Transparent Public Procurement Rating

Implementation Assessment of the Armenian Public Procurement Legislation

The Implementation Assessment of the Public Procurement Legislation of Armenia was prepared by the Freedom of Information Center of Armenia (FOICA).

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Introduction

Features of Armenian PPL Implementation Assessment methodology

Until April 25, 2017, the procurement system in Armenia was regulated by the Republic of Armenia (RA) Law on Procurements adopted on December 22, 2010. But on December 12, 2016, Armenia adopted a new Law on Procurements (signed on January 14, 2017). Taking into account the fact of adoption of the new Law, TPPR Methodology Indicators were assessed according to the RA new Law on Procurements, because the previous law was repealed and no longer existed as a legal act regulating the procurement sphere. On the other hand, the new Law does not have practice of implementation, thus it is impossible to assess the Armenian acting PPL implementation. Thus, this assessment will be based on indicators, scores and results of the Armenian PPL Assessment.

According to Article 6 (principle of legality) of the RA Constitution, state and local self-government bodies and public officials are competent to perform (entitled to implement) only such acts as authorized by the Constitution or laws, i.e. if any action in the sphere of procurements is not prescribed by law, there is no opportunity to perform it. Thus, indicators that were scored 0 (that is not reflected or enshrined in Armenian PPL), will not be assessed from the point of application, and the application of indicators which received any points (that is reflected or enshrined in Armenian PPL), will be assessed.

For example, in the Armenian PPL Assessment in the section "Transparency Environment" indicator "Legislation includes provisions regulating whistleblower protection" was scored 0, so there is no sense to assess the practice of protection whistleblower, as there is no obligation for state bodies and officials (moreover, they have no right) to provide mechanisms for it. Instead, in the same sector of PPL Assessment the implementation of indicator "Budgets of all public procuring entities are publicly available" will be assessed, as publication of budgets of state and local self-government bodies is their direct obligation by virtue of being enshrined in the legislation.

General overview of the Armenian procurement system

As it was mentioned, the procurement system in Armenia is mainly regulated by the RA Law on Procurements adopted on December 12, 2016. The type of procurement system is mixed: the Law provides opportunities to conduct procurements both electronically and paper-based. The Law has a separate article defining which documents are required to ensure the record and storage of the information on the procurement procedure, validity of the data required from bidders and rules of e-procurement (see Article 8 of the Law).

One of the main obvious changes in the field of procurements resulted by the change of legislation is the change in the status of Procurement Complaint Review Board: previously members of Procurement Complaint Review Board were selected by the test from both public and private sector employees and

from these people for reviewing each appeal 3 Board members were elected in a rotational way. According to the new regulation of the Law, Procurement Complaint Review Board consists of up to 3 members, who are appointed for five years by the RA President upon nomination of the RA Prime Minister. The member is not in labor relations with the Republic of Armenia and may not hold any other office or perform other paid work during his term, except for scientific, pedagogical and creative work. Thus, the Board member can't be from either civil society or from state sector during his/her term but in the same time there are no limitations or criteria of their previous activities, thus, Procurement Complaint Review Board members can be previous employees or representatives of both public and private sectors.

There are four methods of procurements – 1) Electronic auction, 2) Contest (tender), 3) Request for quotations, 4) Single-source procurement. In its turn, Contest can be open or closed. Closed contest can be targeted or regular. The Contest is the preferable procurement method. Only in cases stipulated in the law, other methods of procurement can be used. It should be noted, that the previous Law also defined four methods of procurements, but the terminology was different – 1) Open procedure, 2) Competitive dialogue, 3) Restricted procedure and 4) Negotiations. Also, Open procedure was recognized as the preferable and basic procurement method by the Law.

The Law provides for exemption in case of procurement only for public undertakings (entities) in three cases:

1) Products that will be resold or leased to third parties, provided that the undertaking concerned enjoys no special or exclusive right to sell or to lease the subject of such contracts, and other undertakings are free to sell or to lease similar products;
2) Goods, services or works for the purpose to perform relevant activities in a third country, under conditions not involving their use within the Republic of Armenia.
3) Goods, services or works for the purpose to perform other activities than relevant activities. In cases when the contract is intended to cover several activities and among them at least one is a relevant activity, but it is objectively impossible to determine for which activity the contract is principally intended, the procurement shall be made according with the provisions of this law.

