



Transparency International Kyrgyzstan



*State Agency on Public
Procurement and material reserves*



CLMU "ABMP"/
PMU "GTAC"

Monitoring of Effectiveness of Public Procurement System and Conducting Information Campaign in the Kyrgyz Republic

Bishkek 2007

I. Introduction	p. 3
II. Public Procurement System in the Kyrgyz Republic	p.8
2.1. Public Procurement Methods.....	p.8
2.2. Public Procurement Stages.....	p.11
2.2.1. Public Procurement Planning	p. 11
2.2.2. Publication of Announcement at Mass Media and Bulletin of Public Procurement (BPP) and Invitation to Bid	p.13
2.2.3. Preparation and Deadline for Bid Submission	p.14
2.2.4. Provision of Bidding Documentation: Payment and Quality of SBD.....	p.16
2.2.5. Stage of Selecting a Winning Bid. Stage of Contract Award	p.18
2.2.6. Contract Execution Stage	p.21
III. Calculation of Economic Losses in the Sphere of Education in the Kyrgyz Republic	p.24
IV. Instrument of cooperation between the state agencies, the companies - suppliers and a civil society	p.41
V. Conclusions and Recommendations	p.44

1. Introduction

Public procurement is an acquisition of services, goods and works using State funds and conducted by state bodies.

Public procurement in the Kyrgyz Republic is regulated by legislative acts, fundamental of which is the Law “On Public Procurement” No. 69 as of May 24, 2004 (hereinafter the Law “On Public Procurement”). Among by-laws it is necessary to point out Regulations “On Procuring Entity’s Department and Tender Commission” No. 7 as of January 13, 2005, Regulations “On Procedure of Considering Administrative Violations and Imposing Administrative Sanctions for Violations of Public Procurement Legislation” No. 8 as of January 13, 2005.

The whole process of awarding and implementation of public contracts shall be subordinate to the rules which must guarantee an effective and economic use of the State funds and support principles of transparency and non-discrimination. But different private and group interests, as well as availability of huge amounts of money create large possibilities for corruption. A lot of complaints suggest that a system of public procurement is connected with different forms of corruption, which becomes a large problem in the country. Practically the whole process of awarding public contracts suffers from different obstacles and shortcomings, sequences of which are an increased contract price, unprofitable contracts for the State budget, services of poor quality.

At present the Kyrgyz Republic Government carries out reforms of structural transformations in state government, supported by the World Bank credit (GSAC), reforms include a principle of transparency and effectiveness in using funds during the process of public procurement. But nevertheless, there are still many problems in the public procurement system.

This project is devoted to identification of these problems and conduction of informational-clarifying campaign among businessmen and procuring entities in the sphere of public procurement.

The project implementation methodology is as follows:

- Discussions in focus-groups (consisting of businessmen, representatives of procuring entities, public organizations) in all regions of the country.
- Assessment of economic losses in the result of ineffective use of State funds at conduction of procurement
- Development of the Manual on use of public procurement legislation
- Conduction of training in all regions of Kyrgyzstan for procuring entities and suppliers
- Development of recommendations on improvement of the Kyrgyzstan legislation and public procurement system

Focus-groups and trainings were conducted under this Project in all regions of Kyrgyzstan for procuring entities and suppliers.

1. Osh region.
2. Jalalabad region.
3. Batken region.
4. Issykkul region.
5. Naryn region.
6. Talas region.
7. Chui region and Bishkek.

List of state organizations on regions:

Issykkul region:

- 1) *Issykkul State University,*
- 2) *СИЗО №24,*
- 3) *Oblast State Administration,*
- 4) *Administration on water economy,*
- 5) *Ак-Суу ПНДИ,*
- 6) *Department of Education,*
- 7) *JSC «East-Electro»,*
- 8) *Regional Stomatological Union,*
- 9) *Medical Family center of Karakol,*
- 10) *Plant of public services of Karakol,*
- 11) *Regional TV and radio company of Issykkul,*
- 12) *State auto inspection,*
- 13) *Karakol department “water resources”*
- 14) *Institute of correspondence course by name of Tynstanova*
- 15) *Medical secondary school*

Jalalabad region:

