

# Transparent Public Procurement Rating



TRANSPARENCY  
AZERBAIJAN

## Implementation Assessment of the Azerbaijani Procurement Legislation

The Assessment of the Public Procurement Legislation of Azerbaijan was prepared by Transparency International Azerbaijan (TI-Azerbaijan).

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## Problem Statement

The analysis of Azerbaijan's public procurement legislation (PPL) has led to a conclusion that the regulations governing public procurement fall short of internationally accepted standards. The current legal framework suffers from a number of deficiencies, including ambiguity of procurement procedures, lack of accountability and transparency mechanisms, inadequate guarantees for competitiveness of government procurement. Moreover, the shortcomings in the country's openness and anti-corruption policies were identified as a major contributing factor to Azerbaijan's disadvantaged procurement processes.

The assessment of the implementation of PPL further reinforces this conclusion and reveals that in practice problems extend well beyond the flaws in the law. For a country having a large public sector and huge state-funded economic development programs, public procurement has remained off the radar surprisingly far too long in Azerbaijan. This clearly points to more complex factors, such as perverse effects of oil dependency on the pace of institutional reforms and the idiosyncrasy of the political situation. The political and economic context therefore provide backdrop for more specific issues discussed in this study.

While lack of publicly available data on government procurement prevents us from subjecting the issue to a closer scrutiny, the existing sources still allow us to present a general account of the problems. Moreover, due to the fact that the most consequential shortcomings concern the basic functionality of Azerbaijan's procurement system, the focus of this assessment is on the problems of general scope than details of secondary order.

One of the most critical direct challenges stems from the absence of a rigorous set of rules and procedures governing the procurement process. The resulting ambiguity provides a fertile breeding ground for corruption and nepotism in the government procurement by blurring the boundaries of institutional and individual accountability. The problem is further compounded by the enforcement gap resulting from the lack of institutional authority vested in the regulatory body (hereinafter "the Regulator").<sup>1</sup> The scope of discretionary powers actually granted procuring entities overshadows the means of holding these institutions in check. The autonomy of the procuring entities in deciding on matters involving their procurement needs pushed the Regulator further into irrelevance and undermined its ability to establish an effective control over this vital area of public finances.

However, the public has not seen a good faith effort on the part of the Regulator to actively challenge the status quo ever since it was set up. To begin with the Regulator has not been forthcoming in terms of the transparency of its own operations. Besides, the Regulator has watched from the sidelines as charges of corruption and mismanagement made headlines almost on a regular basis. Other law enforcement agencies, notably, Anti-Corruption Directorate under Prosecutor General's Office remained conspicuous by their absence in the face of corruption allegations published in the media. A notable exception is the Chamber of Accounts, the formally independent auditing authority responsible for ensuring the appropriate use of taxpayers' money. The Chamber of Accounts' reports, including its annual audit reports and reviews of the state budget provide rare insights into general procurement data as well as the problems in public procurement management. These reports along with media

publications and the Regulator's annual reports, as well as the registry of procurement competitions are the main sources of data used in this assessment.

## Context

In 2015, government procurement claimed 16% of Azerbaijan's public expenditures, or 2.8 billion Manats.<sup>2</sup> Despite annually consuming a large slice of the state budget, public procurement remained out of the regulatory spotlight until very recently. The law on public procurement, which was adopted in 1999, was rendered ineffective by a multitude of loopholes. Moreover, the government has generally been lax about enforcing the procurement rules. The government's waning interest in the regulation was evidenced further by the fact that the burst of legislative efforts had ceased by mid-2000s. This lack of interest in seeing through the full cycle of reforms was reinforced by a drastic increase in oil revenues in the decade after 2005. Also known as "the paradox of plenty", the oil windfall, reversed the fledgling attempts at institutional reforms and public procurement was among the sectors immediately affected. Year by year increase in public spending fueled by oil earnings obviated, if temporarily, the need for cost reduction in the public sector.

The slump in oil prices, subsequent currency devaluations and economic recession have urged the government to reconsider its profligate spending habits. This has not translated into far-reaching reforms in public procurement, but some of the steps taken lately indicate certain degree of interest on the government's part to generate savings in public procurement. Moreover, the government has come to rely more on its purchasing power as one of the tools of its economic policy. Taking advantage of its unique position as the biggest consumer in the market, it has followed a double-pronged strategy of stimulating the local economy by buying from local producers and limiting the outflow of foreign currency by suspending procurement from abroad.

Until January 2016, State Procurement Agency (hereinafter "the Agency") had exercised the regulatory oversight of public procurement. In January, the Agency was **terminated** and its competences were delegated to Ministry of Economy.<sup>3</sup> Specifically, State Service for Antimonopoly Policy and Consumer Protection under Ministry of Economy (hereinafter "the Service") was tasked with the enforcement of regulatory policy in this area. The process of transition has not been smooth and resulted in disruption of the Regulator's<sup>4</sup> public relations and disclosure policies. Since taking the wheel, the Service has been asked by the government to overhaul the existing law on public procurement to bring it up to date. The Regulator has reportedly finalized and submitted the new draft for the approval of the Cabinet of Ministers, but its failure to consult with the key stakeholders, including the civil society organizations, small and medium enterprises raises serious questions about the content and scope of the proposed amendments.<sup>5</sup>

## Anti-corruption Policy

Azerbaijan's public procurement remains susceptible to corruption, because the government has been slow in adopting robust corruption prevention mechanisms and has been conspicuously lenient in enforcement of the existing regulations. This has far-reaching ramifications for the integrity and efficiency of the procurement process. The analysis of the transparency regulations indicates that they

remain underdeveloped. For example, Azerbaijani officials are not obligated to disclose their wealth or declare any real or potential conflict of interest to their superiors (much less publish it). Moreover, the conflict of interest clause in the law on procurement has a limited scope – it focuses specifically on the members of a tender commission, the body responsible for formally determining the winning bidder(s). However, its application does not extend to senior officials of the procuring entity who are not members of the tender commission, but may carry considerable clout in the decision-making. The fact that the head of the procuring entity falls outside the purview of the conflict of interest clause itself presents a potential conflict of interest. In a hypothetical scenario, in which the head of a procuring entity interferes with the decision of the tender commission, the commission members, who also happen to be his employees, would face a dilemma of deferring to his choice or potentially risking dismissal on a bogus charge.

On the other side, the identities of business owners are kept confidential under Azerbaijan's tightly guarded commercial secret regulations. The anonymity of the business ownership, made into law in 2009, was necessitated by the oligopolistic structure of Azerbaijan's economy.<sup>6</sup> It has wide-ranging ramifications for the integrity of the procurement process, one of them being bid rigging. For example, the companies owned by the same person(s) may enter the tender distorting competition and swaying the outcome of the bidding process. Or, companies registered by the same person(s) under different names may compete for procurement contracts for different goods and services from the same procuring entity. These are some of the examples of bid rigging in collusion with the decision-makers in the procuring entity. This problem is further compounded by the fact that public officials do not disclose their (including their family members') financial assets. Not surprisingly, investigations by journalists raise serious allegations of corruptions involving public officials, politicians and high profile individuals with links to the government. Dubious firms winning large contracts from state agencies are not seldom found to have connections to people in positions of power.

The whistleblower institution, which could act as a safety valve in the absence of other transparency guarantees has recently been introduced into Azerbaijan's legislation.<sup>7</sup> However, this mechanism has not been tested and Prosecutor General's Office has done little in the way of providing necessary assurances for potential whistleblowers. The risks of exposing corruption in the public sector are very high and safeguards to protect individuals who would like to come forward are not well-established.

The right to freedom of information and to appeal to the state bodies is enshrined in Azerbaijan's Constitution and the law on access to information. However, the scope of information released by public authorities is limited, especially, in regard to public procurement. Moreover, the track record of governmental bodies in responding to information requests has been poor. Request for information, especially, the kind of information concerning government finances is rarely granted and official correspondence being time consuming and yielding scant information is seldom rewarding. Limited access to official sources of information curtail the exercise of the right to freedom of information in public sector, including public procurement.

