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FORMER YUGOSLAV REPUBLIC OF MACEDONIA

PUBLIC PROCUREMENT SYSTEM

ASSESSMENT MAY 2008

1. Summary

Since the June 2007 Sigma assessment of public procurement in the former Yugoslav Republic of Macedonia¹ there have been significant changes in the legislative framework. A completely new law on public procurement and another law on concessions and PPPs were adopted by parliament at the end of 2007 and at the beginning of 2008, respectively. The enactment of the Public Procurement Law (PPL) especially, which basically meets European Community (EC) requirements as well as good international practice, is a positive step forward towards the establishment of a sound and efficient public procurement system. Furthermore, Sigma observed during its assessment mission that the new PPL had already been received positively by the Macedonian public procurement community.

Beyond the requirements deriving from the *acquis*, it is very positive to note that the new law introduced a number of procedural improvements as well, which promote good and sound procurement practices. Many of these areas for improvements were addressed as problems in previous Sigma assessment reports.

The new PPL has opened the possibilities for the strengthening of professionalisation in the public procurement area, ensuring the possibility of establishing public procurement units or departments within line ministries, and removing the need to establish permanent tender commissions. Although improvements are clearly noticeable, the operational side of the public procurement system needs to be strengthened within the public administration.

The area of concessions and public-private partnerships (PPPs), however, remains a problematic issue since the new Law on Concessions/PPPs, reviewed by Sigma in 2008, contains a number of significant incompatibilities with EC requirements and with good international practice as well. It is therefore strongly recommended to elaborate, preferably as from 2008, further amendments to the newly adopted law, with the aim of having an amended EC-compliant law adopted by parliament in 2009.

The operations of the Complaints Committee, which is still active pending the establishment of the State Appeals Commission by 1 July 2008, demonstrate a certain improvement, but the Committee maintains the basic weaknesses that were identified in the past. The introduction of the new review and remedies system, together with the planned establishment of the State Appeals Commission, represents a significant improvement too.

The Public Procurement Bureau (PPB) continues to develop its support and service functions and to be very active in the implementation of the new PPL, with the preparation of secondary legislation and operational guidelines, and not least the organisation of extensive training and information campaigns for contracting entities and for the private sector as well. The publication system for tender and award notices, including the website, is highly advanced. In conclusion, the activities of the PPB are appreciated by the procurement community. However, the capacity of the PPB needs to be strengthened in terms of staff and to a certain extent organisationally so that it will be able to carry out its functions under the new legislation more

¹ In this report, the former Yugoslav Republic of Macedonia will hereafter be referred to as "Macedonia".

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effectively. There is a need for more appropriate office facilities that would also take into account all of the external contacts in which the PPB is engaged, such as numerous meetings and training events.

2. Legislative Framework

Since the adoption of the first public procurement law in 1998, Macedonia has progressively developed its legal framework in the area of public procurement, with a view to meeting EC requirements and international good practice. Sigma has described the legislative history in detail in previous assessment reports. The most important legal initiative in the area of public procurement was taken in 2007, with the adoption of a completely new public procurement law effective 1 January 2008.

As a background, Macedonia as a candidate country has the obligation to harmonise its procurement legislation with the new EC Directives, which was also clearly reflected in the National Programme for EU accession.

A completely new PPL, ensuring nearly full compliance with the new EC Public Procurement Directives, was adopted by parliament in December 2007 and published in the *Official Gazette* no. 136/2007; the law became effective on 1 January 2008. Another important legal initiative was the adoption of the Law on Concessions and other types of Public-Private Partnership (PPP) on 4 January 2008.

The new PPL is of a good standard and fundamentally (but not fully) transposes the new EC Directives; it clearly meets expectations on progress in the area of public procurement legislation. Macedonia is aware of the few remaining non-compliant provisions, which are mainly related to issues where the Directives envisage the involvement of the European Commission, the transposition of which is not possible until Macedonia becomes an EU Member State, or related to the special law-making techniques applicable in Macedonia, restricting for example the use of annexes in national legislation. All of the remaining areas of non-compliance can easily be corrected later in the accession process. The new PPL covers the classical and utilities sectors and all types of procurement (works, supplies and services), except for concessions. The rules concerning the utilities sector are provided in a separate chapter. The PPL also contains provisions on remedies (envisaging the establishment of a new State Appeals Commission) and on the operation of the Public Procurement Bureau. The exemptions allowed by the PPL for the contracting authorities in the classical sector and for utilities are in line with EC rules.