- 1) *ПЛВАД-6,*
- 2) *БҮВХ,*
- 3) *SuzakРҮВХ,*
- 4) *ДЭП-2,*
- 5) *Agricultural and water protection,*
- 6) *Department ЖКХ,*
- 7) *Neuralgic Children Home,*
- 8) *Motorbase sanitary cleaning,*
- 9) *ПЛ-71 Kok- Jangak city,*
- 10) *Department of education Kok – Jangak city,*
- 11) *ПЛ-1,*
- 12) *ПЛ-75,*
- 13) *Medical secondary school,*
- 14) *Custom,*
- 15) *Station of blood transfusion,*
- 16) *Suzak ЦСМ,*
- 17) *ПЛ-60,*
- 18) *Bazar - Korgon ЦСМ,*
- 19) *Bazar –Korgon Hospital,*
- 18) *Resourt «Bakyt»,*
- 19) *ЖООБ,*
- 20) *Jalalabad State University,*
- 21) *Jalalabad regional printing house,*
- 22) *Suzak hospital*
- 23) *Regional Medical Family Center*
- 24) *Jalalabad city of education,*
- 25) *Military department -704,*
- 26) *Suzak Stomatology clinic,*
- 27) *Art school,*
- 28) *Main Administration of punishment №10*

Osh region:

- 1) *Regional TV and Radio company «Эл TP»,*
- 2) *Territorial city hospital of Osh,*
- 3) *Medical secondary school,*
- 4) *Station of first aid,*
- 4) *Medical Family Center «Jagalmai»,*
- 5) *Regional bureau of medical expertise,*
- 6) *City of Stomatology clinic,*
- 7) *MFC «Peace of family»*
- 8) *Osh regional tubercular hospital,*
- 9) *Osh State University,*
- 10) *Osh Technical University,*
- 11) *ОГУИИ*

Batken region

- 1) *Batken Department of water resources,*
- 2) *Department of Motor road,*
- 3) *Military department -86017,*
- 4) *Special garage of State Administration,*
- 5) *Regional Music theatre,*
- 6) *Batken telecom,*
- 7) *Regional department of working and migration,*
- 8) *Batken State University,*
- 9) *Batken regional unit of hospitals,*
- 10) *Regional tubercular hospital,*
- 11) *Administration of Internal Affairs of Batken region,*
- 12) *Regional veterinary department,*
- 13) *Batken city department,*
- 14) *Military Department -707,*
- 15) *Finance and economy department of regional administration,*
- 16) *Regional Social Fund,*
- 17) *Batken regional department of treasure,*

Naryn region:

- 1) *Regional department of agricultural development,*
- 2) *Naryn State natural reserve,*
- 3) *Regional Center of benefit and pension,*
- 4) *Regional department on antimonopoly policy and competition,*
- 5) *Regional architectstroi management,*
- 6) *ИТТИ-87*
- 7) *Military Department-2025*
- 8) *Toruagart frontier veterinary control department,*
- 9) *Department №24 of Ministry of Justice,*
- 10) *Staff of State of Defense,*
- 11) *Regional of veterinary department,*
- 12) *ИЛИАИ № 3*
- 13) *Naryn State University,*
- 14) *Regional tax inspection,*
- 15) *Free economical zone of Naryn,*
- 16) *Regional forest economy,*

- 17) *Regional committee on protection of environment,*
- 18) *Regional Center of education,*
- 19) *Naryn regional hospital,*
- 20) *Naryn city center of education.*

Talas region:

- 1) *Regional state administration,*
- 2) *Road exploitation department,*
- 3) *Talas Municipal department,*
- 4) *Professional college № 6 of Talas region,*
- 5) *Technical institute,*
- 6) *Professional college № 90,*
- 7) *City clinic,*
- 8) *Reservoir Department of water economy,*
- 9) *Special hospital for veterans,*
- 10) *Talas regional tax inspection,*
- 11) *City department of education,*
- 12) *ИЛТВАД № 5*
- 13) *Bakai-Atin territorial hospital.*
- 14) *Talas regional unit hospital,*
- 15) *Talas tubercular hospital.*

These focus-groups set objectives of defining a knowledge level of procuring entities and suppliers on legislation and existing challenges in the procurement system. Focus-groups conducted in regions of the country, consisting of businessmen, representatives of procuring entities, public organizations, considered matters related to all procedures of public tendering.