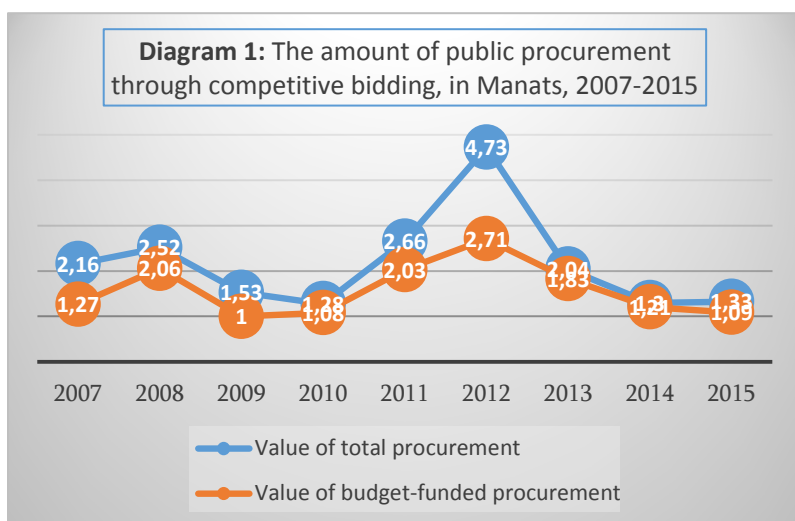
The law on access to information makes it incumbent on state bodies and municipalities to disclose their key budgetary information. However, as the example of the Regulator (previously State Procurement

Agency and presently Antimonopoly and Consumer Protection Service) demonstrate not all state bodies make their budget information publicly available, let alone publish their procurement expenditures.

## Snapshot of Procurement in Numbers

Azerbaijan's law on public procurement identifies 6 methods of procurement of goods, services and works. These are open tender, two-stage tender, limited or closed tender, request for proposals, request for quotations and direct or single source procurement. The legislation stipulates clearly that open tender is to be used when purchasing goods valued 50,000 Manats or over.<sup>8</sup> The law on public procurement, which is the cornerstone of Azerbaijan's public procurement legislation, sets down a fairly straightforward procedure for conducting open tenders (the prescribed procedure being by no means perfect). This is not the case for non-competitive modes of procurement, not least single source or direct procurement. While the exceptional circumstances justifying recourse to direct procurement are spelled out in the law, nothing is said of the procedures according to which it is to be conducted. The prevalence of direct procurement in the purchase of public works has been found to pose a challenge to the integrity of government procurement.

According to the Regulator's website, in 2015 state organizations and enterprises spent over *1.3 billion Manats for procurement of goods (services and works) using competitive bidding*.<sup>9</sup> Competitive bidding includes tenders, request for tenders and request for quotations. Nearly *1.1 billion Manats* of this amount was financed from the state budget. As **Diagram 1** shows, the procurement spending significantly fluctuated over the period of 2007-2015. After a period of decline in 2009 and 2010, the government's procurement spending temporarily recovered and peaked in 2012 at the amount of **4.7**

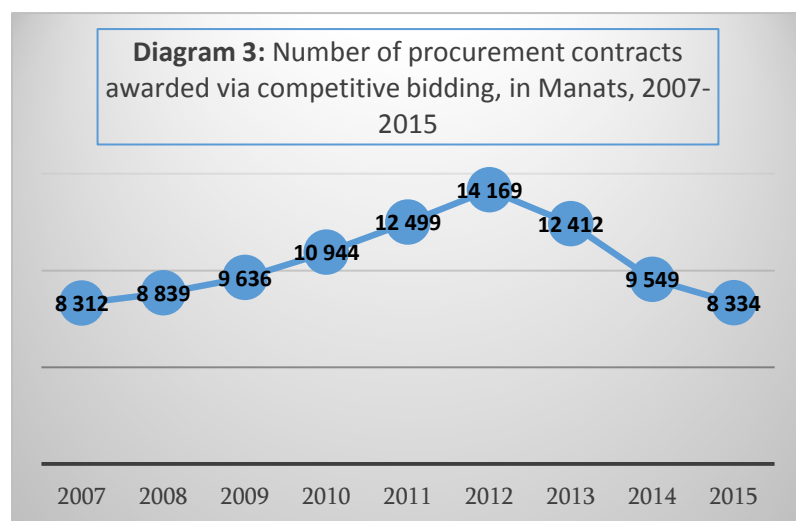
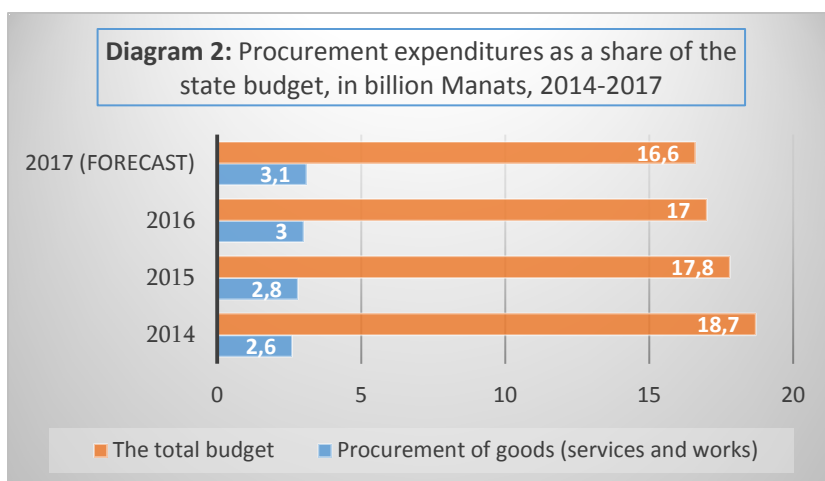


**billion Manats**. Since 2012, the country has cut back on public sector purchases, although in recent years, the size of government procurement as a share of state budget has seen a slight uptick.

The reports of the Chamber of Accounts show that the overall amount of government procurement was significantly higher.<sup>10</sup> The government procurement accounted for 16% of the state budget or **2.8 billion Manats in 2015**, and 14% or

**2.6 billion Manats in 2014 (Diagram 2)**.<sup>11</sup> The share of budget funds going to procurement was expected to pass 17% in 2016 and 18% in 2017.<sup>12</sup> Put differently, the value of overall procurement by the government has been creeping up over the past 4 years. These figures indicate that annually over half of procurement funds are spent through non-competitive procurement methods and information about them is not included in the Regulator's annual reports.

The trajectory of the overall number of contracts awarded via competitive bidding roughly corresponds with their monetary value in the period from 2007 through 2017 (*Diagram 3*). The upward trend in the number of contracts culminated in 2012 and since then has continually declined (the data is not available for 2016). In 2015, 6,848 of 8,334 contracts were based on the acceptance of quotations and their overall value was **151.3 million Manats** or **11.4% of the total procurement in that year**.<sup>13</sup> Similar figures are not available for the overall volume of tenders or requests for tenders in the composition of procured goods (services and works) for that year.

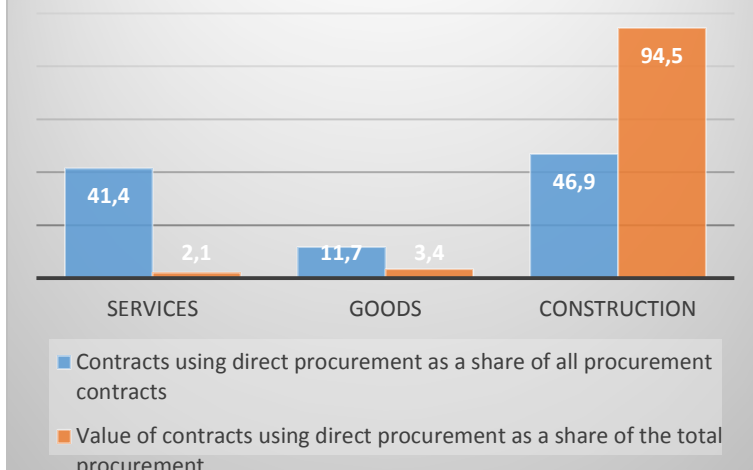


The government's excessive dependence on non-competitive procurement is laid bare by the Chamber of Account audit reports and budget reviews. In 2015, out of nearly 3 billion Manats audited by that institution, **77% were disbursed using direct procurement**, while tenders, requests for tenders and quotations cumulatively accounted for **18%**.<sup>14</sup>

The 2016 report shows that the government awarded the lion's

share of procurement funds through direct procurement in the construction sector - 95% of the total were devoured by direct procurement (*Diagram 4*).<sup>15</sup> This is not a surprising revelation, because in the past decade a significant portion of oil revenues went to finance government sponsored infrastructure projects and the construction craze was fueled at the expense of effective regulatory oversight. Needless to say, direct contracting stifles competition and costs the taxpayers money. The large share of direct contracting in the government's procurement portfolio strongly suggests that specific circumstances justifying the use of direct procurement actually are not specific enough. Moreover, due to lack of necessary safeguards against the broad interpretation of direct contracting clause in the legislation, executive authorities exercise wide discretionary powers in deciding what cases merit direct awarding (one prominent example of this problem shall be discussed later in this report).

