgrade, procurement planning is well- managed by a NSD beneficiary in Bulgaria, the procurement cycle process is managed with care and diligence by a Client in Kazakhstan and well-equipped procurement units for national or local procurement are present throughout the region.

In Albania, two Clients assessed by the Bank are using e-procurement, which substantially improved the reliability and confidence of the public in procurement processing.

In Russia, the two Clients assessed achieved top marks in procurement planning.

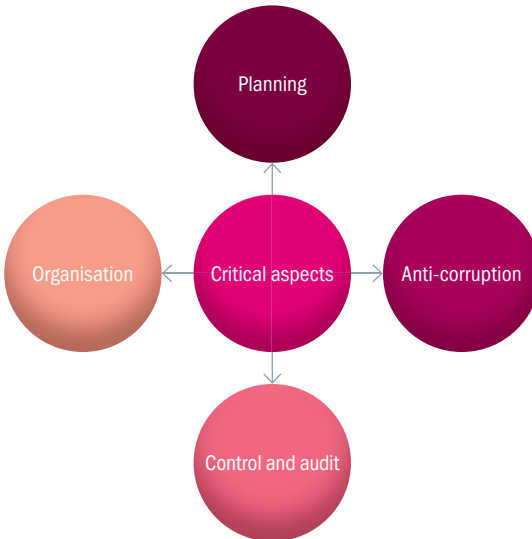


2.5 Critical issues

In the course of the study, the following aspects were found to be of a critical nature in respect to government procurement: (a) audit and support systems, (b) planning, (c) organisation, and (d) anti-corruption strategy.

Going forward, the procurement audit cycle will face the following issues in the region: the auditors are not well equipped to oversee procurement or, specifically, internationally financed procurement; there are no initiatives to inoculate procurement from collusion or corruption. Additionally, systems to support the monitoring of the implementation function are generally non-existent in the region and procurement staff do not have the skills to monitor or evaluate contract performance.

Chart 2.8



Procurement planning, when it exists, relates exclusively to the mandate of local legislation or basic requirements by the lenders, but is rarely used as a management tool, evaluated for compliance or integrated into financial systems or contract register.

The very organisation of the procurement function is also a significant area of opportunity: members of the evaluating committee frequently are not accredited for such an important function and agencies lack structure or efficient delegation of authority.

It was also shown that the absence of a clear anti-corruption strategy at the Client level hinders the development of both deterrence and support mechanisms in the fight against corruptive and fraudulent procurement practices.

Taken all together, these results suggest that the Bank's and developing partners' desire to further develop institutional procurement capacity would be greatly helped with action in five areas:

- Securing the availability of internal manuals and support systems
- Devising methods to monitor and evaluate procurement operations
- Supporting the combination of procurement plans and financial management platforms in order to (a) improve management and (b) facilitate monitoring and evaluation
- Assisting the development of an anti-corruption strategy to benefit good governance
- Strengthening internal and external audit procedures to establish reporting and follow-up practices.

2.6 Simplicity and effectiveness

The assessment work outlined in this document is a short-time task requiring about one day of dialogue between the Bank and the procurement staff of the Client.

This efficient assessment is possible due to the simplicity of the toolkit whose more important features are presented in chart 2.9 below.

Chart 2.9

NPA: NATIONAL SUPPLY CHAIN									
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	
NAME		ADDRESS		TELEPHONE		FAX		E-MAIL	

Features

- Immediate determination
- Qualification: yes or no
- Tailor made: compulsory, desirable, not applicable
- Individual scores: 0, 1, 2, -1, -2
- Score by categories

Results can be given immediately upon completion of the assessment of 62 items in the procurement performance.

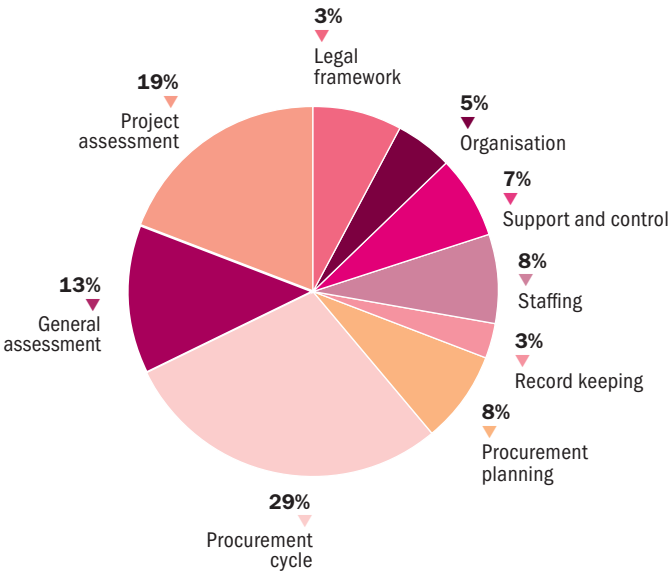
2.7 Categories of the assessment

In the assessment, the Client's supply chain management is condensed into eight categories, while the ninth category, Project Assessment category, comprises a closer look into the organisation and systems related to the specific project implemented in the assessed Client agency.

The next chart lists the categories and the proportion of items assessed within each category.

Chart 2.10

Distribution of items per categories



3

Chapter



Findings in implementing capacity



The 27 assessments provided a valuable knowledge base about the Clients' implementation capacity. The summary of findings in nine categories is presented in this section.

3.1 Legal framework

Legal status, legal framework for procurement, disclosure, debarment and default method

Summary

The assessment confirmed that the majority of Clients have a straightforward legal basis to frame procurement activities. The one pervasive shortcoming is that the conditions for procurement methods are not clearly established or the legal framework lacks an explicit requirement that competitive open tendering be the preferred or default method.

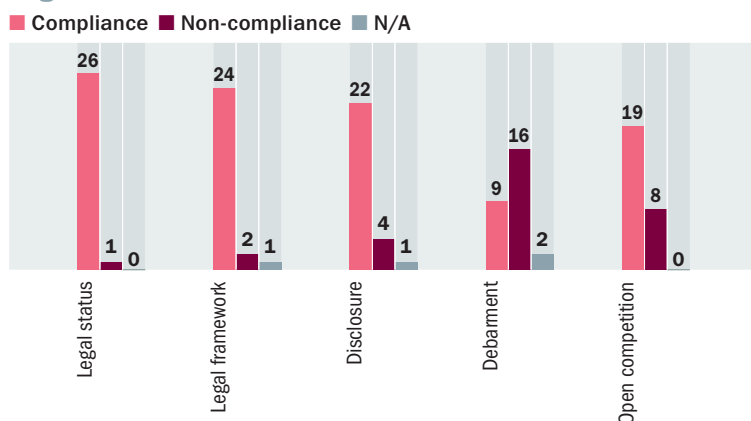
Several Clients failed to demonstrate that they have provisions for the exclusion of criminal or corrupt activities or a due administrative debarment process.