1) Planning

- Is the State budget planned reasonably for conduction of public procurement?
- Is a certain amount allocated for initiating a public procurement process?
- Is a return of saved money from a total sum of allocated funds stipulated?
- Does your organization stipulate costs for training staff at the Regional Training Centre (RTC) under the State Agency on Public Procurement and Materials Reserves (SAPPMR)?
- What is your opinion is a training process effective?

2) Publication of announcements at mass media and Bulletin of Public Procurement (BPP) and invitation to participate in tendering.

- Is a general notice on all tendering, planned for the annular budget year, published in mass media?
- Is there an access to a journal version of the Bulletin of Public Procurement (printed, electronic version)?

3) Preparation and deadline for bid submission

- Is Standard Bidding Documentation (SBD) clear for you, does it include clear requirements related to the experience, qualification and technical specifications for goods, works and services?
- Is a short period for documents submission an obstacle for you? What period for documents submission is optimal to your opinion?

4) Provision with Bidding Documentation: payment and quality of SBD

- Is it easy to obtain SBD in case a tendering has been already announced? Is the amount for SBD commensurable with provided services?

5) Stage of a winning bid selection. Contract award Stage.

- Did you come across in practice with a Tender Commission, a composition of which was not changed during a long period of time?

- Do persons who have possibility to use an administrative resource make an influence on the Tender Commission's decision?

- What is your opinion, are bidders selection criteria clearly indicated in the Law?

- What is the extent of partiality at selection of a bidder? Are pricing and quality conditions comparable, to what extent?

6) Stage of contract implementation

- Are periods for goods supply and works and services implementation sufficiently adequate? If not, what way out of this situation are you seeking for?

- How often has the Ministry of Finance a delay in payment?

- Were there cases when a procuring entity was asked to solve a financial problem directly with the Treasury?

Interview at schools of three regions (Bishkek, Osh and Karakol) have been conducted under this project for calculation of ineffective use of the budget funds in the sphere of education.

The following chapters contain the results analysis of focus-groups conduction, as well as economic losses at conduction of public procurement in Kyrgyzstan.

II. System of Public Procurement Conduction in the Kyrgyz Republic

2.1. Public Procurement Methods

There are 5 methods of public procurement in Kyrgyzstan at present. They are regulated by the Law “On Public Procurement”. The establishment of public procurement methods allows procuring entities to take into account different aspects, circumstances at procurement of goods, works and services.

Each method has certain financial thresholds:

- for budget entities, organizations and foundations, created at the expense of the State funds, as well as for state enterprises and joint-stock companies, in which the State possesses not less than 51% of shares, where an authorized capital is up to 100.0 million soms the following threshold amounts are established aimed at:

a) procurement of goods and services:

- minimum threshold – 100,000 soms;
- maximum threshold – 700,000 soms;

b) procurement of works;

- minimum threshold – 150,000 soms;
- maximum threshold – 1,000,000 soms;

- for state joint-stock companies in which the State possesses not less than 51% of shares, where an authorized capital makes up more than 100.0 million soms the following threshold amounts are established aimed at:

a) procurement of goods, works and services:

- minimum threshold – 500,000 soms;
- maximum threshold – 5,000,000 soms.

The indicated threshold amounts are established by the Resolution of the Kyrgyz Republic Government No. 440 as of September 16, 2005 “On approval of threshold amounts at procurement of goods, works and services”.

- ***Tendering with Unlimited Participation***

At conduction of tendering at the amount equal to the threshold one or more tendering with unlimited participation must be conducted in a binding order. Information on tendering with unlimited participation must be published in the Bulletin of Public Procurement, the Bulletin *is issued twice a week*, and at mass media. Periods for bids submission are *not less than 6 weeks after announcement of tendering*. For tendering with unlimited participation a bidder shall have an experience of similar supplies within the recent two years. A bidder must not be insolvent, a bankrupt, his property must not be under a judicial control, the court or a person appointed by it must not dispose of his affairs, his commercial activity must not be suspended. In order to take part in unlimited tendering for a contract award *Bidders* shall answer minimum qualification requirements.