The situation is different in the area of concessions and PPPs, where further modifications of the newly adopted Concessions Law are needed in order to bring it into compliance with EC requirements and good international practice. Sigma has reviewed the law and identified the following main problems, in brief (the full report has been submitted to DG Internal Market and to the EC Delegation):

- the definition of “concessions” and “concession contracts”;
- the broad meaning attached to the terminology “concessions”;
- the definition of PPPs;
- the necessity for co-ordination of procedures for the award of PPPs;
- the contents of the concessions contract, the detailed provisions of which could be dealt with separately in secondary legislation;
- legal remedies.

A set of by-laws (13 so far) related to the new PPL have been adopted, partly in 2007 and partly in 2008:

The following documents have been published in the *Official Gazette* of the Republic of Macedonia:

1. Rulebook on the format and the contents of the annual procurement plan
2. Rulebook on the procedure of opening of tenders and the form of minutes of the opening of tenders
3. Rulebook on the format and the contents of the notice, the notice on cancellation of the procedure and the form of the records of the simplified competitive procedures
4. Rulebook on the manner of estimation of the value of public contracts
5. Rulebook on the manner of utilizing the ESPP
6. Rulebook on the format and the contents of the notices and the notifications of awarding the public contract
7. Decree on the services that are subject to the public service contracts

8. Decree on the types of activities of construction that are subject to the public works contracts
9. Decision for prescribing the indicative list of contracting authorities
10. Rulebook on the contents of the tender documentation
11. Rulebook on the format and the contents of the procedure outcome report
12. Methodology for expressing the contract award criteria into points
13. Decision on defence related materials (this decision was adopted, but due to its confidential nature it was not published in the *Official Gazette*).

Only one by-law is still to be adopted in 2008, which is the by-law introducing Common Procurement Vocabulary (CPV), which is to be applied as from 1 January 2009.

Among the by-laws, especially the following may be highlighted as the ones significantly improving the procurement practice as well: the ones introducing rules on standard forms, which are likely to contribute to a consistent tendering practice and which may substantially simplify the work of economic operators, as confirmed by the relevant stakeholders; and the revised methodology for expressing the contract award criteria in points, as in practice this promotes the use of the economically most advantageous bid award criteria (instead of the lowest price criteria, which are often chosen).

The PPB will prepare a set of operational tools in the form of guidelines in order to the support or supplement the PPL and secondary legislation, namely in the following areas:

- Guidelines for tender evaluation methodologies for goods, works and services;
- Guidelines for the use of framework agreements;
- Guidelines on information, documents, systems for determining and evaluating selection criteria;
- Guidelines for the procurement of Annex B Services;
- Guidelines for the procurement of electricity.

In addition, the PPB will prepare or modify a complete set of new model tender documents for the procurement of goods, works, and services.

With regard to the by-laws related to the Law on Concessions and other types of PPPs, these fall within the competence of the Ministry of Finance (although the law itself is the responsibility of the Ministry of Economy); these by-laws have not been drafted yet.

The new PPL has implemented all new instruments regulated in the EC Directives, such as the competitive dialogue, framework agreements, central purchasing bodies and electronic procurement. Beyond the requirements deriving from the *acquis*, it is very positive to note that the new PPL introduces a number of procedural improvements by which good and sound procurement practices are promoted. The most apparent improvement is the general simplification of the procedures outside the scope of the EC Directives, notably the increase of the national thresholds, shorter time limits for the submission of tenders, the introduction of the simplified competitive procedure, the removal of the mandatory use of tender and performance securities, simplification of qualification documentation and the need to request consent from the PPB for the use of the negotiated procedure. All of these changes are highly appreciated by the public procurement community and will contribute to more efficient procurement operations.

Another important measure was the change of the role of the permanent tender commissions in the procurement process, which has been addressed in previous Sigma assessment reports. Thereby, stronger reliance on the line organisation in the procurement process has been possible by giving public procurement units or departments a wider responsibility.