**Diagram 4:** Direct procurement as a share of all procurements in 2015, Chamber of Accounts



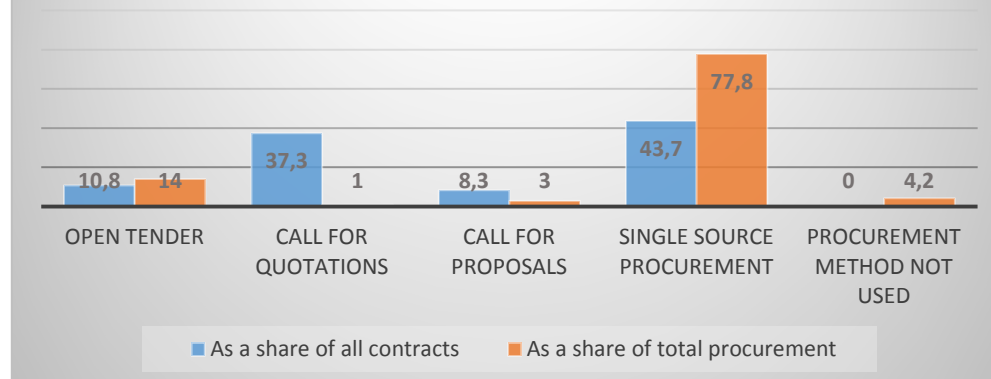
The 2015 annual report of the Chamber of Accounts also highlights the negligible role of tenders in the purchase of goods and services. **Out of every 100 Manats spent for procurement, only 14 were contracted using the open tenders (Diagram 5).** Every 4 out of 100 Manats were used to acquire goods without using any procurement method. These figures highlight the unhealthy levels of poor procurement practices dominating among Azerbaijan's contracting authorities. They also corroborate the significance

of the problems identified during the assessment of Azerbaijan's PPL.

Until recently, information vacuum had shut the door on a meaningful discussion of corruption allegations in the procurement. However, the Chamber of Accounts release of its audit reports has for the first time divulged the details of procurement violations found in the state bodies.

The findings of the Chamber of Accounts confirm the chronic failure of procuring bodies to abide by the public procurement regulations. The report stresses that flawed procurement procedures remain one of the standard problems encountered in state budget organizations. *In 2016, nearly 104 million Manat-worth goods were reportedly purchased without any procurement method.*<sup>16</sup> The splitting of contracts valued at 15 million Manats to circumvent the minimal threshold requirement was another widespread practice - 391 such violations were identified in 2016 alone. The audit found 149 cases, in which the estimated price of the goods had not been accurately calculated; 118 cases, in which participation fees had not been collected; 86 cases, in which tender commissions had not been properly established or violated the legal requirements; 171 cases, in which documents about the financial situation of the bidders had not been received; 73 cases, in which notices of intended procurement had not been properly published; 11 cases, in which the procuring entity had not concluded a contract with the tender's winner; and 121 cases, in which the procured goods and their prices shown in the contracts had been modified.

**Diagram 5:** The proportion of 4 procurement methods used in 2015, Chamber of Accounts





The cost of some other significant violations is shown on **Table 1**. The report concludes that over *150 million Manat-worth procurement contracts* were affected as a result of these *malpractices*, which in some cases, constituted gross violation of the explicitly established legal requirements. The most frequent violation is contracting without proper implementation of procurement procedures, out of 1,514 breaches 740 involved similar cases. This is also the costliest of the listed violation, with a price tag of 47 million Manats. Some of the highlights in the list points to procedural violations, such as contracts being inaccurately prepared, while others directly bear on the competitiveness of the procurement, for example, when unqualified suppliers are awarded or direct procurement or methods other than open tender are used without reasonable grounds.

**Table 1: Violations in the procurement process, Chamber of Accounts, 2015**

Type of violation	Number of violations	Cost of violations
Contracts concluded without proper procurement procedures	740	46.8 million Manats
Contracts not designed accordingly	133	32.0 million Manats
Contracts signed with unqualified suppliers	136	25.6 million Manats
Other tender methods used instead of open tender	67	23.6 million Manats
Contract split to avoid the minimal threshold	391	15.2 million Manats
Advance payment made without bank guarantee	15	9.5 million Manats
Direct procurement used unnecessarily	5	0.9 million Manats
Goods purchased at a higher cost than the contract price	27	0.4 million Manats

While these figures give credence to claims of widespread malpractice and malfeasance in government procurement, one can only surmise what is the overall cost incurred by taxpayers as a result of these violations. The Chamber of Accounts has only recently started releasing the quantitative results of its investigation into the use of procurement funds (as part of budget funds in general), including monetary value of the violations involving procurement procedures. This is an important step toward identifying the problems in public procurement and rectifying them to an extent possible, but the lack of procedural transparency and accountability poses a serious challenge to the viability of these efforts.

## Transparency

The comparative analysis of the PPL in 6 countries of the region shows that the greatest gap between Azerbaijan and the rest of these countries exists in the widely diverging levels of transparency in their procurement systems. The opacity of procurement procedures has created and sustained myriad inefficiencies in the way goods and services are purchased by governmental bodies. Information asymmetry has kept the taxpayers in the dark about to what ends and in what ways public funds are being spent.

The regulator does not publish any information about the tender procedures, including tender applications and bids, tender commissions' decisions or grievances of bidders. The publicly available registry of the results of *competitive biddings* include the name of the procuring body, the procured item, the winning bidder and the value of the procurement contract. The open registry does not include information about all contracts awarded via competitive bidding, much less non-competitive procurement. No information is available about the direct award contracts, nor is there information about subcontracts. The involvement of subcontractors in government procurement is not well-regulated under the existing PPL. The use of subcontractor(s) is conditional upon the authorization of the procuring body and the subcontractor's role in the procurement process is regulated between the supplier and the procuring body through the contract.

The analysis of the PPL showed that a wide array of procurement related information remains undisclosed. As **Table 2** indicates, the range of unreleased information covers all phases of the procurement procedure, pre-tendering, tendering and post-tendering.

**Pre-tendering:** Not all of contracting authorities publish their annual public procurement plans. The release of procurement plans is not regulated by a legal norm.<sup>17</sup> The Regulator's website includes a database of procurement plans published since 2013. The database has not been fully established, because many procuring bodies have not submitted their plans. The Regulator has previously proposed the change to the law making it incumbent on state bodies to publish their procurement plans.<sup>18</sup>

**Tendering:** Notices of intended procurement are published in the official newspapers, as well as on the Regulator's website. The problem is that the potential applicants must access tender documentation for more details, which requires paying a participation fee. This means the potential supplier must pay a substantial fee before deciding if it qualifies for or wishes to participate in a particular tender. The problem of participation fee shall be discussed in more detail below. The Regulator's website has a section on standard tender documents (applications), but the content is missing. Bids by tender participants and decisions of tender commissions are not made public, but reported to the Regulator. The tender commission's decision is not communicated to the tender candidates, until after procurement contract is concluded. Likewise, contracting authorities are not required to justify their decision of rejecting tender application or tender bid.