- ***Tendering with Limited Participation***

It is possible to find information on tendering with limited participation in the Bulletin of Public Procurement and mass media. Not less than three bidders shall participate in tendering with limited participation. At conduction of tendering a technical documentation containing technical specifications shall be sent to a *Bidder* together with an invitation. A deadline for bids submission is *not less than 3 weeks after sending an invitation*.

- *Two-Stage Tendering*

Bids with indication of technical, qualitative and any other characteristics of goods without price indications shall be submitted at the first stage. The bid security shall not also be provided at this stage. A period for initial bids submission shall not be *less than 6 weeks*, in special cases with a permit of the State Agency – *not less than 4 weeks from the date of publishing*. Bidders who have passed the first stage, shall submit final bids for participation in the second stage with indication of prices for goods, works and services in the bid.

- *Request for Quotation*

An invitation to participate in the request for quotation shall be published in the Bulletin of Public Procurement. A *price quotation* enclosed to an invitation to bidding shall contain the *following completed forms*:

- 1) A price list for goods, works and services and a schedule of their supply or implementation;
- 2) Information on technical conformance. A period for *price quotation* submission shall be *not less than one week* from the date of publishing. A contract shall be concluded with a bidder who submitted *the lowest price quotation*.

- *Single-Source Procurement*

Single-source procurement is a public procurement procedure when a *procurement contract* is signed after negotiating with only one bidder, if:

- additional orders are performed within 6 months from the moment of concluding a *Contract*, not exceeding 15% of the value of the previous procurement, but at that previous norms, parameters and standards of goods, works and services, etc. are maintained;
- goods, works or services available only from a particular bidder (contractor) are required for conduction of research, experiment or for preparation of a scientific opinion;
- any bidder (contractor) has exclusive rights in relation to the necessary goods, works or services;
- goods, works or services available from a particular bidder (contractor) are necessary for execution of some creative project in the sphere of arts or culture;
- an urgent procurement of goods, works or services is conducted connected with circumstances which a procuring entity could not foresee.

This method may be applied only with the consent of the State Agency on Public Procurement.

Almost all methods of procurement are applied in Kyrgyzstan at the central and municipal levels. Unlimited tendering make up 46%, limited tendering – 8%, request for quotation – 28%, single-source procurement – 18%.

Table No. 1. Portion of different procurement methods at central and municipal level, 2006

	A share of various ways of purchase, %, average		
	In total on the carried out tenders including the central and municipal level	Central (Republican budget)	Municipal (Local budget)
<i>Tendering with Unlimited Participation</i>	46	44	41
<i>Tendering with Limited Participation</i>	8	9	8
<i>Request for Quotation</i>	28	20	44
<i>Single-Source Procurement</i>	18	27	7
Total	100	100	100

It is evident from the Table that a request for quotation is applied most often at the municipal level (44%). Its popularity among procuring entities is explained by the fact that at this method differing from others only a price indicator is taken into account without consideration of specific characteristics of the good, in the result of which final users cannot know characteristics and quality of the received good which can be procured by the ungrounded high price. In practice it is often cannot be proved that it is just the way by which the State funds are used unreasonably and procured goods and services are used ineffectively.

At the central level after procurement by tendering with unlimited participation (44%) a large portion of public procurement was conducted by a single-source procurement (27%). Probably, this undesirable practice is connected with a fact that there is no clear regulation of tendering proceedings in the Law “On Public Procurement” at announcement of tendering as not taking place by reasons, specified in clause 1, Article 29.

“The Procuring entity upon agreement with the State Body shall cancel a tendering when:

- all bids are rejected;
- the lowest price of bids exceeds the sum allocated by the Procuring entity for the given procurement;
- conducting of the procurement is not longer in the State’s interests because of a serious unforeseeable change of circumstances”.