Contrary to the above-mentioned positive changes, the budgetary rules remain unchanged and still call for changes. In accordance with the Budget Law, the carry-over of funds is not possible, which means that if a contracting entity does not conclude the contract before the end of the fiscal year, the budget allocation is lost. Taking into consideration the applicable time limits, it is therefore likely that in the last two months of the year hardly any procurement procedures will occur, and the same situation applies for the first few months of the year.

Impressive progress has been achieved in the legislative framework for public procurement since Sigma's assessment report of last year. The new PPL is fundamentally compliant with EC requirements and, moreover, a number of improvements have been introduced in areas that are not directly covered by the

detailed provisions of the Directives. Secondary legislation and the future set of guidelines will contribute to better procurement practice in the future. In conclusion, the legal basis for public procurement in Macedonia is now good. Unfortunately, the legislative situation in the area of concessions and PPPs remains unsatisfactory, and a number of amendments to the concessions law are needed in order to bring it in line with EC requirements.

3. Central Public Procurement Organisation

The Public Procurement Bureau (PPB) was established in 2005 in accordance with the PPL, and its operations started in June of the same year.

The PPB is a government administrative body; it is under the responsibility of the government and the Minister of Finance. The director is appointed for a four-year term and may be dismissed by the government on the proposal of the Minister of Finance. It is very important to avoid any possible politicisation of this function so as to ensure stability and to keep its professional character.

The PPB is financially dependent on the Ministry of Finance, since its budget is within that of the ministry.

The organisation of the PPB as an entity within the Ministry of Finance and its dependence on sufficient budget allocations provided by the ministry could give rise to a politicisation of the institution and of the basis for appointment of the PPB director.

The PPB is to ensure monitoring, development and promotion of the public procurement system by ensuring legality, rationality, efficiency and transparency, equal treatment, non-discrimination and encouragement of competition. The main tasks of the PPB are regulated in the PPL.

At the end of April 2008 the PPB had 13 staff, including the director; this number will increase to 18 at the end of 2008.

The continuous strengthening of the PPB's institutional capacity is necessary; sufficient budget resources should be provided for the recruitment of highly qualified staff (especially in the IT area), and the technical facilities, including the premises of the PPB, need to be significantly improved. To achieve these aims, it might be advisable to reconsider the appropriateness of the current status of the PPB as a unit within the Ministry of Finance and instead contemplate other organisational alternatives, such as establishing it as an independent agency.

The PPB is divided into two departments: the Department for Promoting the Procurement System and the Department for Registry and Analysis. Although the PPB performs all of the common tasks attached to a central public procurement organisation, including help-desk functions, it needs to be better reflected in the organisational chart as well. Further specialisation within the organisation, the active involvement of new staff members in all activities, and regular internal training are necessary to improve functional efficiency. An important feature in the PPB organisation is its dependence on a small core of staff, who have been members of the organisation for many years, some even from its start. Their knowledge, experience and dedication are of utmost importance for the success of the work of the PPB and they do not work along a strict division of tasks and responsibilities. While this is very positive and normally needed in a small organisation, it may become a risk when the organisation grows in numbers. The PPB has reached a size where it becomes clearly relevant to consider a more stable and formalised organisational model.

It should be said that the PPB's activities and services are highly appreciated by contracting entities and economic operators and it is known to exercise its tasks in a responsible and efficient manner. The consultation process before the adoption of the new PPL and the impressive range of training activities are some examples of the positive reputation that the PPB has managed to earn within the procurement community.

The PPB also enjoys good co-operation with other competent authorities related to public procurement (State Audit Office, Complaints Commission, State Anti-Corruption Commission and Commission for the Protection of Competition).

The PPB's comprehensive, user-friendly and well-structured website contains a wide range of information (in English as well), including a full set of primary and secondary public procurement legislation, contract notices, annual plans, the Public Procurement Registry, decisions of the Complaints Committee and frequently asked questions. The website is regularly updated.

One of the PPB's tasks is the maintenance of a single registry and a sub-registry on the procurement of contracting entities. The PPB also makes this information available to the public on the PPB website.