The abovementioned exemption is the only exemption from the PPL. Previously, before the adoption of the new Law on Procurements on December 12, 2016, there was another exemption, which was stating, that unless otherwise stipulated by the Republic of Armenia laws, the provisions of the Law on Procurements are inapplicable in case of procurement for state or community non-commercial (non-profit) organizations and entities with over fifty percent of government or community shareholding. This provision of previous Law was not included in the acting one; as a result, the scope of exemptions from PPL was narrowed.

According to the RA Law on Procurements, the procurement is based, among others (inter alia) on principles of transparency and publicity. On the one hand, there is quite a large range of information on procurements, including reports of authorized body and civil society organizations (NGOs), procurement

announcements, contracts of procurements (including from single source), etc., on the other hand, there is a danger that "official" transparency can be "selective" or "incomplete". For example, procurement information of 27 municipalities (city communities) subordinate bodies was not included in the report of Procurement Support Center SNCO (body implementing PPL) for 2015 because of lack of information. It should be noted, that there are 49 city communities in Armenia, thus, the report of the authorized state body for 2015 did not include procurement information of over 55% of city communities and subordinate bodies.

In terms of quality and evaluation, analyses and reports of civil society organizations, such as Public Procurement Monitoring Report of Transparency International NGO, are more accurate, however, reports and analysis of NGOs, even if they contain a lot of information on procurements, cannot be considered as accomplished obligation of the state (government) to ensure the transparency of procurement.

Another problem is the transparency of single source procurement. Although contracts of procurement from a single source are published, pre-procurement processes are generally not accessible for public. During past two years, some progress was made towards the publicity of complaint review procedure, as sessions of the Procurement Complaint Review Board are broadcasted online.[1]

Another example of "incompleteness" of transparency is statistics on how central governmental bodies (all ministries, marzpetarans (regional governors' offices), and agencies adjunct to the Government, staff of the RA president, staff of the National Assembly and staff of the RA Government) publish information on procurements. The analysis showed, that in 2016 only 41.7% of the mentioned bodies have published on their websites procurement contracts or information on procurements (parties, subject, price, etc.), and 42.5% - in 2015, i.e. over half of central governmental bodies are not transparent in procurement processes.

[1] https://www.e-gov.am/gnumner/; and http://gnumner.am/am/home.html

Problems in Practice

Transparency Environment

1. Budgets of all public procuring entities are publicly available.

The RA Law on Freedom of Information, Article 7, part 3, point 2,[2] states that public bodies (state bodies, local self-government bodies, state offices, state budget sponsored organizations) and private organizations of public importance should at least once a year publish their budget. Thus, according to the Law, budgets of all public procuring entities are publicly available. But the analysis of practice showed that in 2016 35% of central governmental bodies did not publish their budget on their websites. What is interesting is that in 2015 only 22.2% failed to fulfill this obligation. It should be noted that budgets of self-governmental organizations (city and rural communities) are as a rule published by regional governors' offices.[3]

2. Public officials are required by law to file asset declarations.

In Armenia only high ranking public officials[4] are required to file asset and income declarations. The maintenance of the register of high-ranking officials' and their related persons' declarations, analysis and publication of declarations are functions of the RA Commission on Ethics of High-Ranking Officials. In practice these obligations the Commission carries out in accordance with the law, within prescribed deadlines.[5]

According to the information posted on the Commission's website, during the whole period of its functioning it initiated only two administrative proceedings regarding the possible conflict of interest situations based on the information containing in the declarations of assets and income of two high-ranking public officials[6] and reports of media regarding the unofficial businesses of those officials[7]. In both cases the proceedings were initiated in response to written requests submitted by Transparency International Anti-corruption Center NGO (local official chapter of Transparency International in Armenia). The proceedings on the first case (related to the former Minister of Finance) were initiated on