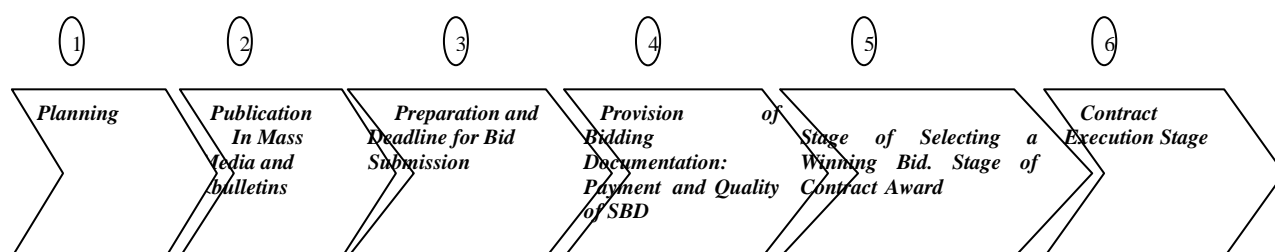
In the result the procuring entity, governed by para 5 of the same Article: “In the events of tendering cancellation in conformity with para 1 of of the Article 29 the procuring entity upon agreement with the State Body may conduct a re-tendering using other method of

public procurement”, applies to the authorized state body for a permit to conduct procurement by a single-source method. Thus, relations between a client and a bidder can be legalized.

2.2. Public Procurement Stages

Public procurement is conducted in several stages. At public procurement conduction a transparency at all stages of tendering proceedings is important for more effectiveness and economy. All stages of tendering proceedings will be considered later in this section. An effectiveness of the procurement system work and a result which the State and tax-payers must see cannot but depend on each stage of procurement.

Scheme of Pre-Tendering and Tendering Proceedings



2.2.1. Public Procurement Planning

In order the State can become an effective purchaser, a reasonable planning and placement of social orders by means of exact definition of needs is necessary.

Planning of future public procurement at initial stages (especially it is related to assessment of needs), the interpretation of the term itself “technical specifications”, as well as a process of supply, essentially, are exposed to corruption. If all procedures are not controlled properly, then “needs” or “requirements” may be selected arbitrarily, as a consequence there will be supplied goods or provided services of low quality, which contributes to ineffective r spending of state funds.¹

At this stage a special attention should be paid to the following questions:

- *Is procurement of some goods, services necessary?*
 - *Monitoring of last years experience: is it worth to invest State funds into these goods and services?*
 - *Is a reasonable planning of quantity or extension of works necessary in order to avoid unprofitable investments?*
- These stages must be carried out under conditions of complete **transparency**.*

¹ Curbing corruption in Public Procurement in Asia and Pacific, ADB/OECD Anti-corruption Initiative for Asia and the Pacific, p.12

At implementation of this project we did not carry out monitoring of the 1st stage. But at conduction of focus-groups some problems touched this stage also: for example, determination of demand for public procurement at state bodies, non-inclusion into the expenditure budget of expenses for purchase of bulletins themselves and for training of the procuring entities staff on conduction of tendering, the cost of which is 4,800 soms. Entities are forced to look for money for such expenses themselves.

At conduction of focus-groups in all regions of Kyrgyzstan there was revealed a weak knowledge by procuring entities of legislation and tendering proceedings. Reasons for such imperfections include a large turnover of employees, who attended training, weak understanding of our legislation. Procuring entities wished to conduct training with examples and role games based not on foreign but on domestic experience, as well as with practical application of our legislation. It is especially pressing for regions.

In many countries at this stage if a consumer of a certain good or service is population, then sometimes **public hearings** are held, which are the most acceptable and necessary for the State, as they can fully reflect interests of the society. Before proceeding to implementation of some project it is necessary at the stage of preparation **to make public** results of the needs assessment (for implementation of expensive projects results of needs assessment must be discussed and commented in public). They give the public possibility to express their comments on this or that project, as well as on these or those potential suppliers (bidders). Such procuring entities must publish at their sites procurement plans in order the public could see for what purpose and how budget funds will be spent.

It is necessary to carry out the following conditions at the stage of needs assessment:

- *Process transparency.*
- *It is necessary to involve a civil society to participation at this stage in taking decisions. Public hearings could have become one of ways to attract the public alongside with other consulting means, which allows:*
 - *to carry out needs assessment impartially;*
 - *to define a necessary responsibility;*
 - *to identify required/not required elements of goods, services, investments, which will be procured.*

Indicators signaling on abuse reflect manipulations of different nature at the stage of necessary needs assessment:

- *Non-transparency of proceedings and decision taking process which cannot be checked and controlled by the public.*
- *Insufficient access of the civil society to information on government programs, processes and decisions.*
- *Lack of possibility to discuss government programs, decisions taking process by a civil sector.²*

² Curbing corruption in Public procurement, p. 33-34.