Findings

> Delegation and Accountability

Best practices state that allowable procurement methods should be established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an accountable official.

Chart 3.1
Legal framework



> Under best practices, appropriate standards for international competitive tendering are very specified. When confronted with recognised best practices, the Clients quickly realised that the international benchmarks exceeded their existing practices.

The results of this study indicate that most Clients meet this criterion. Yet, fewer Clients have no or limited delegation authority. Nearly every procurement activity has to be approved by the top manager of the agency, delaying the lead-time for the purchases and weakening internal control.

> Procurement Methods

The best practices also dictate that competitive procurement is the default method of public procurement. In most laws and regulations, the conditions for the use and application of restricted tendering are vague or ambiguous. The choice of less competitive methods is then arbitrary and frequent. Most Clients would benefit from additional by-laws or a rulebook supplemental to the national regulations explaining the conditions when use of restricted tendering is appropriate.

> Fractioning of Contracts

The vast majority of Clients comply with regulations relating to the prohibition of fractioning of contracts to limit competition. This occurs because the use of procurement methods are generally legally specified by means of thresholds of monetary value.

It is interesting to note that in most cases, there are no regulations (or much concern) about splitting contracts whose amount already exceeds the threshold for open competition. This would imply that tender packages might be in the market that are smaller than adequate for international interest or by lots to attract larger contractors or suppliers. The majority of Clients would benefit from an internal agency rulebook alerting them to avoid this type of fractioning hence making procurement planning more useful towards a more efficient and economical use of public funds.

> Standards for International Tendering

Under best practices, appropriate standards for international competitive tendering are very specified. Very few Clients make a distinction between national competitive tendering and internationally open tendering. Many Clients consider themselves exposed to international tendering when they receive foreign tenders in locally advertised tenders.

Conclusions

The majority of Clients would benefit from a rulebook or internal procurement manual in which:

Regulations would clearly define the situations in which other less competitive methods may be utilised.

Acceptable justification and approval levels are clearly specified.

The above are proven facets of a well-functioning structured framework, which, in general, is organised as follows:

- national law provides the legal framework
- national regulations explain the legal conditions of decisions, ensuring consistency in the public sector
- internal rulebooks will adapt the regulations to internal procedures.

In the region, the first and second aforementioned levels are generally well established, however the third tier of agency's internal regulations is practically absent.

Comparison of results with the public procurement assessment

The results of the CA capacity assessment touches upon aspects that were also discussed in the study carried out by the Legal Transaction Team (LTT) of the Bank in 2011.



A considerable amount of data and information about the legal practice is available in the aforementioned report. As explained in the methodology of the legal study, the findings are largely based on a questionnaire given to practitioners.

The findings of the CA team were based on site visits where Clients were engaged in a highly analytical dialogue, and were requested to produce the documents for the Bank team to assess the existence, quality and the opportunity of documents and procedures.

As in the case of the legal study, the Clients' procurement unit staff participating in the assessment or capacity building tasks were often overly optimistic in respect to the availability of documents or systems to support the procurement function.

When confronted with recognised best practices, the Clients quickly realised that the international benchmarks exceeded their existing practices.

In other important matters such as integrity and human resource development, the findings of the two teams are identical. The next table presents some comparative results:

Findings by LLT, page 76	Findings by ICA
<p>The main phases of the public procurement process</p> 	
<p>Some common trends across the Bank's countries of operations are observable from the responses of the practitioners who participated in the survey. Basic guidance and templates supporting the work of officials, such as procurement manuals, internal guidelines for tendering documents, as well as standard forms, seem to be available throughout the EBRD region.</p>	<p>The manuals, when available, are largely incomplete, are not available for the agency staff at large, adding to the compilation of assorted instructions.</p>
<p>Local practitioners also report that there are no problems with the fundamental organisation of the public procurement function. For example, the internal procurement roles and responsibilities are duly allocated, and internal monitoring and auditing is undertaken by the procuring bodies concerned, although its depth may not be entirely satisfactory.</p>	<p>Organisation of the procurement function is very basic, mainly covering the tendering process; many of the upstream functions are not covered and important tasks of procurement are not in place at all (see Page 40 of this report). Audits exist but there are no systems to follow up and support the response to the auditors' recommendations.</p>
<p>However, there is potential for significant improvement across the region in the provision of training for public procurement officials. The current situation is unsatisfactory in terms of the availability of training materials and on-the-job courses in most EBRD countries. A general lack of adequate training is preventing officials from performing their work efficiently.</p>	<p>Training in law is available but not in international procurement.</p>
<p>There is further potential for significant improvement across the region in the provision of procurement risk assessments. These are normally conducted for all public tenders in developed countries. Such risk assessments enable the organisations to understand and prepare for hazards to finances, health and safety, or an adverse public perception of the procuring body, by estimating the likelihood of such hazards and their potential impact.</p>	<p>Risk assessment of procurement is not a normal practice to the Clients.</p>
<p>The greatest need for improvement in the EBRD region concerns first and foremost the adequate remuneration of public procurement staff. Poor remuneration may negatively impact staff retention and integrity. Similarly, codes of ethics are non-existent or only very weakly observed in most of the procuring entities in the countries surveyed.</p>	<p>Remuneration was not subject to review: findings regarding anti-corruption strategy are consistent.</p>

3.2 Organisation

Contracting authority, key functions, procedural manual

Summary

The number of staff in the sample varies from 3 to 4 in the smaller Client agencies and from 10 to 12 in the larger ones. Workload does not seem to be an issue in agency performance. Difficulties arise, however, when attempts are made to move forward in quality, transparency and efficiency, as many critical tasks needed to improve overall procurement performance are not assigned to staff.

In a few instances, the Clients do not have a clear delegation of contracting authority, and suffer from unnecessary levels of approval or cumbersome procedures. In the majority of cases, various key functions in the supply chain are well designated, however most Clients do not have a procurement manual structured as such.

The majority of Clients' instructions and procedures are, in a word, "loose." This results in difficulties for new staff to catch up with procedures, creating in-process errors or making the control framework and auditing procedures less effective overall.