[2] http://www.foi.am/u_files/file/legislation/FOIeng.pdf

[3] http://ararat.mtad.am/community-budget/, http://aragatsotn.mtad.am/byuje-hamajnq/, http://kotayk.mtad.am/byuje/, http://shirak.mtad.am/community-budgetary-expenditure/ and http://shirak.mtad.am/community-budgetary-revenues/, http://gegharkunik.mtad.am/community-budgetary-expenditure/ and http://gegharkunik.mtad.am/community-budgetary-revenues/, http://vdzor.mtad.am/Hamaynqbyuje/, http://syunik.mtad.am/community-budgetary-expenditure/ and http://syunik.mtad.am/community-budgetary-revenues/, http://lori.mtad.am/byuje/, http://armavir.mtad.am/community-budgetary-expenditure/ and http://armavir.mtad.am/community-budgetary-revenues/, http://tavush.mtad.am/community-budgetary-expenditure/ and http://tavush.mtad.am/community-budgetary-revenues/.

[4] Point 15 of Part 1 of Article 5 of the Law on Public Service provides the list of the positions of high-ranking public officials.

[5] http://ethics.am/en/declarations-registry/

[6] Those were the former Minister of Finance and current Mayor of Yerevan.

[7] There were media reports arguing that the mentioned high-ranking officials were owning businesses, which is forbidden by Armenian Constitution and, thus, having large income, Also, their declarations were containing such large amount of assets and income from the hidden from public sources, which could not be explained, considering their official salaries.

April 10, 2013 and the decision was passed on May 3, 2013. The proceedings on the second case (related to the Mayor of Yerevan) were initiated on September 20, 2013 and the decision on that case was passed on October 16, 2013.[8] Since that, no other administrative proceedings were initiated, and this fact is a strong indication of lack of pro-activeness of the Commission, which in its turn points to more serious and systemic problems in the institute of declaring assets and income.

3. The country has adopted legal provisions ensuring the right to request public information.

The right to freedom of information is stated in the RA Constitution. Article 42 of the Constitution states, that everyone shall have the right to freely express his or her opinion and this right shall include freedom to hold own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers. In its turn Article 51 of the Constitution states, that everyone shall have the right to receive information and get familiar with documents relating to the activities of state and local self-government bodies and officials.

The main aspects of freedom of information and conditions for the exercise of this right in Armenia are set out in the RA Law on Freedom of Information (HO-11-N), adopted on September 23, 2003.[9] The Law was considered one of 10 best laws in the sphere of freedom of information in Europe. Although during 14 years of application the RA Law on Freedom of Information has not been amended or changed, however, due to the positive court precedent[10] a good practice of implementation of the Law was formed. A comprehensive monitoring of the freedom of information sphere was conducted by Freedom of Information Center of Armenia NGO (FOICA) in 2011. According to that monitoring report and new publications and analyses of the FOICA[11], the main problems in the FOI sphere are 1) Lack of Culture of Openness, 2) Provision of Complete Responses and Refusals, 3) Timeframes (violation of the deadlines established by the Law), 4) Request Forms (written information requests sent by post received the most complete responses, while there still are problems with regards to electronic and oral information requests).

Uniformity of the Legislative Framework

1. Public Procurement Legislation (PPL), which may include primary and secondary legislation, lays out the basic principles and general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances.

Relations pertaining to the procurement of goods, works and services by clients are regulated and principal rights and responsibilities of parties are established by the RA Law on Procurements adopted on December 12, 2016. Armenian PPL also includes sub-legal acts of 17 fields of regulation, probably

[8] In the first case the Commission found only a minor conflict of interest, and in the second case – no conflict of interest was found.
[9] http://www.foi.am/u_files/file/legislation/FOIeng.pdf
[10] http://www.foi.am/files/library_pdfs/8.pdf, http://www.foi.am/files/library_pdfs/4.pdf and http://www.foi.am/files/library_pdfs/79.pdf
[11] http://www.foi.am/en/news/

separate sub-legal act on implementation of centralized procurements, sub-legal acts on limitations of participation of a person(s) residents of any country. The abovementioned sub-legal acts are not developed yet, thus, sub-legal acts which were adopted under or in pursuance of the old Law continue to be valid to the extent not inconsistent with the new Law until the new sub-legal acts will be adopted.