2.2.2. Publication of Announcement at Mass Media and Bulletin of Public Procurement (BPP) and Invitation to Bid

De jure:

Bulletin of Public Procurement is issued in Kyrgyzstan, where all information on tendering is published. Periodicity of issue – twice a week, information on tendering is published also in mass media.

A procuring entity shall establish an exact date and a period for bids submission: for conduction of tendering proceeding with unlimited participation – not less than 8 weeks after announcement on tendering and for conduction of tender proceedings with limited participation – not less than 3 weeks from the date of sending invitations to bid and publishing of the announcement in mass media and/or in the Bulletin of Public Procurement.

In spite of the fact that these periods are indicated in the Law “On Public Procurement” at conduction of focus-groups the following problems were revealed:

De facto:

- Published information on public procurement is not always reliable:
 - Bulletins contain incorrect coordinates of the procuring entity, it is practically impossible to find a person in charge of conduction of tendering or such person is not informed that his name is indicated in the Bulletin.
 - Some state organizations give announcements without finalizing the project, as a result, tendering may be cancelled.
 - Announcements on tendering are issued either on the date of its conduction or in three days or in a week after publishing in mass media.

It should be pointed out that the above indicated shortcomings are spread elsewhere in Kyrgyzstan.

These facts in practice are connected with a fact that there are defects in the Law “On Public Procurement”:

- on matters connected with a procedure of publishing information on tendering in mass media or in the Bulletin of Public Procurement;
- on defining responsibility of a procuring entity and its officials for allowance of violations.

The analysis of publications of tender information of different organizations in mass media showed that the context information on forthcoming procurement by their organizational structure differs very much. Thus, if an advertisement of one organization contains information on forthcoming tendering, in which the following aspects are indicated: a selected method for tendering proceeding, a brief description of the procured good; a venue where interested persons can obtain a complete package of bidding documents; a deadline and time for bidding documents submission; a place and time of bids opening, then it is possible

that in an advertisement of another organization published on the same page there is a notice on forthcoming tendering containing only an indication on a particular type of the procured good.

- After tendering cancellation a procuring entity announces again tendering on the same product.

Case-study: A supplying firm won at tendering for supply of 40 t of sugar. After winning all necessary procedures were observed. This firm was assured that it was a winning bidder and that it could start to be engaged with supply. But at the last moment everything was suspended, as a notice has come that this tendering and this product at the moment does not present any interest for the State (the Law “On Public Procurement”, Art. 29, p. 1). On the next day the same procuring entity again announced on tendering related to procurement of the same sugar.

A provision of the Article 29 “Cancellation of Tendering” of the Law “On Public Procurement”, where it is indicated that a procuring entity upon agreement with the State Body cancels tendering when conducting of the procurement is no longer in the State’s interests in connection with serious changes of the situation is *completely corruptive* in the existing redaction, in this connection it is necessary to finalize the above indicated article of the Law “On Public Procurement” by new provisions. In particular, to disclose a legal content of terms “State’s interests” and “unforeseeable change of circumstances”.

Besides, a provision of the Article 29 of the Law “On Public Procurement” contradicts provisions of Articles 408 and 410 of the Civil Code on rules of conducting tendering in the form of a competition. The point is that the law defines a term “tender” through a term “tendering”. In other words, tendering is a procurement of goods, works and services by a procuring entity on a competitive basis.

2.2.3. Preparation and Deadline for Bid Submission

De jure:

1. Not later than one week after receipt of a request on provision of necessary documents a procuring entity shall provide suppliers with a bidding documentation, establishing basic provisions of procurement proceedings.

2. At conduction of tendering with limited participation a bidding documentation including specifications shall be sent simultaneously with invitation.

De facto

Sometimes a receipt of a bidding documentation becomes a problem. There are cases when tendering is already announced, but a specialist engaged in this matter is not available at his working place, bidders are not provided with a Standard Bidding Documentation (SBD) because forms of such documentation are over, a telephone line is disconnected. A mechanical obstacle is created for such bidders who can become competitors for the previously agreed supplier. These problems were solved after involvement of the Agency on Public Procurement. In most cases suppliers try not to complaint, as they consider it is useless.