Findings

> Delegation and Accountability

The most interesting finding in this item is that authority in the region is concentrated in pockets and there is limited delegation: in several cases, all procurement transactions required consent from top management and were subject to concurrent internal audits. The procurement plan is, therefore, not used as a management tool to allocate responsibilities and accountability.

Conclusions

A well-designed and functional procurement unit in the agencies will be able to provide quality services while:

Operating effectively in centralised or de-centralised environments.

Serving as the main contact with the Public Procurement Office.

Issuing internal norms and regulations.

Coordinating the internal audit work.

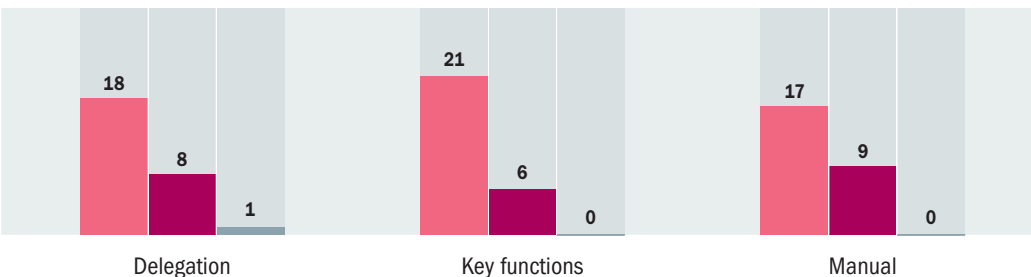
Developing framework, central contracts.

Managing the procurement knowledge base of the agency.

Developing the human resources assigned to the function.