The new law is more acceptable in terms of legal certainty, more clear and understandable compared with the previous law, but considering that around 17 fields must be regulated sub-legal acts, it is doubtful that new legislation will be complicated and difficult to be interpreted for procurement parties. In any case, whether legislation complies with the principle of legal certainty and easy to apply or not, might be considered only when there will be a practice of implementation of the new legislation.

2. PPL (including primary and secondary legislation) is available in a single and accessible place.

PPL is available on www.procurement.am (which is recognized by Law as a Bulletin) and on www.arlis.am makes it possible to search the text of the act, and on www.procurement.am the legal acts are in either "word" or "pdf" formats. Text of legal acts in "word" format is searchable. Both platforms are free of charge to use, give opportunity to download legal acts and do not require special computer programs, only Internet is needed.

3. PPL determines a separate public body (procurement regulatory body) responsible for managing public procurement or assigns this function to a subordinate state body(ies) (e.g. Ministry department).

According to the RA Law on Procurements, Article 2, part 1, point 13, the authorized body is the state body of the Republic of Armenia Executive responsible for the development and implementation of the Republic of Armenia Government policy in the area of public finance management, i. e. the Ministry of Finance.

Up until 2016 though, the Ministry of Finance was the authorized body and the policy maker, the actual implementation of PPL was ensured by the Center for Procurement Support SNCO. First, it was a subordinate body under the Ministry of Finance, but in 2015 by the 30.01.2015 decision of the RA Government 64-N the Procurement Support Center SNCO came out of the Ministry's jurisdiction and became a body of straight governmental jurisdiction (was included in the Staff of the Government).

This jurisdiction change gave certain independence to the Procurement Support Center, as it sometimes opposed the Ministry of Finance. For example, for including a bidders in a list of bidders ineligible to participate in procurement procedure, the Ministry previously had to apply to the SNCO for its conclusion, and in a number of cases the SNCO was returning of the application of Ministry concluding that no grounds exist for including a bidders in a list of bidders ineligible to participate in procurement procedure. Also, the Procurement Support Center was acting as the secretariat of the Procurement Complaint Review Board. By the new Law on Procurements the Procurement Support Center SNCO was dissolved, and the Ministry of Finance remained as the only authorized body. The Ministry will also be

the secretariat of the Procurement Complaint Review Board. Moreover, Board members will receive payments (salaries) through the Ministry.

Although this new regulation does not have practice of implementation, but taking into account the abovementioned, there is serious concern that in the cases of conflict of interest and corruption risks this kind of authorized body (Ministry, without certain guarantees of independence) will be able to operate properly.

4. PPL ensures the existence of an independent (from parties involved in a procurement dispute) review body with the authority to review complaints and grant remedies (the review body includes civil society members).

The Procurement Complaint Review Board consists of up to 3 members, who are appointed for five years by the RA President upon nomination of the RA Prime Minister. The member is not in labor relations with the Republic of Armenia and may not hold any other office or perform other paid work during his term, except for scientific, pedagogical and creative work. Thus, the Board member can't be from either civil society or from state sector during his/her term but in the same time previously can be both public and private sector employee.

On the one hand, it is too early to assess whether guarantees on independence are in fact acting and whether the Board is really independent. On the other hand, two of three Board members are already appointed, thus it can be assessed what background do they have and whether they relate to civil society. One of the Board members is Mher Ananyan, ex head of the Procurement Support Center SNCO. During last 10 years Mr. Ananyan held only public positions. Second Board member is Emil Sargsyan, whose previous position was the head "Transport PIU" of the RA Ministry of Transport and Communication. Before that Mr. Sargsyan was deputy head of the Procurement Support Center SNCO. Thus, according to the existing practice no Procurement Complaint Review Board member is a civil society representative.

Efficiency

1. PPL establishes a single official point of access (i.e. an online portal) for all procedures and information related to public procurement.