The second important player in this area is the Ministry of Economy (MoE), which is responsible for the primary legislation related to concessions and PPPs in Macedonia (as indicated above, the secondary legislation falls within the competence of the Ministry of Finance).

The establishment of a PPP and Concessions Unit within the MoE is based on a government policy decision but final approval of this decision is pending. The PPP and Concessions Unit within the MoE is planned to be staffed by five people, including the head of the unit and four other civil servants (two lawyers and two economists).

In accordance with the Concessions Law, a Council was created, comprising 11 members, seven of whom represent various ministries, two representing associations of local governments, and two other experts (one lawyer and one economist). The Council has already started to operate and as its first priority it is engaged in the elaboration of a strategy on the implementation of projects.

A number of solid improvements have been identified in terms of the central public procurement organisation and its capacity. However, the Public Procurement Bureau (PPB) needs further strengthening in order to be in a better position to effectively support the implementation of the new PPL and the further development of the public procurement system. In particular, it needs to increase its staff as well as strengthen their competence and, to a certain extent, restructure its organisation to better reflect all of the new challenges and innovations that have recently been introduced with the new PPL. The current status and location of the PPB should be addressed in order to provide a more efficient base for its future operations. The PPB would also benefit from more practical and modern office facilities.

4. Procurement Operations and Practices

On 1 January 2008, at the same time as the implementation of the new PPL, a new electronic publication system, operated by the PPB, was rolled out. The system is based on unified standard forms, in accordance with the SIMAP/TED formats for notices, and is considered as an important step for the improvement of the procurement system. The system is already highly appreciated by all relevant stakeholders, although contracting entities initially experienced certain technical difficulties and tenderers had to familiarise themselves with the innovations of the new system. All low-value procurement contracts are advertised only on the website, while high-value procurement contracts for the time being need to be published also in the *Official Gazette*. Contract notices for international tenders are allowed to be advertised on TED. The PPB has organised several training activities to support the use of the new publication system.

The use of the publication system is free of charge and provides an excellent information source for business opportunities in the private sector; the system is an extensive improvement compared with the previous system. An additional major advantage of the publication system is the facilitation of the gathering of procurement data and the compilation of statistics that it offers to the PPB as part of its monitoring functions. Interestingly, the system is also capable of notifying contracting entities automatically when mistakes are found in the preparation of contract notices during an ongoing public procurement procedure.

Along with the electronic publication system, an electronic procurement system – in accordance with procedures addressed in the PPL – is in principle also available, but this system has so far been used only to a limited extent. Further testing in terms of pilot projects, including training and guidance, will be needed in order to make these new instruments more widely known and applied. Electronic procurement will certainly be an effective method and a natural part of the future public procurement system, but a number of preconditions are needed to be in place in order to ensure equal access to the system by all tenderers, including SMEs, especially in terms of common technical platforms and inter-operability.

The PPB had previously issued a set of standard tender and qualification documents and model contracts covering the procurement of goods, works and services. These tender documents are regularly used by contracting entities, even though they are not obligatory. At present, with the support of Sigma, these standard bidding documents and model contracts are being adapted to the new legal environment.

The new PPL allows for the setting up of central purchasing bodies and of co-ordinated purchasing arrangements, but no such examples exist so far. However, in reality, the Office of Common and Mutual Matters seems to be responsible for centralised purchasing activities in terms of certain goods and services for the government sector, and its services are mandatory for all government bodies.

Framework agreements are also introduced by the new PPL but the same applies here; this instrument is used only on a very limited scale by contracting entities. However, since the PPL had not been in force more than four months at the time of the assessment mission, it is not possible to draw any firm conclusion on the future use of this instrument or of the other new methods. The PPB is to also prepare and issue guidelines for the use of framework agreements before the end of June.

The PPL has removed the mandatory use of tender securities (3%-5% of the estimated contract value) and performance guarantees, which is a clear improvement compared with the past. However, in practice, tender securities apparently are still required quite regularly, especially in certain sectors (e.g. construction and IT areas). Requests for tender securities may affect participation and restrict competition. In particular, small and medium-sized companies may be discouraged from participating.