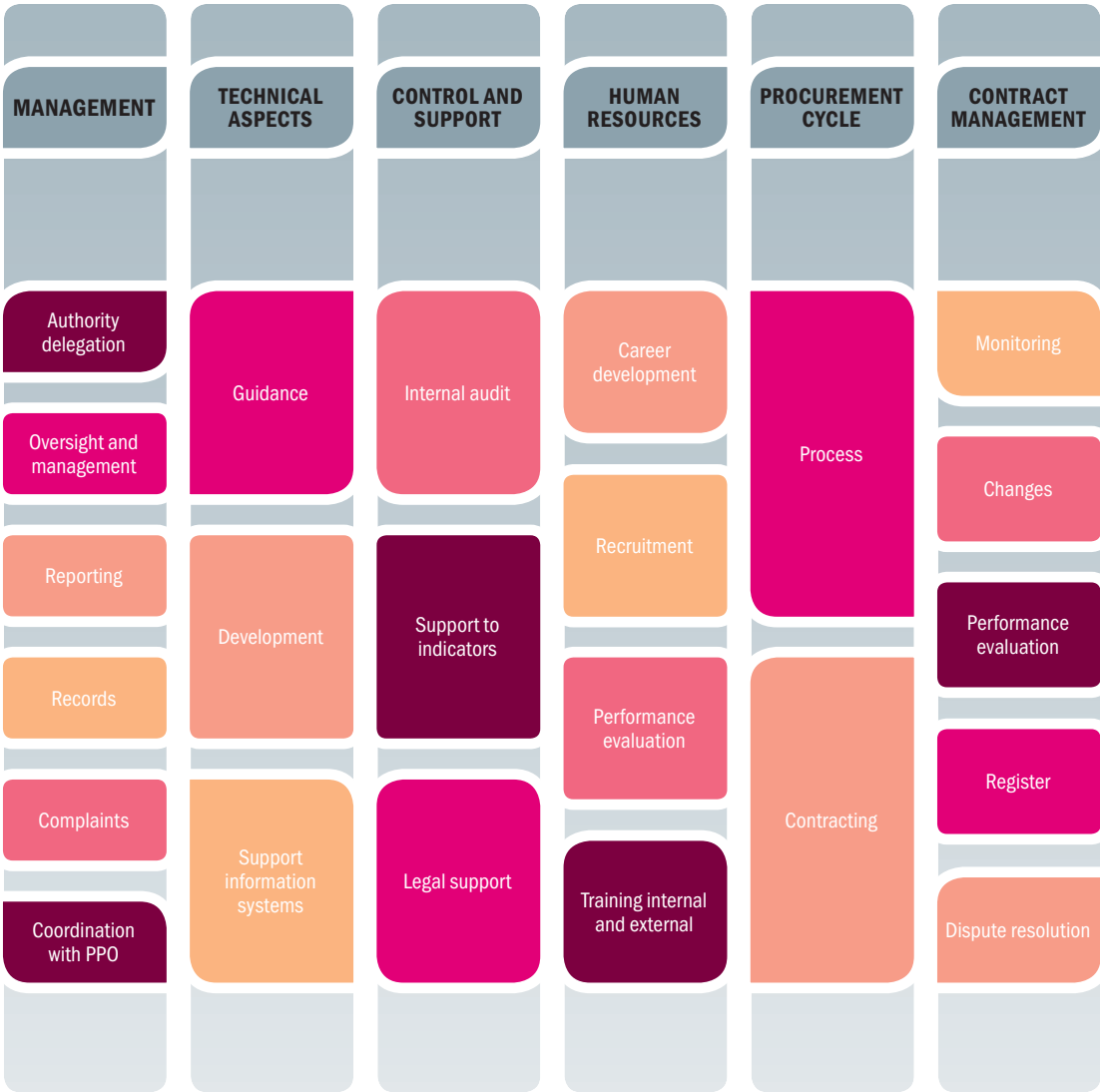
Chart 3.2
Organisation

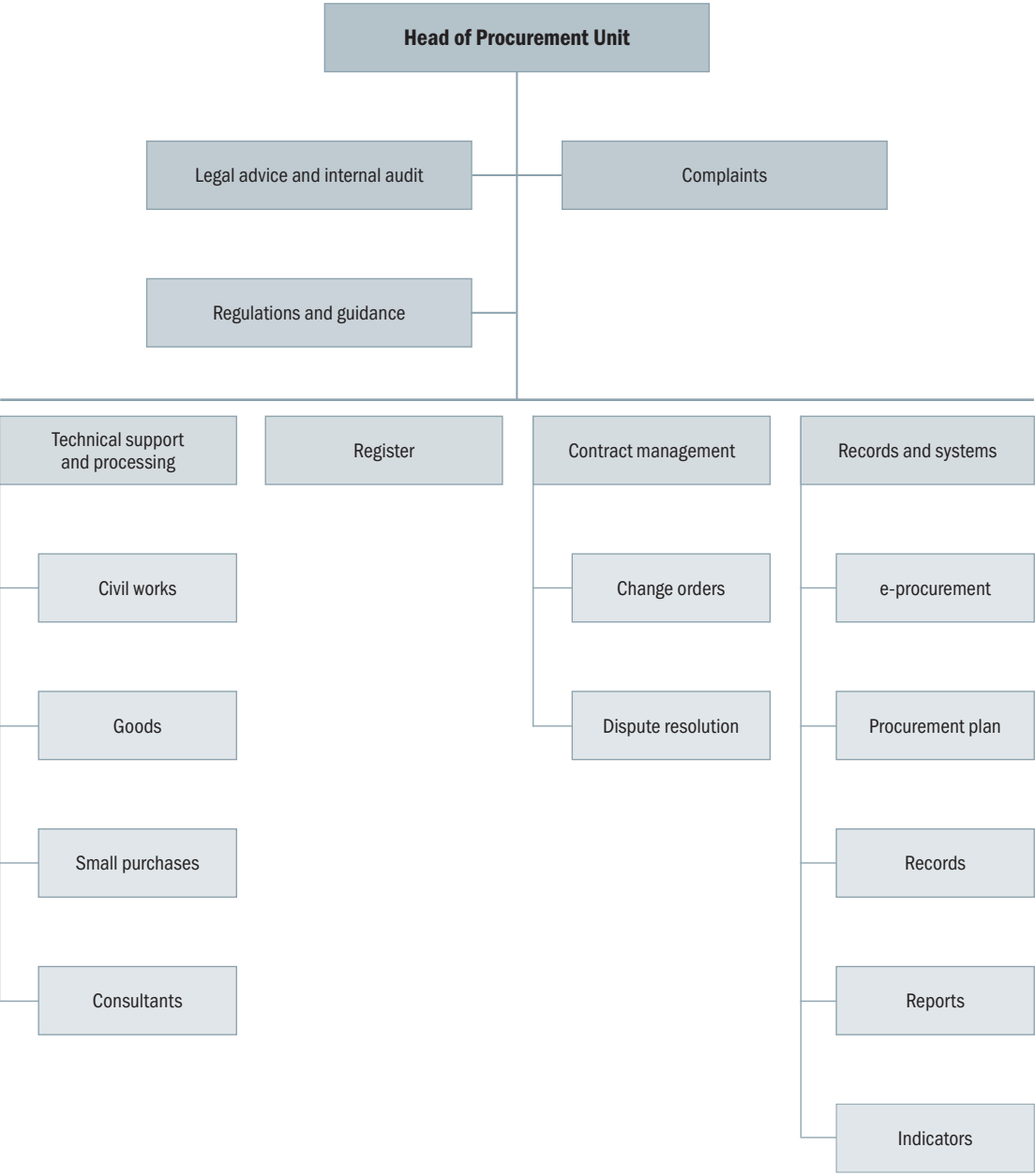
■ Compliance ■ Non-compliance ■ N/A



In order to achieve such levels of service, the organisation should ensure that staff is responsible for the following areas and tasks:

In some instances, agencies considering restructuring the procurement function asked about a model structure for an ideal procurement organisation. The Bank team suggested the following basic structure:





3.3 Support and control systems

Audit arrangements, access to quality legal advice, steps to curb corruption, whistle blowing mechanisms

Summary

The Clients in the sample, in general, lack declarations of conflict of interest or personal assets. A code of ethics or conduct is in place for government officials and is normally signed on appointment, however there are no specific forms or periodic statements to be signed by procurement officials. In a few cases, members of the tender committees sign no-conflict-of-interest statements and confidentiality statements, however this is not applied to technical staff supporting the evaluation of tenders.

Findings

Several employees directly involved with procurement revealed that there are no mechanisms in place to report corrupt activities without fear of repercussion.

Declaration of interest forms are available in many systems. Inspectors or evaluators must keep current, signed declarations on file stating that no real, potential or apparent conflict of interest situations are known to them and they have disclosed if they have a financial, or other interest, in (and/or relationship with parties who may have vested commercial interest in) obtaining access to any confidential information disclosed to them. A “whistle blowing” policy or equivalent is not available.

Audits are performed among all Clients in the sample, however these reports only review the procurement process superficially without tests to locate collusion, or are based on a broad vision beyond simple compliance. The audit reports—which at times are kept confidential at higher management levels—have no established timeframe to implement with the audit’s recommendations.

Most Clients need to develop quality assurance standards and a monitoring system for procurement processes.

In the region, Clients lack a procurement staff performance evaluation process based on outcomes and professional behaviors.

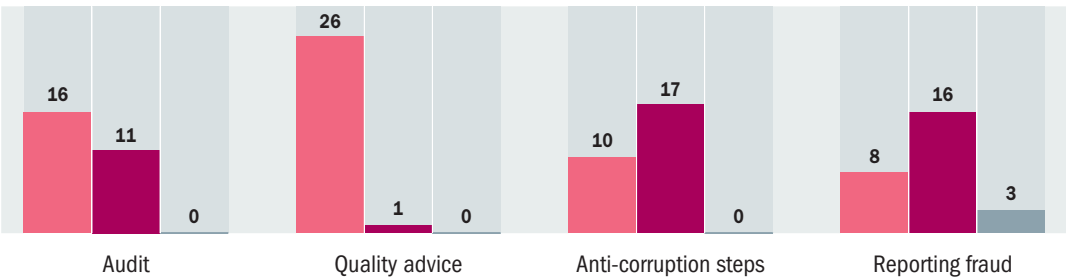
Clients need to ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards.

Conclusions

Much still needs to be improved regarding the support and control mechanism in the region. All Clients were subject to external audits, but about half of them lack internal audits dealing with procurement in a meaningful and effective manner.

Chart 3.3
Support and control

■ Compliance ■ Non-compliance ■ N/A



Procurement staff in the region are highly professional and passionate about public procurement.

External audit reports centre on financial transactions with little attention paid to procurement. There are no tracking or support systems to ensure that procurement audit recommendations are implemented within six months or earlier. While some Clients need to train lawyers to assist the procurement units, the majority of Clients also need to create a larger base of expert procurement auditors.

Procurement does not come “naturally” in the audit practice.

There is a need to establish programmes to train internal and external auditors to ensure that they are well versed in procurement principles, operations, laws and regulations.

The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits.