**Post-tendering:** It is mandatory to release information about the procurement contract within 5 days of signing the contract, but detailed tender results are not published. The winning suppliers are as a rule kept out of spotlight and in many instances, they do not have any information about them on the Internet, much less a website or contact information for that matter. The description of the procurement is usually limited to the type of good, service or work that is being purchased. The type of procurement procedure is not disclosed, and in absolute majority of the cases, there is no information about the number or the value of bids, information regarding the review procedures, the date or duration of the contract, etc. Likewise, the identity of subcontractors is not disclosed to the public. Procurement contracts and amendments thereto, as well as performance information, payment receipts and inspection and quality control reports (if there are any) remain out of public sight, too.

**Note:** Information is not timely and completely published in English for foreign companies. For instance, in the last 3 years, only a tender announcement of the Central Bank had been posted on the official website of the Regulator.

**Table 2: Access to information on public procurement, 2016**

The name of the document or information contained in it	Is the document or information contained in it publicly available? (or to tender participants, where specified)
Submitted complaints	No
Dispute resolutions	No
Annual public procurement plans	Partially
Notices of intended procurement (including tender documentation)	Partially <b>Note:</b> Notices are published, tender documents are not.
Amendments to tender documentation	No
Applications for tender candidates	No
Bids offered by tender candidates	No
Decisions of tender commissions	No
Procurement contracts	No
Amendments to procurement contracts	No
Detailed information about the tender's winner	No <b>Note:</b> The only information provided is the name of the winning bidder.
<b><i>Tender participants informed of the decision of tender commission</i></b>	No <b>Note:</b> Tender participants are informed of the winner after the procurement contract enters into force. They are sent the notice with information about the winner's name, address and the value of the contract awarded. <sup>19</sup>
<b><i>Information about tender results published</i></b>	Partially <b>Note:</b> See above – Detailed information about the tender's winner
Contract performance information	No
Payment receipts	No
Inspections and quality control reports	No
Information about subcontractors	No

The lack of transparency provisions in the law is the major barrier to an in-depth analysis of Azerbaijan's procurement system. The analysis of Azerbaijan's PPL has highlighted the need to introduce robust mechanisms of transparency into the procurement process. Currently, public procurement is shrouded in a thick veil of secrecy and the big part of this problem stems from the legislation. The transparency problem can be approached from two angles – the private sector and the civil society. Potential suppliers have a vested interest in the outcome of the bidding process. In order to ensure fair competition and equal treatment, they are interested in the transparency of procurement procedures. On the other side, taxpayers want to be able to have clear mechanisms in place allowing them to monitor how their money is spent. In this regard, the PPL is not accommodating to either of these needs.

However, the law grants the bidders the right, where relevant, to request information, such as bidders' qualifications, the estimated price of planned procurement and the method of its calculation, as well as a short summary of bid assessment and comparison, or where applicable, the reasons for the rejection of all bids. Moreover, bidders' can also access, albeit upon request, the short summary of any request for explanation of qualification compliance or tender documents submitted to a procuring body as well as any responses to such requests or any change in such documents. The information becomes available upon the acceptance of a tender proposal, offer or quotation, or upon the completion of procurement procedures, which have not resulted in procurement contract. On the other hand, the scope of information regarding bids' assessment or comparison is limited by the law – detailed information on the study, assessment and comparison of the bids cannot be disclosed.<sup>20</sup>

The recently adopted Open Government National Action Plan for 2016-18 includes a requirement that procuring entities funded from the state budget disclose their procurement information on their websites through 2018. Obviously, this alone does not suffice to address the transparency deficit in government procurement.

## Uniformity of Legal Framework

The analysis of the public procurement regulations suggested that they suffer from serious deficiencies. Their practical ramifications are manifold and addressed in this section. The vaguely formulated law on public procurement, the key piece of legislation, is the source of confusion and discretionary abuses. Azerbaijan's law on public procurement constitutes the basic structure of the country's public procurement legislation. As noted earlier, the rules are more or less clear in relation to competitive methods, but uncompetitive procurement is not subject to a strict regulatory scrutiny. The value and risks of the purchase through direct procurement is not properly justified and allegedly decided usually by an executive fiat (e.g. the Cabinet of Ministers). The lack of proper rationale for the use of non-competitive methods partly derive from the law itself. For instance, the law states that direct procurement can be used "if urgent demand for goods (works and services) is arisen and conducting tender procedures or use of any other procurement method is inexpedient" or "if urgent demand for such goods (works and services) is arisen in connection with emergencies, if use of other procurement methods is inexpedient in view of time to be spent to them".<sup>21</sup> The interpretation of particular situations in connection with these clauses is currently open to executive discretion, because the norms have not

been clearly delineated in the law to define to the greatest extent possible the criteria of urgency or emergency. Moreover, once a decision is made to use direct procurement on account of urgency, it is practically impossible to challenge that decision. This has important monetary implications for the state funds, because there are cases of large scale contracting from single source for construction projects ahead of international events held in the country. Investigative reports indicate the contracts awarded through direct procurement without proper justification can rise north of a billion Manats in some cases.<sup>22</sup>

One of the critical questions is to what extent the government's official procurement budget covers the spending that may actually qualify as the purchase of goods, services and works. The officially reported value of public procurement clearly fails to capture the full picture of vast public funds spent on infrastructure programs, social services, as well as through state-owned companies, such as SOCAR. According to one expert's estimate, as much as half of the state budget could actually be spent on acquisition of various services and works. This clearly raises questions about how well procurement spending is designated under the existing budget law. The lack of clear legal guidelines for defining the scope of procurement expenditures essentially means any attempt at the reform of the public procurement system may fall short of ensuring integrity in the system as a whole.

The legislation in Azerbaijani is available on the regulator's website, [www.tender.gov.az](http://www.tender.gov.az). However, the content is not regularly updated. Moreover, not all of the legal documents of relevance to the procurement process is published on the website. Technical documents, including instructions on organization of different types of procurement and other procedural issues are available at the website of Ministry of Finance, [www.maliyye.gov.az](http://www.maliyye.gov.az). Even though the legislation is not always clear on procedural matters, the regulator does not offer explanatory notes for interested parties, businesses, NGOs or media organizations. The "Questions and Answers" section instead of clarifying the abstruse points in the law, refers the user to relevant paragraphs of the law. As regards the English version of the legislation, the only available legal act is the law on public procurement. Apparently, the news content of the English version of the Regulator's website has not been updated since 2012, which suggests a lesser degree of interest in public relations with potential foreign suppliers.

In theory, the law on public procurement should regulate the procurement procedures in all entities financed from the state budget, as well as state owned companies and legal entities of public law. However, in practice, large companies, such as SOCAR, state owned utility companies, Azerbaijan Railways go about their procurement activities independently of the Regulator. OCCRP has done some investigative reporting on large-scale government procurement done by SOCAR as a procuring entity and a contractor without competitive bidding. As noted earlier, as recently as in March 2017, it was reported that the Swedish authorities have launched criminal investigation into alleged bribery involving a Swedish company, which allegedly won the tender by Azerbaijan Railways through bid rigging.<sup>23</sup> The law is not consistently applied, especially, to state-owned quasi-commercial organizations.

Azerbaijan's law treats the status of local self-government exercised by municipalities separately from the state authority. Therefore, the law on public procurement is not directly applicable to municipalities. Municipalities conduct their procurement under ill-defined rules on making municipal orders. While the rules mandate the use of competitive bidding or direct procurement, it does not clearly indicate which

of these methods comes first in the order of precedence. The deputy-Minister of Justice who performs the administrative control of the municipalities has stressed the need to adopt a separate law to improve transparency of local self-government and to tackle corruption.<sup>24</sup>

The law on public procurement does not cover the purchase of foodstuffs, which is regulated by a newly instituted Food Procurement and Supply Open Joint Stock Company, in a centralized manner.<sup>25</sup>

Moreover, the procurement law covers the procurement of goods (works and services) performed by state enterprises and organizations (departments), enterprises and organizations, state share in charter fund of which is 30% and more at the expense of state funds, loans and grants obtained by state and received under state guarantee.<sup>26</sup> Non-state sources of revenues therefore do not fall within the scope of this law and regulated separately. For example, the revenues of SOCAR were nearly 32 billion US Dollars in 2015 and a larger portion of these revenues originated from its commercial activities, which may exempt them from Azerbaijan's public procurement rules.