The PPL does not include any provisions on preferential treatment rules, which is a very positive feature in the procurement system.

The number of contracting entities covered by the PPL amounts to about 1000 (based on estimates of the number of budget-users and public enterprises). According to the statistics prepared by the PPB in 2007, 6599 contracts were awarded above the national procurement thresholds. The total value of the concluded contracts last year amounted to approximately 355 million EUR, which is large increase compared with 2006. There are no data or estimates available on procurement below the national thresholds.

Generally, economic operators' interest in competing for public contracts appears to be good in most areas, although no exact statistics on participation rates are available. However, contracting entities indicate that some sectors attract insufficient interest, probably due to the monopolistic nature of these market segments.

The main purchasers from the central government and from the utilities sector seem to have a better knowledge of, and ability to apply, the PPL, but much remains to be done in terms of strengthening operational capacity, especially at the local government level. In terms of future training activities, special emphasis should be placed on increasing the understanding of the new instruments (framework agreements, e-procurement possibilities, etc.), as well as other practical aspects of the procurement process. Training in this area should also include economic operators.

Since the implementation of the new PPL, with the financial support of USAID, the PPB has organised extensive training in terms of workshops and seminars to support the correct application of the law; this training has involved nearly 2000 participants from all over the country.

With the new PPL, there are enhanced possibilities for an increased professionalisation at the level of contracting entities due to the change in conditions for the formation and in the role of tender committees in the procurement process. Stronger reliance on specialised public procurement units within line organisations is now possible, which should stimulate the creation of a professional cadre of procurement staff in the future.

For the purpose of creating sufficient training capacity in the future, it would be advisable to encourage a wider role of the private sector in the provision of procurement training. There are many good examples to be obtained from EU Member States. Institutionalisation of public procurement training is another important method in order to ensure long-term sustainability.

The overly formalistic approach in the conduct of procurement proceedings continues to be seen as an important problem. Many of the problems are likely to be remedied with the new PPL, where a number of simplifications have been introduced, especially in the qualification phase, but old practices have a tendency to continue to be followed.

Economic operators have generally criticised the operations of the Complaints Committee, in particular its delays in reaching decisions, and they welcome the establishment of the new State Appeals Commission.

Despite the fact that considerable efforts have been made to support contracting entities, as well the private sector, with training, information and the publication of secondary legislation – including model tender and contract documentation, further enhancement of the support to purchasers is required to strengthen the operational side of public procurement. It would be extremely important to further promote an increased professionalism in public procurement by taking full advantage of the rules of the new PPL concerning tender committees. The establishment of specialised procurement departments within contracting entities is highly advisable. The competitive side of the public procurement market is satisfactory, and the absence of any preferential-treatment rules is a positive feature of the Macedonian system.

5. Control, Review and Integrity

5.1 Complaints Review

The review and remedies system operates in a transitional situation: the PPL envisages the establishment of a new State Appeals Commission (SAC). This body should be operational only as from 30 June 2008, and in the meantime the former Complaints Committee (CC) is continuing its operations based on the provisions of the former PPL. The recruitment process for staff of the SAC was under way at the time of the assessment mission through an open competition.

All current members of the CC were appointed in September 2007 and a new CC was established at that time. CC members are selected experts (lawyers, public notaries, barristers) with previous experience in the public administration. They take on their duties as members of the CC on a part-time basis and receive only symbolic remuneration. The CC does not have a permanent office. It holds its meetings in the building of the government and is assisted in its operation by only three experts and two administrators.

The new State Appeals Commission will be composed of a chairman and four members appointed by parliament, plus a professional service. It is to be an independent state authority with the status of legal entity.

In view of the elections on 1 June and the unclear political situation, there is a clear risk that the CC will need to continue its work beyond 30 June 2008; however, the PPL actually provides for such a solution in the event that the Appeals Commission is not yet operational on the starting date foreseen in the PPL.

Sigma's 2007 assessment report indicated that the weakest point of the public procurement system was evidently the remedies system, especially in light of the large number of complaints lodged by economic operators; thus it needed to be completely restructured in order to meet EC requirements and international good practice. This conclusion remains valid also in 2008. However, with the appointment of the new CC in September 2007, the situation has improved in terms of shortened review procedures and the lack of any backlog. However, Sigma had no opportunity to make any conclusions on the quality of the CC's decisions.