3.4 Staffing

Workload, matching skills, training, contract management capabilities, international procurement

Summary

Staff working in procurement generally do not receive training in the full scope of their job (and very seldom in international procurement). Practically none of the procurement units possess the adequate skills or supporting systems allowing them to make contributions or observations about contract management or contract monitoring, a situation that clearly separates the supply chain between processing and implementation.

As a consequence, feedback about contractors' or suppliers' performance from technical units to the procurement unit is non-existent.

Findings

Clients should establish permanent and relevant training programmes for new and existing staff in government procurement.

It is essential to maintain the supply of qualified procurement staff.

Clients should develop quality of advisory services on procurement matters for agencies and the public at large.

Curricula of the existing programmes should be relevant and sustainable.

Procurement staff in the region are highly professional and passionate about public procurement.

It is somewhat surprising that very few agencies possess a human resources manager to oversee staff development.

There are ample opportunities for training in national procurement, but the study was not able to identify cases of training in international procurement.

Conclusion

The staff working in procurement have the background, training and talent to perform at the top level, however they need exposure to international procurement. They also need to be given incentives to develop systems, databases and tools; all of which will make government procurement more systematic, predictable and transparent, and consequently more economic, competitive and accountable.

A well functioning system should provide for evaluation of the training programme and monitoring of progress in addressing capacity issues.

Advisory services or help desks for public or private sector parties where they can get advice on application and interpretation of policy and rules.

3.5 Record keeping

Filing and records on prices

Summary

This item of the supply chain management does not pose an area of opportunity in the sample of assessed Clients. Only 10 per cent of the Clients acknowledged that their procurement files require improvement. Another 10 per cent showed impressively well-kept and thorough procurement filing techniques.

Findings

This study has found that, in general, the filing system of the Clients is adequate and at times, the records are kept meticulously.

However, in the methodology adopted by the Bank for the capacity assessment, the filing and records category goes beyond neat filing. It also requires that the Client retains and maintains a price database to monitor costs and use price controls and proper budgeting practices. Very little was found in the discussion with Clients about the availability of such systems.

Conclusions

Databases or monitoring systems related to price monitoring or performance evaluation are not available in the region. There are certainly good performers supplying goods and services to Clients in the region, but such performance goes unaccounted for as records and feedback mechanisms are non-existent.

If such records were kept in an orderly fashion and accessible to procurement units, the qualification

criteria might be adjusted to ensure that only quality contractors and suppliers are consistently hired by Clients.

3.6 Procurement planning

Preparation, content, integration to financial management platform, usage, assigned staff

Summary

Twenty-five cases were discussed in the study examining the relationship between procurement planning and overall procurement performance. Strong evidence suggests that procurement units participate little in the development of the procurement plan and often receive these plans directly from higher authorities. In such cases, there are no systems to support the monitoring and implementation of the procurement plan and there is no evidence of an evaluation on the performance of compliance of the procurement plan at the end of the period. Moreover, the contract register is not integrated into the procurement plan and neither is the procurement plan integrated into the financial control platform except in one isolated case.

Findings

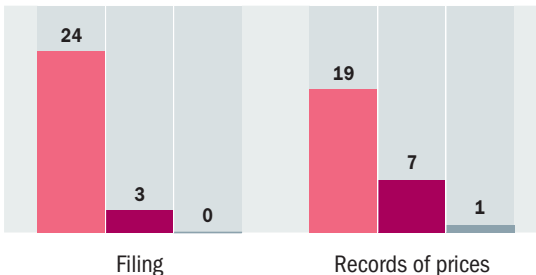
One of the more significant findings to emerge from this study is that procurement plans in the region are normally prepared based on annual and multi-year operating plans. Links with budget planning are weak and plans are not required to match the budgetary allocation available before expenses are committed.

The most striking result to emerge from the procurement planning discussions is that best practices (as represented in the next chart) are not consistently followed in the countries:

Chart 3.4

Record keeping

■ Compliance ■ Non-compliance ■ N/A



- There is no integrated procurement and budget planning.
- Procurement plans are drawn without obvious and direct connection with the budget planning exercise.
- There is no requirement to match procurement plans with the availability of funds before expenses are committed.

Conclusions

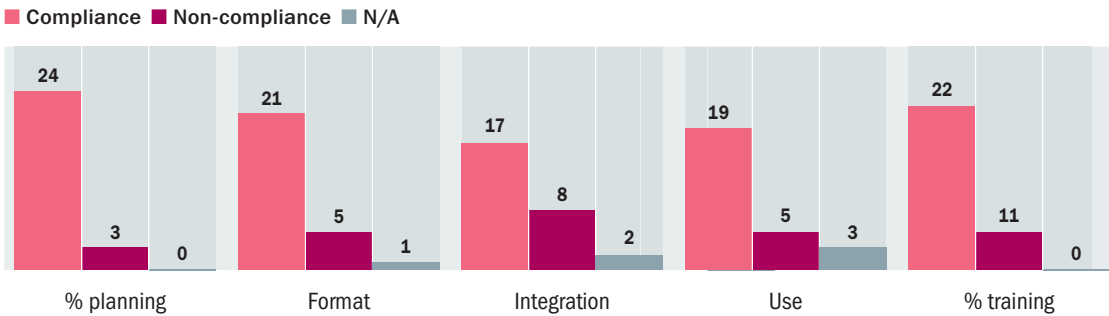
In order to take stock of the full potential of the procurement plan as a management tool in the region, there are a number of important changes, which need to be made:

- The regular planning should evolve towards an upstream exercise that should:
 - start with the preparation of multi-year plans for the agency, from which annual operating plans are derived
 - be followed by annual procurement plans and estimations of the associated expenditures
 - culminate in the annual budget formulation.
- Procurement plans should stop being prepared only to comply with law or regulations and should become a support for budget planning and budget formulation process.

Throughout the discussions with Clients during the capacity assessment, and subsequently during capacity building activities, the Bank team provided tips on how to start transforming the procurement plan into an effective tool for managing the procurement function. Some participants expressed their belief that the following points were most useful as steps to transform the current procurement planning at their agencies:

- Think as a management system, not as an excel table.
- If it is an excel table, the data contained in the database should be more than the data displayed in the screen or print out of the plan.
- Procurement plans should look ahead for more than the fiscal year.
- Plans should be linked to contract register.
- Procurement plans should be updated regularly but incomplete or failed actions should not be deleted.
- Evaluate compliance and performance at the end of every fiscal year.