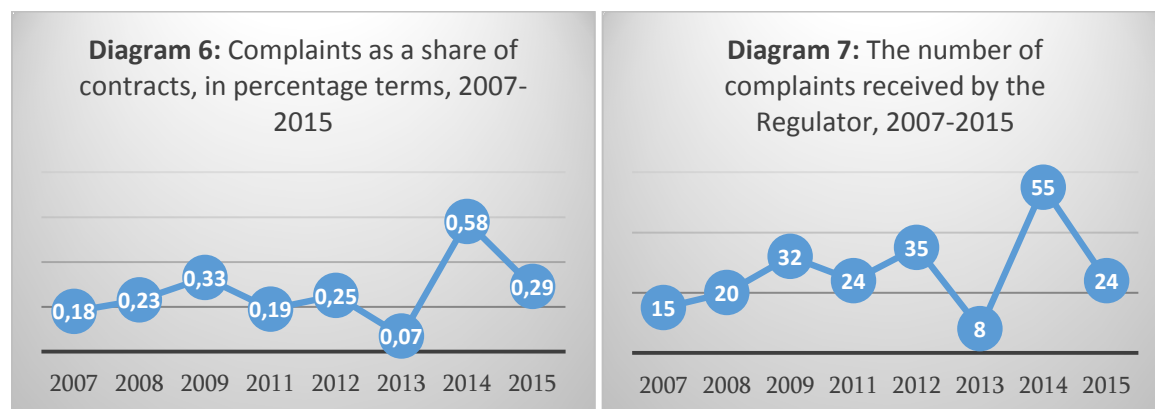
As discussed earlier, the question whether the Regulator has done enough to improve the country's procurement procedures remains open. The experience of the media and the civil society with the Service has not assuaged the public's concerns, quite the contrary, in some ways, only escalated the negative public perception of government procurement. The transfer of powers of regulatory authority to the Service has certain advantages and disadvantages. The primary advantage is the organization's specialization in subjects directly bearing on the quality of procurement policy, i.e. antimonopoly and competition policies. The procurement policy suffers from numerous challenges to competitiveness of the procurement procedures and the organization's relevant experience may help produce better solutions and oversight policies. The disadvantage primarily concerns the disproportionality of the organization's responsibilities to its resources. With a substantially trimmed personnel and fewer resources at their disposal, moreover, juggling more than one regulatory responsibility (regulating procurement, antimonopoly policy and protecting consumer rights), the organization may soon spread itself too thin to effectively deal with the challenges in each of these areas. The rationale of structural change is not immediately clear, it could be driven by the cost saving efforts or a more strategic objective of merging related spheres of public policy under one institution. The entire staff of the Regulator after the restructuring includes 199 employees, of them 147 in the central administration and 52 in the regional offices.<sup>27</sup> These organizational and budgetary challenges should stimulate the Regulator to cooperate with different non-state actors to raise the efficiency and quality of its operations.

One of the key challenges is that contracting authorities do not have a separate office of procurement officer, because it is not legally required. Tender commissions are set up on ad hoc basis to organize planned procurement, which raises serious questions about the qualifications and impartiality of the commission members. Moreover, the law on public procurement does not specify the procedure for selecting the members of the tender commission to ensure impartiality of the individuals involved in the commission's work.

The organizational principle behind Azerbaijan's public procurement does not fit neatly into a centralized or decentralized approach to public procurement. In practice, contracting organizations exercise wide discretion in purchasing the goods of their needs. While the Regulator has the authority to

reconsider procurement decisions and recommend the revision of these decisions, the amount of complaints submitted to the Regulator remains very low.

Over the period of 2007-2017, the Regulator received 213 complaints, which were reportedly settled to the satisfaction of the parties involved.<sup>28</sup> As for the content of these grievances, they are not published, except for a standard description stating that the complaints mainly involved the management and the conduct of the tenders. As the figures in **Diagrams 6 and 7** indicate, the share of complaints filed with the Regulator has rarely passed the 0.5% threshold and in 2015, the odds of the procurement decision being challenged by bidder(s) was meager 0.3%. The figures most probably do not realistically reflect the proportion of the tender participants who could be potentially affected by the illicitly concluded tender results. The average of 27 complaints (from 2007 to 2015) when juxtaposed against 1,514 procurement violations found by the Chamber of Accounts in a single year, may be construed as a sign of *low competitiveness* – fewer participants submit fewer complaints; or of *lack of confidence in review mechanisms*; or this could attest to *lack of awareness among the suppliers that a review mechanism exists or simply of their lack of access to it*. Regardless of which of the above reasons is the definitive factor, the lower rate of submitted complaints put a question mark over the credibility of the Regulator's review mechanism.



The complaint review procedure in Azerbaijan's government procurement is a two-step process.<sup>29</sup> An aggrieved bidder can file a complaint with the head of a procuring authority *before the contract enters into force*. He must submit the grievance within 15 banking days from the time he learned or was supposed to learn about the basis, upon which the complaint was being made. Unless the bidder and the procuring organization come to an agreement, the head of the procuring entity must make a written decision, justify the reasons for such decision and if complaint is granted, he must indicate measures, which have to be taken to remedy the situation (within 20 banking days upon receipt of the grievance).

The aggrieved bidder can file a complaint with the Regulator (15 banking day requirement is valid), if the contract has already entered in force or if he wants to challenge the decision of the head of the procuring entity (within 15 banking days from the decision is made). Upon review, the Regulator may reject the claim or grant it, in which case, may recommend to the procuring body one of these remedies among others:

- Determine legal standards or principles, which regulate issues relating to the subject of the complaint;
- Prohibit the procuring entity's making *illegal actions, taking illegal decisions or applying illegal procedures*;
- Obligate the procuring entity, which has committed illegal procedures to take legal action;
- Suspend illegal action of the procuring entity and fully or partially cancel its illegal decision;
- Revise the contracting entity's illegal decision and take own decision in its stead;
- Bring an action on compensation;
- Finally, cancel procurement procedures.

If the received complaint is valid, the reviewing body (the procuring entity or the Regulator) must suspend the procurement procedure for 7 banking days (which may be extended up to 15 banking days).

Alternatively, the bidder may take their case to the court.

Because the complainants-tender participants are first referred to the head of the procuring entity to have their complaints considered, the fairness of complaints' review mechanism may be compromised from the outset. The Agency justifies the referral of the aggrieved tender participant to the procuring entity by arguing that it (a) gives the head of this body a chance to rectify the wrongdoing and (b) spares the complainant time and red tape to be encountered in the higher instances of appeal. Even if the review is available throughout the procurement process, the absence of an independent review body, the lack of procedural guarantees for the transparency and fairness of the review process undermine confidence in the handling of complaints. Moreover, according to the Regulator's website complaints from subcontractors are not reviewed under the existing procedure.<sup>30</sup>

The existing mechanism prioritizes the efficiency of the process at the expense of procedural fairness and eventually achieves none. Because the savings achieved as a result of fewer complaints or expeditious, yet potentially biased decision-making, eventually cost the taxpayers a lot more in misspent funds, as indicated in the reports of the Chamber of Accounts and discussed in more detail above.

## Accountability

Azerbaijan's public procurement system does not have strong built-in safeguards to ensure accountability. This is to a great degree a regulatory problem. The law is silent or obscure on key issues that may arise at various phases of the procurement process to undermine its integrity. The rules are not always precisely formulated or strictly enforced, institutional and individual responsibilities are not clearly charted. This has resulted in significant monetary and reputational damage to governmental institutions without persons or institutions being held to account. This is highlighted by a growing body of evidence published in the reports of the Chamber of Accounts. Despite its deficiencies, Azerbaijan's law on public procurement remained more or less unchanged over the course of 16 years since it entered into force in 2017.

One of the key challenges has been the Regulator's or contracting authorities' reluctance to consult the civil society institutions or expert community to identify and remedy the problems in the procurement system. Unlike some other public authorities regulating civil service or public services, the Regulator has



remained introverted in the way it has organized its work. This is partly due to the inadequate legal guarantees for engaging key stakeholders in the procurement decision-making or review process. But the law is not entirely to blame, because the country's law on public participation provides legal grounds for consulting and engaging with the public, including non-governmental organizations.