Case-study: A supplier who previously refused to give a bribe in the amount of 10% of the contract value, could not obtain SBD during the next tendering. A procuring entity did not let an applicant to take part in tendering referring to a fact that an SBD package is over and there is no specialist in place who is dealing with such matters.

In another case an applicant was in every way hindered in obtaining an SBD package and he endeavored that forms of documentation were issued to him on the last day. The next morning when this applicant submitted a necessary documentation he was informed that tendering has just been conducted.

Case-study: A department on tendering conduction of one of military hospitals simply denied a fact that they placed an announcement on tendering in mass media, though this advertisement was published. Thereby they tried to exclude a healthy competition.

These facts in practice are connected with a situation that the Law “On Public Procurement” does not define clear composition of violations and measures of responsibility of the procuring entity and its officials in case of such violations.

Unfortunately, these phenomena are not defined in the Code on Administrative Responsibility as well. This is confirmed by the Article 413 of the above indicated normative document: “Violation of legislation in the sphere of public procurement of goods, works and services entails the imposition of the administrative penalty on officials in the amount of twenty estimated indicators”.

A procedure of considering administrative legal violations and imposition of administrative sanctions for violation of public procurement legislation shall be regulated by the by-law: Regulations which were approved by the order of the State Commission under the Government of the Kyrgyz Republic on Public Procurement and Material Reserves No. 8 as of January 13, 2005. This document was developed by the Agency on Public Procurement as in compliance with a Code on Administrative Responsibility the Agency is authorized to consider administrative violations and to make guilty persons answerable by means of imposing administrative sanctions for violation of legislation on public procurement.

The document regulates procedures of considering and adopting decisions on the administrative case on violation, which include:

- ascertainment of a list of legal terms and concepts (for example, an administrative violation, a penalty, etc.);
- ascertainment of a list of circumstances which mitigate or aggravate an administrative responsibility;
- ascertainment of different periods, for example, a period for consideration of a case on violation;
- rights and obligations of the Agency managers and its staff;
- procedure of documents execution, for example, protocol on violation;
- procedure of consideration of a case on violation;
- procedure of taking decisions and its appealing;
- procedure of decision fulfillment, for example, procedure of a penalty payment by a guilty person.

2.2.4. Provision of Bidding Documentation: Payment and Quality of SBD

De jure

For provision of a bidding documentation containing basic provisions of procurement procedures, a procuring entity may collect a non-refundable payment, which must not exceed the amount necessary for covering costs for printing and sending of the documents.

De facto

List of Basic Problems

1. Payment for SBD varies in different spheres. For example, in tendering in a pharmaceutical block, prices vary from 200 to 1,000 soms, in a construction block – from \$50 to \$100, in suppliers of office equipment – from 150 to 500 soms. In regions the amount varies from 100 to 500 soms, at open joint-stock companies – up to US\$ 5,000. Suppliers think it is not fair to deliberately establish prices for a small quantity of paper. It is deemed that these amounts must be directed to consultants or experts for preparation of professional specifications. Many specifications, according to the suppliers' opinion, are developed not at the professional level, as they cause a lot of confusion since beginning from the SBD submission and completing by conduction of the tendering itself. Entrepreneurs wished to improve a development of technical specifications.

Such price dispersion testifies to a lack of the established procedure on calculation of the SBD cost. Nevertheless, at establishment of its cost it is necessary for procuring entities to be governed by a requirement of para 4 of the Article 20 of the Law "On Public Procurement" where it is indicated that payment for the SBD shall not exceed the cost of printing and sending of the documents.

It is necessary here to include responsibility for the SBD cost into the Administrative Code and to introduce clear methods of the SBD cost calculation.

The engagement of a professional consultant for conduction of tendering can become very useful for the tendering organizer. Consultants usually know well all details of competitions organization and can help a customer to avoid mistakes and excessive work both at preparation of bidding documentation and at compilation of specification for equipment or services. There are examples when the equipment which "somebody has seen somewhere" is indicated in the specification. And this equipment may be taken out of production already and a lot of inconveniences may arise then. A technical expert will help to avoid these problems. Besides, sometimes, customers require a submission of a large number of references, which is not always justifiable, as it significantly complicates the acceptance of bids. A consultant will make up an optimal list of requirements and will be competent in highlighting key points in requirements and criteria. It is said in Regulations "On the Procuring Entity's Department and Tender Commission" on engagement of state officials and specialists *on gratuitous basis*; may be that is why specialists of not high level are invited.