Chart 3.5
Procurement planning



3.7 Procurement cycle

Use of standard documents, qualification criteria, price adjustment, registers, clarifications and responses, records, reception, evaluation, reports, award, negotiations, systems, contract changes, disagreements, contract management skills, payments

Summary

The questions and test regarding the management of the tendering process encompass the systems and procedures used by Clients in the open tendering process (both local and international).

The items in which the Clients tend to fail compliance are the following:

- the safekeeping of tenders before opening
- the evaluation of tenders based on a point system
- the absence of a registration mechanism
- the rejection of tenders in the opening session
- the absence of anti-corruption wording in the tender documents
- the absence of a procurement monitoring system
- a lack of skills in contract management
- a lack of a price adjustment system based on indices
- the participation of non fully-accredited individuals in the tender evaluation process.

A well-planned procurement manual within the agencies would assist in refining the applied procedures and practices in order to effectively correct deviations from best practices.

Findings

The procurement process has been demonstrated to be a strength to most Clients. Yet some fine-tuning and an adoption of international best practices would move the performance in local and international procurement to the next level. However, given member turnover within the tender committees and support staff at the procurement units, the challenge is sustainability and consistency over time. The suggested procurement manual should provide that continuity and will provide the framework for the internal control framework. Specifically:

Clients will benefit from using a procurement manual detailing all procedures for the correct administration of procurement regulations and public procurement law with forms, charts and procedures.

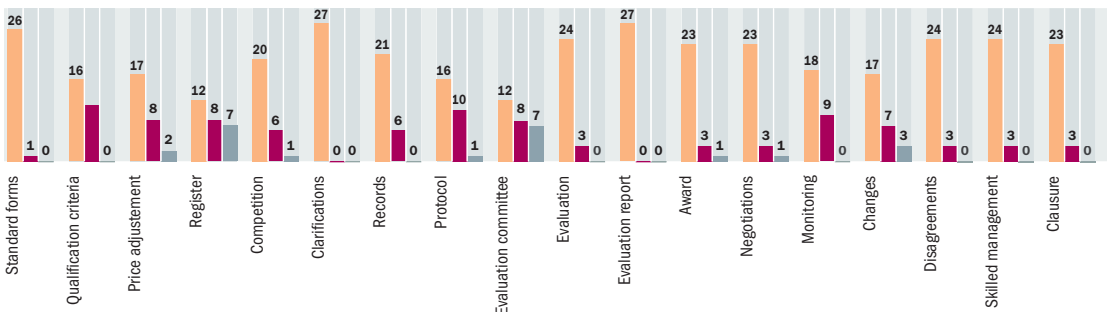
The manuals should go beyond the transcription of laws and by-laws; it will gather the good practices of the Clients; and should be developed along electronic means for ease of updating.

Clients should appoint staff responsible for the collection and update of the manual, and to provide maintenance going forward.

The manual should lay out the internal control framework of the procurement function.

Chart 3.6
Procurement cycle

■ Compliance ■ Non-compliance ■ N/A



Conclusion

Areas of opportunity in procurement processing go beyond contract signing. Procurement is a cycle that properly ends when (a) items are tested and put in operation, (b) services are rendered and civil works are finished and (c) operations and contracts are brought into closure.

Clients in the region need to establish the link between procurement processing and contract implementation.

Certainly, the technical supervision of contracts remains the responsibility of technical and specialised units. However the administration of the contacts (for example, amendments, extension, change order, variations, new unit prices, escalation, performance evaluation, dispute resolution and management reports regarding the progress or obstacles in the contract implementation) are critical skills that need to be instilled within the procurement units. Specific steps forward include:

Systems to ensure quality performance of the contract requirements and to facilitate prompt payment of invoices including final acceptance and final payments.

Procedures for the acceptance of final products and for issuance of contract amendments are part of the legal/regulatory framework or are incorporated as standard clauses in contracts.

Clauses that are generally consistent with internationally accepted practices.

Quality control (QC) procedures for goods are well defined in the model contracts, documents, or in the regulations. QC is carried out by competent officers, inspection firms or specialised testing facilities.

Supervision of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors.

Final payments are processed promptly as stipulated in the contract.

Another aspect that might improve the procurement cycle is establishing a registration of contractors and suppliers with the following characteristics: (a) all those who wish to register (nationals or foreign) can do so at any time before contract award; (b) the registration system should not constitute a barrier to participation and should not discriminate; (c) registration should not substitute publicity in wide circulation media; and (d) registration must remain open and accessible during the tendering process.

3.8 General assessment

Anti-corruption policy, disqualification, analysis of tenders, Client estimates, investigation of wrongdoings, independence of decision-making, existence of a register of complaints

Summary

By the time the assessor discusses items in this category, he or she knows well the skills and abilities of the procurement staff, the existence of supporting systems including control framework and other details of procurement processing in the agencies.

This knowledge enables the assessor to further evaluate the quality of the decision-making process and the organisation of the procurement function at the agency. The findings are reflected in a general assessment of the procurement capacity.

In this part of the assessment, most Clients failed to demonstrate that they have three important facets in place: (a) an effective anti-corruption programme; (b) the ability to handle complaints or keep registers of complaints or violations; and (c) procedures that would enable management to improve protocols, sanction individuals, investigate collusion and fraudulent practices.

Findings

In practically all cases of the sample, Clients were rated below compliance in this category of the assessment due to the absence of an anti-corruption strategy reflected in tender documents or skills to fight collusion and other fraudulent practices. Steps to move forward should include:

Regulations which specify mandatory requirement of the anti-corruption strategy and give precise instructions on how to incorporate the matter in tendering documents.

Clients should define fraud and corruption in procurement and spell out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.

Clients need to design a preventive package against corruption.

Establish and periodically circulate a code of ethics specifically for the procurement function.

Publish posters that reflect upon the issues.

These elements will support the anti-corruption strategy: Hotline, Ombudsperson and Inspector General.

Insert section in an internal manual on anti-corruption.

Conclusions

The main conclusion is that Clients in the region expressed interest in working towards modern procurement practices encompassing more transparent, more efficient and more economic public contracts. This goal would require investment in at least three aspects: (a) an anti-corruption strategy to fence-off the agencies from increasing risks of fraud and corruption, including a code of ethics for the procurement function; (b) procurement support systems to support the contract administration; and (c) procurement monitoring systems based on indicators of performance. The characteristics of these three areas of opportunity are detailed below.

Several actions need to be gradually developed for most Clients to design and implement an anti-corruption strategy. Most of them would require external consultants and guidance from the Bank to develop an effective strategy.