Not only the civil society organizations are left out of the procurement process, swirling accusations of abuse and corruption in the media implicating procuring agencies go unnoticed or ignored. Some of these accusations concern the absence of effective conflict of interest regulations in Azerbaijan's law, which was discussed earlier in this report. The lack of conflict of interest rules can be a potent instrument of discretionary abuse in the purchase of goods (services and works). To better illustrate this case, we can look at instances, in which the same persons may act as both the agent of the procuring entity and the supplier. For example, the non-governmental organization led by the individual may provide services to the unit of government, in which he is the principal decision-maker. As long as the official in question is not a member of the tender commission, which formally decides the winner, he is not affected by the conflict of interest clause in the law. There are instances of this happening in practice and being reported in media.<sup>31</sup> Or, a company owned by a close relative of a senior official in a state agency may without any inhibition win the procurement contract. The media investigations have also revealed family relationships being the key consideration in the contracting of large-scale projects. Obscurity surrounding the identity of the companies frequently awarded procurement contracts is often dispelled by investigatory journalists, but public authorities rarely follow up on serious allegations of corruption in the media. For instance, alleged corruption schemes involving family members of senior officials at Azerbaijan's two monopolistic public utilities companies - "Azersu" (water supplier) and "Azerishig" (electricity provider) revealed by journalistic investigations have not prompted necessary interest from law enforcement agencies.<sup>32</sup>

Procuring entities are required to justify the need to purchase goods (services and works) from a single source and get approval of the Regulator, but this information is not made publicly available. But judging by the fact that the greater part of contracts is awarded through direct procurement, one may conclude that the bar remains low for the use of non-competitive procedures. The shady practices of direct procurement have been in the spotlight of international and local media for a while, now. For instance, OCCRP investigation revealed that nearly 2 billion USD worth of construction contracts were awarded by SOCAR, Azerbaijan's state owned national oil company to a foreign company with dubious credentials without bidding.<sup>33</sup> The Cabinet of Ministers granted an exemption from competitive bidding for this purpose justifying its decision by "the importance of international events to be held in the country".<sup>34</sup> The specific case mentioned here clearly falls short of the circumstances cited in the law warranting an exemption from competitive bidding.

Azerbaijan's PPL has put in place hierarchical accountability, but remains silent on the role of civil society and private sector within the accountability procedures. There has been no precedent of government – civil society partnership to advance the quality and efficiency of the procurement process. The missing accountability element throughout the procurement process reduces the government's responsiveness to problems and ability to deal with them. Surprising, the civil society has had a limited role in raising

awareness about the public procurement, too. This is partly due to reluctance of the government to collaborate on this matter, partly a result of limited access to information, etc.

Even though due to a greater role of the executive branch in policymaking, Azerbaijan's parliament is not a deliberative body in the full sense of this word, it still subjects the work of individual state bodies to a somewhat democratic scrutiny. It is therefore important that the legislative branch, as is the tradition in many developed countries, be able to hold the Regulator to account through a mechanism of annual reporting. A similar system of reporting exists in the case of the country's Chamber of Accounts, the chief auditing body. It is as much if not more important for the Regulator, which operates under the direct supervision of the executive body – Ministry of Economy to be overseen in a similar fashion.

In some cases, the officials of a subordinate state body are later transferred or promoted to a position in the supervisory body. A similar risk exists in the appointments to the Regulator. For example, the official of a procuring entity may later be entrusted with a senior position in the Regulator. The government should amend the conflict of interest provision in the procurement legislation to ensure that similar potential cases of conflict of interest are prevented.

## Competitiveness

Competitive bidding is the backbone of an effective procurement policy. An effective procurement policy is defined by OECD as “the promotion of efficiency, i.e. the selection of the supplier with the lowest price or, more generally, the achievement of the best “value for money””.<sup>35</sup> The structure of the procurement by the government has shown that the methods used to purchase goods, services and public works are not always conducive of achieving the best value for money. As shown above, the widely-practiced method of direct procurement strangles competition in the purchase of public works. Despite the fact that the law on public procurement declares open tender as the main method of public procurement for purchase of goods (services and works) above the threshold of 50,000 Manats, in reality, it is not strictly enforced and specifically, it rarely happens in the construction procurement. The evidence suggests that even in those cases, in which competitive procedures are used, the outcomes often betray the problems in the decision-making of tender commissions. Competitive bidding procedures are ignored, manipulated or violated in ways that discourage small and medium businesses from participating in these tenders.

The terms of reference are not published along with the notice of intended procurement. The content of tender documentation is available to the bidders and to the Regulator (presented by the procuring entity upon completion of the tender procedures). Moreover, the evaluative criteria used by tender commissions to decide the winner are not always limited to those shown on paper. As far as the eligibility of the tender participants are concerned, the law refers to “professionalism, experience, technical and financial capacity, workforce, competency in management, reliability in relevant field to ensure performance of procurement contract” as necessary qualifications of the tender participants.<sup>36</sup> However, as mentioned earlier, one of the most frequently encountered violations found by the Chamber of Accounts was the awarding of contracts to unqualified firms. While the eligibility criteria are listed as the sine qua non of a successful bidder, in practice, there are cases, in which qualifications or the bidder's financial standing do not appear to meet even basic requirements. A cursory examination of

a great majority of the businesses which win lucrative contracts reveals that they have entered the market just a few months before they won the contracts, they have no website and no publicly available records to examine their financial position. Quite often, the winners of the tenders are *shell companies* specifically established to reap the benefits of large-scale procurement opportunities lacking proper oversight.

To better illustrate how serious the disregard for the bidder's qualifications can be, let's take up one case for a closer scrutiny. One of the companies listed in the registry of successful bids (the year of 2016) was established in March 2016 with the charter capital of 50 Manats.<sup>37</sup> In 2016 alone the company won 105 procurement contracts with a total value of 24 million Manats. It supplied a wide array of goods, services and works, including equipment and machines, office supplies, elevators, apparel and even brooms (brooms alone cost 256 thousand Manats!). What should not come as a surprise at this point is that the company does not even have a website or any basic information about it on the internet. Despite wide media coverage, public authorities are yet to investigate the head-spinning success story of "Kontakt-F", the company in question. "Kontakt-F" is not the only suspect beneficiary of contract awards, the registry list is rich in secretive businesses with dubious credentials.

In this case, there are at least 3 problems: First, because information is not available about the real owner(s) of the company (business registry does not include this information), it is difficult to identify a potential conflict of interest. Second, because the evaluative criteria and the substantiated decisions of tender commissions are not publicly available, it is impossible to explain what accounted for the spectacular success of a few-month old company, if not some shady considerations swaying the decision-making. Third, because the review process is not transparent and the regulatory policy is not straightforward, it is difficult to explain how come the Regulator has not launched investigation into the matter in the face of such overwhelming indications of foul-play.

The law prohibits technical specification or contract evaluation on unspecified criteria to benefit a particular supplier, but in practice, this is difficult, if not impossible, to control. Obviously, twisting the technical requirements is not the source of the problems, but usually a symptom of a wider net of issues arising out of discretionary powers procuring authorities enjoy. Recently launched investigation by Swedish authorities into possible money laundering scheme involving a Swedish company and Azerbaijani authorities has alleged that a multi-million procurement contract was unlawfully awarded to the company in return for its assistance with the transfer of funds 4 times of the procured' equipment's value to an unidentified company's account.<sup>38</sup> As part of the scheme, the organizers of the procurement reportedly held secret negotiations with the representatives of this company, modified technical specifications of the tender to favor it, etc. Azerbaijan's authorities are yet to look into these scandalous claims.