Both the previous and the current PPL contain provisions on the standstill period. The current PPL does not allow for the conclusion of the contract within 12 days from the date of receipt of the formal decision of the contracting entity.

The CC focuses not only on the content of the complaint, but also on the legality of the whole procedure (supervisory role); if any irregularities are found, the procedure is cancelled. The same approach is applied by the new PPL, with the difference that the SAC will only be allowed to act *ex officio* in relation to major infringements, as set out in the PPL.

At present, complaints may be lodged by dissatisfied tenderers (candidates) and by economic operators that have requested the tender documentation, but have not necessarily submitted a tender. According to the provisions of the new PPL, any economic operator having a legal interest in the contract award procedure, and which has suffered or could suffer damage by an alleged infringement of the provisions of the law, may initiate an appeals procedure against the decisions, actions and failures to undertake actions by the contracting entity during the contract award procedure. In addition, the attorney general will have the right to initiate an *ex officio* appeals procedure in the contract award procedures whenever he/she feels it necessary in order to protect the interests of the Republic of Macedonia or the public interest.

While there is no cost to the complainants for filing a complaint at present, with the new PPL a fee has been introduced in order to reduce the number of unfounded appeals. The amount of the fee will depend on the value of the contract in question and will vary from 50 EUR (for low-value procurement) to 300 EUR (for contracts above 200,000 EUR). These fees can be considered to be quite reasonable and do not seem to restrict the right to lodge a complaint. However, fees should be kept at a moderate level in order to avoid becoming a disincentive, thereby also obstructing the submission of founded complaints.

The new PPL provides for the possibility of a public hearing in line with the principle of ensuring a contradictory procedure under which both parties have the right to be heard fully. It will be important to make this provision effective in practical terms as well, and to change the current practice.

Both the present CC and the future SAC have a 15-day deadline for decision-making. The CC, however, has never been able to respect this deadline, although there are noticeable improvements in respect of the newly formed CC.

The number of complaints remains high. The present CC has made 1252 decisions (including the backlog) since its date of appointment in September 2007. Its decisions always contain a short written rationale, which also are published on the PPB website.

Contrary to the situation in previous years, the majority of the complaints in 2007 were considered to be unfounded (in 648 cases, while in 27 cases the complaint was rejected because of its untimely submission) ; only in 268 cases was the case sent back to the contracting entity for re-evaluation. The CC annulled the procedure in 212 cases.

In 2008, from January until mid-April 230 complaints were filed, of which 200 cases related to the application of the former PPL and 30 concerned the new PPL. However, since only small-value contracts were subject to review, the CC was not in a position to evaluate the changes brought by the new legislation.

Most of the complaints are related to the incorrect application of the contract award criteria.

An appeal may be filed with the court against a CC decision. No data are available on the number of judicial cases; however, it is known that the State Supreme Court has a huge backlog and that the Administrative Court has been trying to eliminate the backlog for the previous years. The court procedures are seen as being very lengthy and they do not suspend the completion of the contract; as a result relatively few appeals are lodged with the court.

The possibility of judicial review will be ensured by the new PPL as well: the decisions of the SAC may be subject to administrative dispute before the court that is competent for resolving administrative disputes; the court is to handle public procurement cases with urgency.

The right to compensation in the form of damages before the regular courts is also provided for in the law, but no data are available on this issue.

With the new PPL, the SAC will be obliged to submit an annual report to parliament; the contents of this report are specified in the PPL.

The new PPL has established a framework with the possibility of a more efficient review system, which also complies with EC requirements, but now substantial efforts are needed for the effective implementation of these provisions.

The recruitment process is currently ongoing, as indicated above, but it is highly questionable whether the SAC will be established by 30 June 2008.

It is important that the newly established SAC receives the necessary support also in organisational terms: it needs to be well-staffed by experts and administrators, and its proper functioning should be ensured by adequate technical means, including office facilities and IT systems.

Importantly, the newly recruited staff of the SAC will require extensive support in terms of training, advice and technical support, especially during the first year of its operations but also in a long-term perspective.