The RA Law on Procurements, Article 2, part 1, point 14, www.procurement.am was recognized as the Bulletin, i.e. a portal for access to all necessary information on procurement. In parallel, Armenia has adopted strategy of developing unified Armenian Electronic Procurement System (ARMEPS), which is electronic Public Procurement System (e-PPS). ARMEPS was created as an open, secure, interoperable and re-configurable e- Procurement modular platform, addressing the full lifecycle of e-Procurement, in full compliance with ISO 27001 Standards. The ARMEPS has also a section "Reports and Analysis", which contains info-graphics, procurement plans and reports. In addition to abovementioned two portals there is also a portal of the RA Government www.e-gov.am, where the contracts of procurements from a

single source are published and via that website the sessions of the Procurement Complaint Review Board are broadcasted online and the videos are published.

In such diversity of sites and platforms it cannot be argued that there is a "single point of access" for all procurement related information. Moreover, in such circumstances, it is difficult to effectively search for and find the information needed. Thus, although procurement related information is available online, but the method of publication is not efficient.

Also, the diversity of portals caused confusion in content, i.e. the information is similar sections of different sites is incomplete (refers to various periods) or is outdated. For example, yearly reports on procurements for 2011-2016 (including) are published on www.procurement.am in "word" format, the same information for 2016 and 2017 is available also on www.armeps.am in form of tables and info-graphics.

2. Legislation requires that software used for electronic procurement and related communication shall be non-discriminatory, free to use and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure.

According to the RA Law on Procurements, Article 8, part 3, the electronic means must be non-discriminatory, generally available to any possible participant and must be interoperable with the means of general use of information and communication technologies. To participate in e-procurement, electronic signature is needed which runs through identification cards. Depending on computer programs, operating systems, the sequence of actions, etc., the use of identification cards for electronic signatures has different features.

In practice, in a number of cases because of the mentioned technical issues the bidder was deprived of a chance of future participation in procurement (the bid was refused). During last year, at least three such cases became a subject for appeal in the Procurement Complaint Review Board. Thus, despite the provisions of the Law, it can't be stated, that tools used for electronic procurement are generally available to any possible participant and are interoperable with the means of general use of information and communication technologies. It should be noted, that Procurement Support Center SNCO in its official yearly report for 2015 identified 31 system errors of the Armenian Electronic Procurement System (ARMEPS), part of which have been resolved through ongoing works and in its yearly report for 2016 the SNCO identified 20 system errors of ARMEPS.

Competitiveness and Impartiality

1. PPL stipulates that open tender is the default procedure for any public procurement, and all exceptions are clearly listed by the PPL. Open tender is the default procedure for any public procurement.

The RA Law on Procurements states that tender is the preferred form of procurement and notes that the closed tender is applicable when the process contains state secret. Thus, the Law does not explicitly mention, that open tender is the default procedure for any public procurement process, if the subject of procurement is not included in the list of goods, services and works to be procured through e-auction or in the list of goods, services and works to be procured through close recurrent tenders; instead, all exceptions are clearly listed by the Law. In practice, –one of the most noncompetitive procedures of procurement, namely, single source procurement is widespread in Armenia. According to the published procurement contracts, 12.373 procurement procedures were initiated (goods, works or services were obtained) from a single source.

In a number of cases the urgency of single source purchase is hardly justified, and the price of contract raised suspicions of corruption. For example, on December 16, 2015 the RA Ministry of Finance signed furniture purchase agreement worth over 249 million AMD (over 498.000 USD), or on December 16, 2015 the RA Ministry of Defense signed contract for construction works worth over 104 million AMD (over 208.000 USD). Another example - the regional governor's office of Ararat region on December 9, 2015, signed anti-hail stations purchase contract worth over 66 million AMD (132.000 USD).

In 2016 procurement from single source reduced almost two times - 6.900[12] procurements were initiated from a single source and contracts were signed. But the situation with justification of urgency and the high price of some contracts remained the same. For example, in 2016 the RA Ministry of Finance signed four contract for construction/repair works worth over 903 million AMD (over 1.806.000 USD). Another example - in 2016 the regional governors' office of Gegharkunik region signed four contract for construction/repair works in two cities of region worth over 62 million AMD (124.000 USD).

2. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterizes the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favoring or eliminating certain undertakings or certain products.

According to the RA Law on Procurements, Article 13, part 5, the procurement subject specifications shall not require or refer to any trademark, brand name, license, design or model, country of origin or a specific source or a manufacturer, except cases, when the description of the procurement subject is impossible without such requirement or reference. In the event if references are made, the technical specifications must contain the words "or equivalent". Despite the legal requirement, the analysis of the

[12] For comparison, it should be noted that according to the official statistics of www.armeps.am 20.940 lots (procurements) were conducted and completed in 2016 - https://armeps.am/ppcm/public/reports?lang=en

complaints shows that in a number of cases the procurement subject specifications point to a specific product (brand). For example, based on a complaint filed by Khachpar Ltd., the Procurement Complaint Review Board found out that in the discussed case Yerevan State Medical University made procurement subject description in a way that the described specifications required only to one product (brand). As a result, Khachpar Ltd.'s complaint was satisfied[13].

Transparency

1. PPL ensures electronic, machine-readable and free of charge access to

- submitted complaints, either the full text or key information contained in these documents,
- decisions of dispute resolutions (of the independent review body), either the full text or key information contained in these documents.
- public procurement annual plans of all procuring entities or key information included in these documents.
- notices of intended procurement (including tender documentation), either the full text or key information contained in these documents.
- tender documentation amendments, either the full text or key information contained in these documents.
- tender candidate applications (all documents needed for the request to participate in a tender), either the full text or key information contained in these documents.
- information about the bids offered by tender participant.
- decisions of the tender commission, either the full text or key information contained in these documents.

According to the RA Law on Procurements, announcement about a complaint, decisions of the Procurement Complaint Review Board, public procurement annual plans, notices of intended procurement, tender documentation amendments, tender candidate applications, protocols of the bid opening sessions and the protocol of the tender evaluation sessions should be published in the bulletin (www.procurements.am) but there is nothing in the Law about their formats.

In practice the abovementioned documents are published in different formats. For example, announcements about complaints are available in an electronic, machine-readable and free of charge way (in "word" format), while public procurement annual plans or decisions of the Procurement Complaint Review Board are published in "pdf" format (decisions of the Board are scanned), thus, these documents are not machine-readable. Thus, it should be stated that there is no single approach on formats of publication of abovementioned documents and information both in legislation and in practice.

[13] According to the report of the Procurement Support Center SNCO for 2015, this violation was considered as one of the most risky areas of PPL and was 6.2% of all violations (There is no comparable data in the report for 2016).

Conclusion and Recommendations

The major findings pointed out after the assessment of legislation is that the strengths of the system, its problems and flaws will be strongly connected with the implementation of the Law, because the proper interpretation of the Law will lead to the good procurement system and vice versa. For example, Armenian PPL includes sub-legal acts of 17 fields of regulation, (probably separate sub-legal act on implementation of centralized procurements, sub-legal acts on limitations of participation of a person(s) residents of any country, etc.), which are not adopted yet and can mainly influence on quality of the interpretation of provisions of Law.

Recommendations based on PPL gaps

The following recommendations are based on the assessment of the Armenian PPL and identified gaps.

1. Armenia does not have publicly available business registry. Creation and maintenance of Business registry is carried out on the basis of the State Register of Legal Entities, and the appropriate information is available only upon payment.

- Thus, it is necessary to legislatively fix the idea of ***publicly available*** business register.

2. Armenia does not have proper legislation regulating whistleblower protection. A relevant law has already been drafted and passed a round of public discussions in February, 2017, but has not been submitted to the National Assembly yet.

- Thus, it is necessary to ensure adoption of the RA Law on Whistleblower Protection ***as soon as possible***.

3. The procurement regulatory body (authorized body) in Armenia is the Ministry of Finance. It means, that the authorized body is not a separate body with typical independence guarantees; also, the Ministry is financed only from state budget.