High participation fees may also discourage the interested firms from participating in the tenders. Azerbaijan's law on public procurement states that in cases when participation fee is applied, the tender documentation is provided to those applicants who have paid the participation fee. Participation fee can be up to 0.5% of the estimated value of the good (service and work) to be procured and can be as much as 1.5 times of the tender costs.<sup>39</sup> In fact, all expenses in the process of organizing the tender are covered by participation fees. These may include costs of tender announcement, advertisement, lease

of rooms to hold tender, funding tender of commission, preparation and delivery of tender documents to bidders as well as all other costs directly associated with conducting of tender. Just to give one example of how participation affects the potential supplier's decision: A body of a government agency has released a tender notice, in which it declares its intention to purchase "equipment for its laboratory". To find an answer to a question of what kind of equipment is supposed to be purchased, a firm must acquire tender documentation from the body at the cost of 650 Manats (and in other case, 1,150 Manats). Since tender documentation is not publicly available it is not possible to gauge the impartiality and effectiveness of their content. This lowers competition by keeping the tender applicants and other stakeholders in the dark about the tender process.

The problems stifling competition are also acknowledged by the Regulator, whose proposed amendments to the PPL includes the equivocal ban on discrimination against bidders, simplification of bidders' application process, the clear ruling out of the evaluation of tender bids based on non-required criteria, the lowering of participation fee and the restriction of uncompetitive forms of procurement. It is yet to be seen what changes will be adopted and how effectively they will be implemented.

While the law on public procurement rules out discrimination based on any criteria except the applicant's qualifications, the government offers preferential terms to local producers, especially, when purchasing agricultural products. The slowdown of Azerbaijan's oil driven economic growth has inclined the government to increasingly use its procurement potential to stimulate the local production. Moreover, the government suspended procurement of goods and services from abroad in 2016 (until 2018) with an eye to curtailing the flight of precious foreign currency reserves. The purchases from abroad is not totally banned and orders from abroad can still be made upon the approval of Ministry of Economy. However, there is no information as to how often this is the case. However, in view of the economic problems, Azerbaijan's procurement protectionism is a new reality that is likely here to stay.

## Efficiency

Azerbaijan still relies on traditional paper-based procurement methods. Although the idea of e-procurement has been on the Regulator's agenda since at least 2007, the government had not warmed to the idea until recently. The regulator's website has evolved over time to include some general information about the tenders, procurement plans, Q&A section, etc. But even by conservative standards the website is not user friendly and key data is not released in a machine-readable format. In some ways, the content of disclosed information, namely annual reports have been significantly condensed. For instance, until 2010, the regulator used to disclose the amount of procurement spending across different categories of purchased items. Information about the number of procurement contracts and their value according to central executive bodies was also available. This information is not published by the Regulator anymore. Moreover, in some instances, the format of the published information has made it hard to use. For example, if until 2016, the registry of competitive awards had been released in Excel file, in 2016, the Registry published them in PDF.

The Regulator's reports indicate that the Agency for State Procurement had worked on introduction of e-procurement at least since 2007. The basic delivery model of e-government has been introduced into the procurement process. Under October 17, 2012 dated decision of the Cabinet of Ministers, the State

Procurement Agency has published tender notices, information about the biddings and the winners and the basic information about procurement of foreign governments.<sup>40</sup> In recent years, the Agency has encouraged procuring bodies to place their procurement plans on its website, even if it has been done slowly and incompletely. However, little progress has been made beyond these rudimentary developments.

The government has recently put online the purchase of agricultural products through a newly established centralized authority under Ministry of Agriculture. The e-portal of [www.tedaruk.az](http://www.tedaruk.az) (provision or store up) where procuring bodies and potential suppliers present their needs and offers. The portal seems to be in working order, however, there is no publicly available information to gauge the effectiveness of the mechanism. This initiative is partly driven by the need to support local farmers (as well as importers) and if properly conducted, could give impetus to local production.

Key feedback mechanisms to ensure efficiency are missing. Suppliers' (or potential suppliers') feedback is not solicited, nor the civil society is brought into the decision-making of tender commission. The website of the regulatory body, [www.tender.gov.az](http://www.tender.gov.az) provides a single official point of access to some primary information. However, as explained earlier, the content of the information is limited and incomplete. Procuring plans are not published by all state bodies and when published, there are instances in which they are done late during the year. While the planning of procurement and estimated expenditures comprise the component of the budget formulation process, the process of budget making has serious deficiencies. One of them is that the budget is not given due consideration due to a weak legislative input and qualifications under unrealistic time constraints. Minimum monetary thresholds have been set for open tenders and quotations. If the overall value of the purchased service is above 10,000 Manats, the notification about it is to be published on a media outlet and on the internet.

Pursuant to the Open Government National Action Plan for 2012-2015, some of the state institution have started placing their procurement plans on the Regulator's website. The analysis of the submitted information indicates that 285 institutions (these include both ministries, as well as hospitals), but many government agencies and local authorities have not publicized their procurement plans for 2016.

The regulator does not have a blacklist of suppliers although the myriad infrastructure problems across the country betrays the fact that suppliers at least in some of the cases are to be blamed for inferior work. However, simply disqualifying businesses which have failed to deliver on their commitments is not enough, because there is always a possibility of establishing a new company to participate in the competition.

## Recommendations

Azerbaijan's government has acknowledged that the country's procurement policy needs to be reformed. The recently approved "Strategic road maps for the national economy and main economic sectors", the official blueprint for Azerbaijan's economic development in the post-oil period, envisions overhaul of procurement procedures to expedite the delivery and efficiency of government purchases and to support small and medium enterprises. However, the steps taken so far have not been reassuring about what the proposed solutions would look like or how far they would go in challenging the status quo. The success of the proposed policy measures will to a great degree depend on how regardful they

are of the issues discussed in this report. The following recommendations are based on the most urgent of those issues highlighted by the report's findings.

### **Recommendations for the immediate future**

Within the existing framework of the PPL, the Regulator may improve its reporting procedures by bringing them up to date.

Currently, the Regulator annually publishes the names of the winners of public procurement contracts. The Regulator does not disclose the taxpayer's identification number (TIN), as a result of which it becomes harder to identify the identity of these companies. It would therefore be helpful in terms of the utility of the information, if not only the name, but also the TINs of these firms are published in the list of annual reports.

On the other hand, Azerbaijan does not have an official registry or list of procuring bodies. It is therefore not surprising to see, for example, both ministries and institutions subordinate to them acting as purchasers of goods, services and works. The lack of clarity in regards to the identity of all procuring bodies prevents us from forming a clear view of the entire procurement process.

Another problem is the lack of classification standards in indicating the subject of public procurement, something similar to CPV. As a result, the same goods purchased by various procuring bodies are described differently.

Tender notices are not informative enough in the sense that the sought after goods or services are not specifically defined and the potential bidders are referred to tender documentation, which may be acquired upon payment of a participation fee. Procuring entities are free to set the participation fee within the limits established by the law on public procurement (discussed in more detail above). Participation fee may be collected after the bidders are given a chance to acquaint themselves with the content of tender documentation.

The method of public reporting by the Chamber of Accounts may serve as an interim model for the release of procurement related information:

- The name of the good, service or work procured.
- The source of funding for procurement (e.g. the state budget, own revenues, international programs, etc.)
- The method of procurement used to purchase the good, service or work.
- The date and the place of publication (e.g. the official newspaper, the Regulator's website) of the notice of intended procurement.
- The names and taxpayer identification numbers (TIN) of bidders (other than the winning party) which participated in the competition.
- The name, TIN and contact information of the bidder which won the competition.
- The date of the final protocol signed by the Tender Commission.
- The amount and the date of the procurement contract.
- The estimated price of the good, service or work procured as opposed to the final price thereof.

## **General Framework**

- The government should introduce elaborate rules on conflict of interest in public administration, including in public procurement. The conflict of interest rules in the procurement process should be extended to include the senior management of procuring entities.
- Public officials should be required to disclose their and their family members' wealth and commercial entities (at least, those competing for public contracts) should be required to disclose their owners.
- Anti-nepotism rules should be clearly defined and applied in public administration to prevent favoritism in the awarding of procurement contracts.