In its current form, the review and remedies system remains a weak point of the public procurement system. However, with the establishment of the State Appeals Commission (SAC) and the new review mechanism, hopefully by 1 July 2008, one vital component of the public procurement system will be significantly improved. However, the new review body will require extensive support in the coming years in terms of training and hands-on advice for its effective functioning.

5.2 External Audit

The supreme audit institution of Macedonia is the State Audit Office (SAO), which was established in 1999. For the purpose of auditing EU funds, in 2007 a State Audit Authority was created within the structure of the SAO.

The mandate of SAO covers all state budget-users and funds, including state-owned enterprises and local government. The State Audit Office may also, where needed, conduct extended audit of entities that have business relations with the entities covered by the scope of its audit. Central governmental organisations and the City of Skopje are audited on an annual basis, but other entities – involving local government – are audited on a much more ad hoc basis, depending on risk and resources.

The financial audit, where relevant, includes a chapter on public procurement. The audit carried out is based primarily on determining compliance with the PPL, where the SAO checks the entire process from the time of preparation (e.g. securing funds) until the conclusion of the contract, including the outcome of the contract execution (final prices in the contracts, completion dates, etc.). The SAO has not yet conducted thematic audits (covering several institutions) in the area of public procurement, but is planning to conduct these as from 2009-2010.

Most frequent audit findings in 2007 were:

- the planning of public procurement was often poor: contracting entities failed to adopt public procurement plans or failed to comply with them;
- contracting entities tended to divide the value of public procurement in order to avoid the application of public procurement rules;
- contracting entities failed to maintain registers of public procurement files.

The SAO was represented in the working group set up by the PPB and participated actively in the consultation process for the elaboration of the new PPL.

5.3 Integrity of Procurement Operations

The PPL does not include any provisions that specifically address the area of corruption in public procurement other than provisions on conflict of interest. However, the PPL in itself has the aim of preventing corrupt and fraudulent practices. The PPB states on its website that public procurement rules themselves might contribute to the transparent and effective use of public funds by reducing the possibilities of corrupt behaviour, thus saving money and improving the quality of procurement.

Furthermore, the PPL ensures the transparency of public procurement procedures by laying down extensive publication rules and expressed preference for open competitive procedures. As mentioned above, the PPL also contains rules on conflict of interest, which provides better guarantees for fair and impartial procedures that are potentially free from biased decisions or irrelevant influences.

The PPB co-operates on a regular basis with the State Commission for Prevention of Corruption (SCPC) and the PPB is a signatory to the State Programme for Prevention and Repression of Corruption elaborated in 2007.

According to the SCPC, public procurement is an area that is strongly threatened by the risk of corruption; therefore its annual report always addresses this issue in a separate chapter.

The SCPC considers that the most frequent problems identified relate to the determination of award criteria and their inappropriate application. It considers the enactment of the new PPL as an important step in the direction of reducing corruption. The SCPC uses the annual reports of the SAO as a basis for its actions. Not surprisingly, according to the SCPC it is always difficult to prove corruption or fraud in the public procurement area.

The Institute for Democracy began implementing a one-year project entitled "Monitoring of Public Procurement in Macedonia" in May 2007, focusing on the public procurement practices followed by local governments. The preliminary results of this project indicated that the risk of corruption was considerably higher in smaller local governments than in larger municipalities.

One important initiative for strengthening the fight against corruption in public procurement is the elaboration of a Policy and Action Plan under the National Programme, aimed at meeting the requirements under chapter 23 (Judiciary) of the negotiations for EU accession. Three major issues are identified: risk elements in each phase of the procurement process; indicators (red flags) that control bodies (including the PPB) should consider in procurement procedures that might indicate that something is wrong; and identification of high-risk types of procurement. Sigma has been asked to support this work.

6. Capacity to Further Develop the Public Procurement System

The public procurement system of Macedonia has reached a higher level of functionality since Sigma's assessment report of 2007. Extensive efforts have been invested in the elaboration of a completely new legal framework transposing the EC Directives 2004/17 and 18, but also with the objective of modernising the

procedures and rules outside the scope of the Directives. The PPL will also be supplemented by the issuance of secondary legislation and the preparation of operational tools in the form of guidelines and website information. Furthermore, the complaints review system has undergone a complete overhaul with the implementation of the PPL. The electronic system for publication and information is another example of the system's improvement. A number of training activities have been conducted to support capacity-building at operational level.