- Thus, it is necessary to legislatively change the authorized body responsible for managing public procurement with opportunities to have income in addition to state funding.

4. The RA Law on Procurements states that that public procurement can be carried out electronically and communication between procuring entities and tender participants can be carried out electronically, but the Law does not recognize electronic means as primary method of conducting procurement. Moreover, the law has a restrictive norm, which says, that e-procurement participation fee can be set by the Government.

- Thus, it is necessary to legislatively fix that electronic means is the primary method of conducting public procurement and of communication between procuring entities and tender participants. Taking

into account the hierarchy and regulatory areas of legal acts in Armenia, it is necessary to fix it in the Law.

5. There is no single approach on formats of publication of announcement about a complaint, decisions of the Procurement Complaint Review Board, public procurement annual plans, notices of intended procurement, tender documentation amendments, tender candidate applications, protocols of the bid opening sessions and the protocol of the tender evaluation sessions in legislation.

- Thus, it is necessary to legislatively fix that any of the abovementioned documents which are to be published via bulletin (www.procurements.am) should be machine-readable and free of charge (should be downloadable, freely available to everyone to use and republish, without restrictions (criteria of open data)).

6. The Law on Procurements states, that procurement plan should be conducted, but only for procurements with state budget sourcing. Also, the Law does not define what the plan must include.

- Thus, it is necessary to at least restore regulation of the previous Law, which was stating, that the procurement plans must be approved on the basis of procurement subject, quantity, total price, and procurement method.

7. One of the main gaps of the RA Law on Procurements is the poor regulation of guarantees for accountability and integrity.

- The Law does not stipulate that procurement process should not normally be initiated until the appropriate financial resources have been identified,
- The Law does not stipulate that justification for using a non-competitive procedure must be made public by the procuring entity,
- The Law does not stipulate that public procurement operations must be subject to internal and external audit conducted by qualified specialists.

- Thus, it is necessary to legislatively fix guarantees for to ensuring accountability and integrity, taking into account abovementioned remarks.

Recommendations based on PPL implementation assessment

1. Most of public bodies do not fulfill the requirement of the RA Law on Freedom of Information, according to which public bodies must proactively publish their budgets on their official web-sites.

- It is it is necessary to set responsibility by the RA Administrative Offenses Code for violating the obligations of proactive publication of information.

2. As it was mentioned, Armenian PPL includes sub-legal acts of 17 fields of regulation, on implementation of centralized procurements, sub-legal acts on limitations of participation of a person(s) residents of any country, etc.

- Taking into account, that most of the abovementioned sub-legal acts are not adopted yet, it is necessary to strongly consider the principle of legal certainty while developing the sub-legal acts.

3. As it was mentioned, both of already appointed Procurement Complaint Review Board members are not civil society representatives.

- Thus, when appointing the third Board member, in all other equal conditions preference should be given to civil society representative candidate.

4. As it was mentioned, there are three platforms for procurement related information - www.procurement.am, www.armeps.am and www.e-gov.am.

- Taking into account, that www.procurement.am was recognized as a Bulletin by the Law, it is necessary to create a single official point of access on the basis of the Bulletin, ensuring access to all information related to procurement via that platform.

5. As it was mentioned, during one year out of 31 errors of the Armenian Electronic Procurement System (ARMEPS) only 11 were resolved.

- It is necessary to resolve the remaining errors of ARMEPS as soon as possible and to ensure future smooth operation of the platform.

6. As it was mentioned, the number of procurements from a single source is quite high and appears to be a way to escape competitive procedure.

- Thus, it is necessary to straightly fix in the Law, that competitive procedure is the default procedure for any public procurement, also, there should be fixed special restrictions (such as price limits) on the procurement from a single source.

7. As it was mentioned, despite the legal requirement, the analysis of the complaints shows that in a number of cases the procurement subject specifications point to a specific product.

- Thus, it is necessary to set regulations (by sub-legal acts) to prevent referrals to a current product (for example, it can be set, that any specifications (indicator) providing better condition or result than described is considered to be equivalent).