## **Transparency and Accountability**

- Government procurement should be conducted under transparent procedures and procurement data should be fully and timely disclosed. Specifically, the following documents or the information contained in them should be made publicly accessible:
  - Annual public procurement plans,
  - Notices of intended procurement, including tender documentation (and amendments thereto),
  - Tender applications,
  - Bids offered by tender participants,
  - Decisions (including, their justification) of tender commissions,
  - Complaints submitted at different phases of the procurement process,
  - Decisions of the review body,
  - Procurement contracts,
  - Detailed information about the tender's winner,
  - Information about the supplier's performance of its contractual obligations,
  - Payment receipts,
  - Inspections and quality control reports,
  - Information about subcontractors.
- The government should regularly disclose the information about non-competitive procedures used by procuring entities, including their rationale, the value of these contracts and the company profile of the supplier.
- The Regulator should publish a monthly or quarterly (analytical) report on procurements conducted by contracting authorities, violations, complaints and the results of their review.
- Procuring entities should publish tender documents along with the notice of intended procurement, access to tender documents should not be conditional on the payment of participation fee.
- The names of procuring entities most often violating the procurement rules should be disclosed along with the list of blacklisted companies.
- The full content of inspection and audit reports on execution of procurement contracts should be disclosed and clear lines of responsibility for and mechanisms of oversight and enforcement

of procurement contracts should be established among the Ministry of Economy (the Regulator), Ministry of Finance and Chamber of Accounts.

- The Regulator should establish a procurement hotline and appoint a public spokesperson to address the questions from the citizens and the business on a regular basis.
- The Regulator should upgrade its e-resources, specifically, its website by diversifying the content of the published information and raising the quality of its e-delivery.

### **Competitiveness and Efficiency**

- The PPL should categorically restrict the use of non-competitive procedures (namely, direct procurement) and describe the specific circumstances warranting their use in clear terms.
- The justification for the use of non-competitive procedures should be required to be based on evidence and not on arbitrary conclusions.
- The government should institute an independent review body for investigation of complaints involving procurement process. Not only tender participants (or applicants), but also subcontractors and other stakeholders (e.g. civil society) should be able to lodge a relevant grievance with this body.
- The rules for disqualification, debarment and suspension of suppliers from public procurement should be clearly stipulated and strictly enforced.
- The Regulator, as well as procuring entities, should cooperate with the specialized civil society organizations and where relevant, business representatives in all phases of procurement process. The Regulator should discuss with the specialized NGOs and business representatives the draft version of the proposed amendments to the public procurement legislation to ascertain their relevance and possible side effects.
- The citizens should have a role in or at least, the ability to monitor the procurement decision-making, including the work of tender commissions and complaint review.
- The government should introduce e-procurement and encourage the online conduct of public procurement. The recently established e-portal for government's purchase of agricultural products should transparently organize the procurement process and publish the results of its activities.
- The mechanism of calculating participation fee should be changed to lower the cost of applying to public tenders.
- The government should ensure the quality of bidders by introducing a minimal threshold of annual business turnover as one of the eligibility conditions for participation in tenders.



## Endnotes

- <sup>1</sup> “The Regulator” shall refer to both **Agency for State Procurement**, the former regulatory body, and to **Antimonopoly and Consumer Protection Service**, the existing one, except where otherwise specified.
- <sup>2</sup> Chamber of Accounts opinion on state budget execution 2015, available in Azeri at: [www.sai.gov.az](http://www.sai.gov.az)
- <sup>3</sup> The Decree of the President of the Republic of Azerbaijan on termination of State Procurement Agency dated January 15, 2016, available in Azeri at: [www.e-qanun.az](http://www.e-qanun.az)
- <sup>4</sup> Depending on the context, the Regulator shall refer to State Procurement Agency or State Service for Antimonopoly Policy and Consumer Protection. In specific cases, these bodies shall be referred to by their names, either as the Agency or the Service.
- <sup>5</sup> The letter of the Service No ASİMDX-15/01-5/5818, dated May 5, 2017.
- <sup>6</sup> The amendment to the Law on trade secret dated June 12, 2012, available in Azeri at: [www.e-qanun.az](http://www.e-qanun.az)
- <sup>7</sup> The amendment to the Law on combating corruption dated October 14, 2016, available in Azeri at: [www.e-qanun.az](http://www.e-qanun.az)
- <sup>8</sup> The decision of the Collegium of the Ministry of Finances dated 30.05.2013, available in Azeri at: [www.tender.gov.az](http://www.tender.gov.az)
- <sup>9</sup> The annual report of the Regulator for 2015, available in Azeri at: [www.tender.gov.az](http://www.tender.gov.az)
- <sup>10</sup> Compared to previous years, the reports of Chamber of Accounts for 2015 and 2016 provide more details on procurement expenditures and violations of procurement regulations.
- <sup>11</sup> Chamber of Accounts opinion on state budget execution 2015, available in Azeri at: [www.sai.gov.az](http://www.sai.gov.az)
- <sup>12</sup> Chamber of Accounts opinion on the draft of law on the 2017 state budget of the Republic of Azerbaijan, available in Azeri at: [www.sai.gov.az](http://www.sai.gov.az)
- <sup>13</sup> The annual report of the Regulator for 2015, available in Azeri at: [www.tender.gov.az](http://www.tender.gov.az)
- <sup>14</sup> The annual report of Chamber of Accounts for 2015, available in Azeri at: [www.sai.gov.az](http://www.sai.gov.az)
- <sup>15</sup> The annual report of Chamber of Accounts for 2016, available in Azeri at: [www.sai.gov.az](http://www.sai.gov.az)
- <sup>16</sup> Ibid
- <sup>17</sup> It was one of the commitments undertaken by the government in its Open Government Initiative National Action Plan for 2012-2015, available in English at: [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)
- <sup>18</sup> The annual report of the Regulator for 2015, available in Azeri at: [www.tender.gov.az](http://www.tender.gov.az)
- <sup>19</sup> The law on public procurement, December 27, 2001, available in Azeri at: [www.e-qanun.az](http://www.e-qanun.az)
- <sup>20</sup> The law on public procurement, Article 10/3/2
- <sup>21</sup> The law on public procurement, Article 21
- <sup>22</sup> SOCAR’s Turkish Partner Wins Massive No-Bid Construction Projects, June 21, 2016, available at [www.occrp.org](http://www.occrp.org)
- <sup>23</sup> Bombardier Sweden Investigated for Alleged Bribery in Azerbaijan, March 17, 2017, available at: [www.occrp.org](http://www.occrp.org)
- <sup>24</sup> Azerbaijan is suggested to adopt a law on municipal procurement, February 12, 2016, available at: [www.trend.az](http://www.trend.az)
- <sup>25</sup> The amendment to the law on public procurement dated March 4, 2016
- <sup>26</sup> The law on public procurement, Article 1
- <sup>27</sup> The presidential decree No 888 dated April 28, 2016, available at: [www.e-qanun.az](http://www.e-qanun.az)
- <sup>28</sup> The annual reports of the Regulator, available in Azeri at: [www.tender.gov.az](http://www.tender.gov.az)
- <sup>29</sup> The law on public procurement, Articles 55-60
- <sup>30</sup> Procedures of submitting complaints, available in Azeri at: <http://tender.gov.az/new/?inc=34>
- <sup>31</sup> Deprived children turned into officials’ business, May 10, 2017, available in Azeri at: <https://www.azadliq.org/a/28478331.html>
- <sup>32</sup> For whom and how “Azersu” spends state funds?, October 18, 2016, available in Azeri at: <https://www.azadliq.org/a/24484047.html>
- <sup>33</sup> SOCAR’s Turkish Partner Wins Massive No-Bid Construction Projects, June 21, 2016, available at [www.occrp.org](http://www.occrp.org)
- <sup>34</sup> The Order of the Cabinet of Ministers No 370 dated November 15, 2011, available in Azeri at: <http://e-qanun.az/framework/22539>
- <sup>35</sup> Competition and procurement: key findings, 2011, available at [www.oecd.org](http://www.oecd.org)
- <sup>36</sup> The law on public procurement, Article 6
- <sup>37</sup> The registry is available in Azeri at the Regulator’s website, [www.tender.gov.az](http://www.tender.gov.az)
- <sup>38</sup> Bombardier Sweden Investigated for Alleged Bribery in Azerbaijan, March 17, 2017, available at: [www.occrp.org](http://www.occrp.org)
- <sup>39</sup> The law on public procurement, Article 29
- <sup>40</sup> The list of the types of e-service approved by the Cabinet of Ministers decision No 235 of October 17, 2012.