Consequently, the Public Procurement Bureau (PPB) has certainly proven that it has the capacity to develop the public procurement system, although some of the work has been supported by external assistance.

Unfortunately, the same positive picture does not apply yet to the area of concessions/PPPs. Further efforts to build institutional capacity and improve the legal framework are needed in the near future.

However, there will continue to be a further and extensive need to strengthen the central capacity by allocating sufficient resources to the expansion of the PPB and supporting the creation of a functional and effective organisational structure, including consideration being given to moving the PPB to a more appropriate location within the public administration. Support for the implementation of the new PPL and for the introduction of new business models, such as frameworks and e-procurement, will become major challenges in the coming years and will require the full attention and commitment of the PPB, as well as ongoing support by the government to the PPB, in terms of providing resources and stability.

The further development of the PPB and the operations of the State Appeals Commission (SAC) will be supported by EU financing, while the instruments to be used have not yet been finally determined. Two projects are envisaged, one covering the PPB and the other covering the SAC; both are scheduled to begin in 2009.

USAID has also expressed its intention to provide technical assistance, without engaging in the legal and institutional reform process but by financing a number of important activities to support the implementation of new procurement legislation.

In 2007 Sigma was engaged extensively in supporting public procurement reform work and will continue to do so in 2008 in the areas of public procurement and concessions/PPPs, particularly through training and advice on legislative and institutional development and capacity-building.

7. Summary and Next Steps

The public procurement system of Macedonia has undergone a number of significant and quite impressive changes in 2007 and at the beginning of 2008. The most noticeable improvements include: (i) the adoption of the new public procurement law, fundamentally in compliance with EC requirements, but also with good international practice; (ii) the creation of the State Appeals Commission for complaints review and remedies (1 July 2008); (iii) the roll-out of the new web-based publication and information system; (iv) the preparation of the whole set of secondary legislation; and (v) all of the efforts to support the implementation of the new PPL through the arrangement of training and information campaigns. These achievements are mainly a result of the work of the PPB and of the government's commitment to reform the public procurement system.

Unfortunately, the area of concessions and public-private partnerships (PPPs) remains a problematic issue, since the draft law on concessions/PPPs reviewed by Sigma in 2008 contains a number of significant incompatibilities with EC requirements and with good international practice as well.

A number of steps and actions are needed in the short and medium terms.

Priority should be given to the following actions:

A. Should be applied (or started) in the short term (or next 12 months):

- Support to the implementation of the new PPL will be a priority area in 2008, which would imply the preparation of operational tools, such as practical guidelines and the continuous arrangement of training and information campaigns for the procurement community on all the innovations of the new PPP.
- The PPB should continue the work of developing the electronic system for tendering and information exchange; initiate the use of framework agreements and co-ordinated purchasing, as well as of centralised purchasing systems.

- The role and capacity of the PPB is crucial for the progress of the continuous public procurement reform work, and there is a strong need for further capacity enhancement. The future organisation and location of the PPB within the administration should be reviewed in order to secure its long-term independence and functionality. There is also a need to consider other office facilities than the existing ones.
- The new State Appeals Commission will need considerable assistance during its first years of operation in order to operate efficiently.
- The Law on Concessions should be amended in order to meet EC requirements and good international practice. The unit on concessions and PPPs should be made operational.

B. Should be applied (or started) in the medium term (or next two years):

- The public procurement system should be further modernised by a wider use of the new instruments and methods provided by the new PPL;
- The procurement function should be further strengthened and professionalised at operational level by institutionalising training and education in public procurement and by introducing new ways of organising and managing procurement processes.
- Consideration should be given to the establishment of a public procurement consultation forum to promote the dialogue and exchange of information within the procurement community. The forum should be chaired by the PPB.
- The role and organisation of the PPB should be further strengthened in the light of all of the new developments and challenges that the public procurement system will meet in the next two years.
- The amended Remedies Directives need to be implemented in the Macedonian legislation.