A code of ethics designed specifically for the procurement function would improve the rating of the general environment:

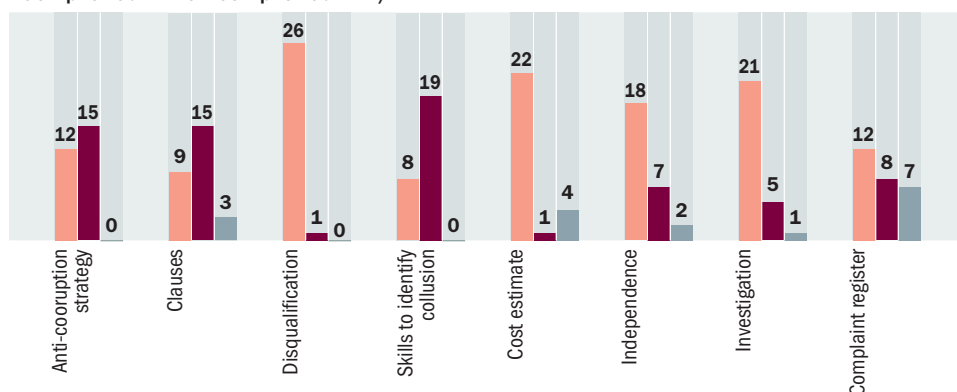
Each country should have in place a code of conduct/ethics that applies to all public officials. In addition, special provisions should be in place for those involved in public procurement.

In particular, financial disclosure requirements have proven to be very useful in helping to prevent unethical or corrupt practices.

Chart 3.7

General assessment

■ Compliance ■ Non-compliance ■ N/A



- Agency has a code of conduct or ethics for staff with particular provisions for those involved in public financial management, including procurement.
- The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements.
- The code is of obligatory compliance and consequences are administrative or criminal.

And lastly, Clients will improve their procurement performance as they develop and apply a procurement monitoring system widely accessible within the agency based on indicators such as those provided by the OECD-DAC methodology of assessing public procurement (which provided the technical basis of this Programme) and other methods customised for the Client.

3.9 Project risks

Overall, the assessment has revealed the need for manuals to compile implementation instructions and procedures. In many cases, the size or complexity of the project exceeds the current capacity of Clients requiring consultants to support the implementation.

The assessment of project risk almost invariably concluded that the scope of projects exceeds the capacity and experience of the Clients, particularly in the case of green field projects and when the Bank or other multilateral sources of development funding did not have an earlier intervention, leaving the Client to act as the implementing agency.

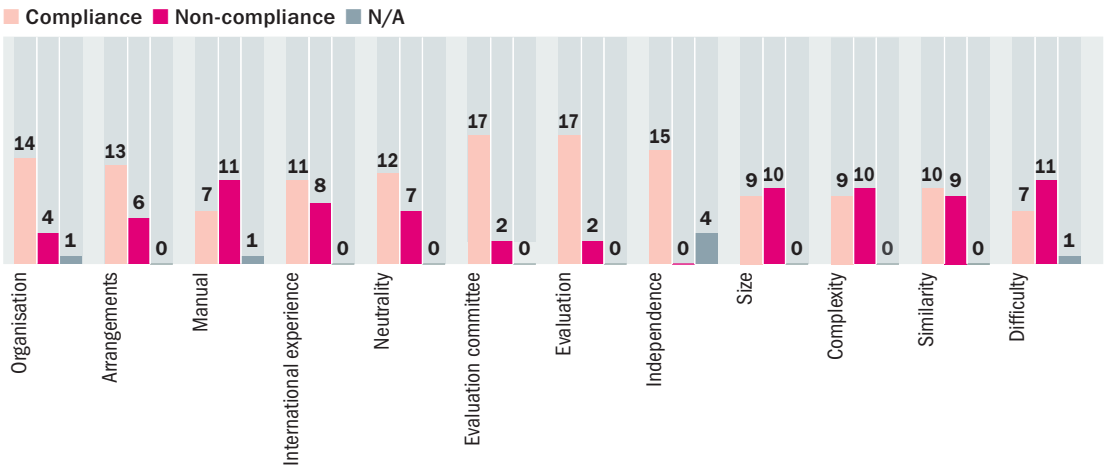
Summary

Clients in the region have little experience in applying price adjustment formulae. The larger duration contracts of civil works financed by the Bank require Clients to use, apply and control the price adjustment methodology. Currently, the Clients have no such experience.

Experience shows that in order for these adjustments to reflect the true fluctuations in the above inputs, there is a need for agencies to have in place a mechanism that tracks price changes, whether resulting from market forces or changes in legislation.

Usually no price adjustment clauses are included in contracts for goods to be supplied, or works to be completed within one year, unless the market situation calls for it.

Chart 3.8
Project risk



Findings

The lack of experience present in the implementing agencies with regards to international or long-term contracts with suppliers and contractors are creating vacuums in certain fundamental contract management skills such as price adjustment.

Where procurement is for major works, tender documents should require that tender prices be adjusted to reflect changes in the prices of major inputs such as labour, materials and equipment usage over the contract period.

Price adjustments should be made according to formulae specified by the agency in tender documents.

In the region, there are skills and resources to deal with disputes in project implementation, but such skills are not available in the procurement unit of the Clients, which seldom participate in the review of variation orders, change orders and amendments thus losing the opportunity to pass experience gained in such negotiations to future contract managers.

Conclusion

Rules of price adjustment need to be introduced in the region. An effective way is by developing databases to be used by the procurement units (PU).

Indices and the definition of the sector and characteristics of the coefficients need to be instilled in the PU and internal/external auditors if and when price adjustment mechanisms enter into effect.

$P_n = a + b L_n / L_o + c E_n / E_o + d M_n / M_o + \dots$ where:

“P_n” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “n”.

“a” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments.

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, such as labour, equipment and materials.

“L_n”, “E_n”, “M_n”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment.

“L_o”, “E_o”, “M_o”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element.

3.10 Comparison of results

Findings by LLT	Findings by CA
The general trends in the EBRD region in terms of contract administration are positive. The administration of public procurement contracts, as well as internal monitoring is perceived as satisfactory. This, however, cannot prevent a medium compliance rate and occasional problems with the completion of public contracts on schedule and within budget.	Contract administration is generally well performed; however, the procurement units do not add value to this important phase of the procurement cycle. There are no shared monitoring systems and procurement staff do not have skills to accompany contract implementation.
Clearly additional contractual safeguards, beyond monitoring delivery, and their enforcement may help, together with on going improvements in the general business practices in the countries concerned.	Procurement units need to strengthen skills and knowledge of contract administration.
Ensuring the integrity of the procedure would require further strengthening of the review and approval procedures for amendments and extension of public contracts. Currently, a lack of monitoring and clear contract revision procedures in many countries leaves room for corruption.	Procurement units should actively participate in amendments and extension approvals.

3.10 Comparison of results with the public procurement assessment

The results of the CA capacity assessment touch upon aspects that were also discussed in the study carried out by the Legal Transition Team (LTT) of the Bank in 2011.

Regarding contract administration the findings of the LTT and CA teams are identical. The previous table presents some comparative results.

3.11 Analysis

In the sample, only the power and municipal sectors have data to allow for a brief sector analysis of the risk in procurement.

There is not sufficient data to allow for a regression analysis. The Bank expects to collect data systematically on procurement capacity of Clients over the next few years; if and when this data are available, the Bank will be able to formulate a regression equation about expected capacity and associated risk of the Clients.

As presented in the next two charts, if outliers are removed, one could expect that in the Power and Energy sector, Bank's Clients will score between 50 per cent and 80 per cent of the maximum possible score given by the methodology. The average score of the eight applications in power sector was 64.5 per cent, which places candidate Clients in the limit of the 65 per cent threshold for moderate low risk Clients.

Seemingly, if outliers are removed, Bank Clients in the municipal sector will score between 47 per cent and 58 per cent of the maximum possible score with an average of 55.7 per cent, which is the middle point of the moderate high-risk category.

It is possible to hypothesise that these conditions are likely to occur in future applications. Further work is required to establish this model.

Power

- Clients are expected to be moderately low risk in procurement

Municipal

- Clients are expected to be moderately low risk in procurement

Chart 3.9
Power sectors scores

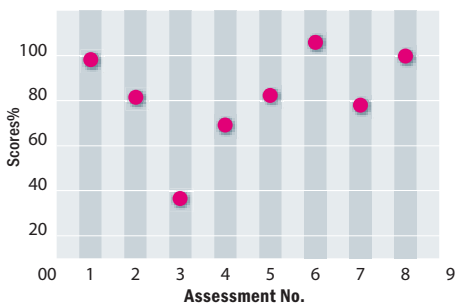
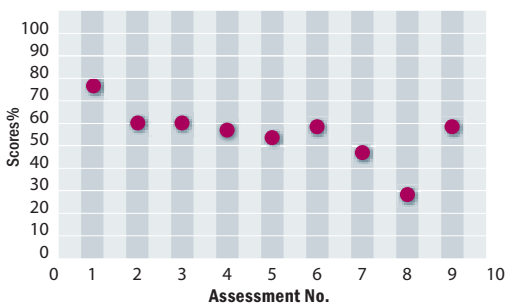


Chart 3.10
Municipal sectors scores



4

Chapter



Training

4.1 Training activities followed capacity assessment

The assessment provided an opportunity to provide training in the areas of opportunity identified in the review. The Bank provided Clients with separate training events for the staff of 18 agencies that participated in the programme. The training events were aimed at tackling the areas of opportunity for improvement identified in the capacity assessment.

The training activities were delivered as customised, one-day packages combining dissertations and case study discussions among Clients' staff and the facilitators. The training package is an asset of the Bank that can be easily adjusted to serve the needs of any Client carrying out public procurement in the region.

More than 120 participants of the events filled out the evaluation sheet qualifying the relevance of the training events. The results are encouraging as presented in the next chart. Almost unanimously, the Client beneficiaries qualified the training as relevant or higher.



The training package is an asset of the Bank that can be easily adjusted to serve the needs of any Client carrying out public procurement in the region.

Chart 4.1 Relevance of the event

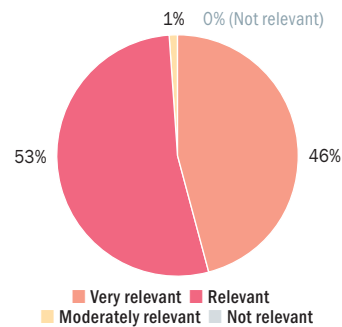


Chart 4.2 Level of the event

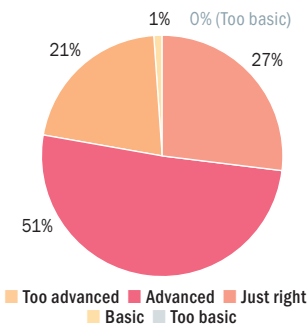
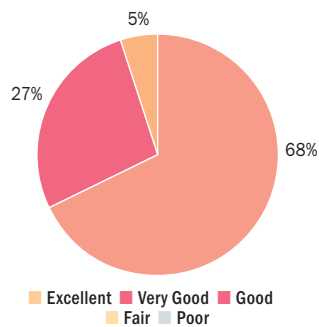


Chart 4.3 Lectures



Chapter

5



Suppliers and contractors outreach

5.1 Business opportunities and industry outreach

The same consultant who developed training materials for the Bank was also contracted to develop a business opportunities package for suppliers and contractors in the region.

An event sponsored by Belgrade Chamber of Commerce and the Bank served as a testing field for the materials developed under the programme.

Subsequently, the conference materials were used by the Bank in several interactions with the private industry in UK, Serbia and Spain.

The toolkit is also offered to the Bank staff in a simplified version. In this version, the numbering of the items is not consecutive, as the other items will remain in the system for an opportunity to gather data on the characteristics of excluded parameters. This version consists of 37 out of 62 items in the fully-fledged toolkit and it relates exclusively to aspects connected to the project.



Private sector representatives learn about business opportunities offered by the Bank and how to compete effectively in Belgrade.

> Clients in the region expressed interest in working towards modern procurement practices encompassing more transparent, more efficient and more economic public contracts.

This assessment was possible thanks to the immense collaboration of the following Bank's Clients, their project teams and the Office of the Representative in each country

Elektroprivreda
Beoland
Novi Sad District Heating
Srbijagas
AIHCB
City of Tirana
ARA
OST
FCNRS
Telekom
Ukrenergo
Ukrhydroenergo
Aktobe District Heating
KEGOC
Lvov-District Heating
SERAW
JAVYS
Lithuania-Post
ELEM
City of Skopje
Gaz-System
Subotica Water & Sewerage
Directorate of Roads Canton Sarajevo
Vik-Bijeljina
PUC-Cazin
Rosmorport
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