2. The following problem is a creation of artificial obstacles at preparation of specifications. Sometimes specifications are developed for a particular bidder, i.e. a certain subjectivism is present at compilation of professional specifications (for example, a supplier must have warehouses in a certain part of town, the goods are to be stored in a certain packing, etc.)

3. A bid security is a good screening against fly-by night firms, which will not allow them to participate in tenders. But in many regions a bid security is up to 1% of the total amount which is too small for a bid security, in the result fly-by night firms supply goods and services of low quality or disappear after advance payment.

Indicators of possible manipulations are present in the world practice at the stage of preparing standard bidding documents, advertising, and conduction of prequalification procedures and bids submission.

- **Absence of, or non-compliance with, a procurement plan;**
- **Contracts for similar goods are not packaged but split;**
- **Justification for direct contracting not given or a fake one given;**
- **Deviation from standard bidding documents;**
- **Technical specifications are weak and do not allow for evaluation of the contractors' quality of performance;**
- **Bid specifications are narrow or appear tailored; references to work being performed to "National Standard Specifications" in place of more detailed descriptions;**
- Global procurement notice not issued;**
- **Restricted advertising or insufficient notice given;**
- **Advance release of bid documentation or relevant information to one bidder;**
- **Vague or unclear pre-qualification requirements;**
- **Insufficiently advertised;**
- **Inadequate time given for preparing applications;**
- **Lack of publicly known standard evaluation procedures;**
- **Exclusion of experienced applicants on minor technicalities;**
- Requirement to be pre-registered on a government-approved roster;**
- **Failure to answer requests for clarification in good time;**
- **Only selected bidders are informed of the employer's contract cost estimate;**
- **Failure to keep accurate minutes of pre-bid meetings, including questions and answers;**
- **Clarification sought by bidders is not answered in writing nor circulated to all bidders;**
- **Delay between deadline for submitting bids and opening them;**
- **Different location for receiving bids and opening them;**
- **Bids submitted and accepted after the submission deadline;**
- **Bids not opened in public;**
- **Names of attendees, names of bidders and offer prices not recorded at bid opening;**
- **Failure to provide secure storage of, and restricted access to, bids received; and**
- **Lack of transparent procedures for handling complaints and determining remedies.³**

³ Curbing Corruption in Public Procurement, Transparency International, p. 35-36

2.2.5. Stage of Selecting a Winning Bid. Stage of Contract Award

List of Basic Problems

1. A supplier, a contractor, a consultant shall be selected on the basis of competition (as well as for international investments), which is a justifiable way to obtain the lowest bid. “*The lowest evaluated cost*” – is not necessarily the lowest evaluated bid or the most economically profitable proposal; the affirmation is not correct that if bidders propose a very low price and win this or that tendering, then later in the process of work they can increase the contract cost.

In respect of the “quality” as a criterion at bids evaluation it is possible to point out that it is mentioned in the Law in Article 36 in respect of application of the request for quotation method. A method of request for quotation is applied in case of procurement of goods with established quality standards and at the amount below the maximum threshold amount.

Besides, in Chapter 6 “Procurement of Consultative Services” of the Law “On Public Procurement” matters connected with quality are regulated more or less completely. For example, in the Article 41 of the Law “On Public Procurement” it is indicated that a basic method of consultative services selection is a method of quality-and-cost based selection.

As for other procedures, then actually the Law “On Public Procurement” insufficiently regulates matters corrected with evaluation of qualitative characteristics of goods or services in bids.

The Law “On Public Procurement” must contain detailed provisions connected with evaluation of proposed goods and services quality at comparison of bids, and for each public procurement method. At that it is necessary to ensure maximum openness of decisions taking and to minimize subjectivism at the adoption of the decision by the procuring entity officials.

2. During the bids opening procedure the protocol must be vised by each bidder participating in tendering. There were some cases when a tender commission did not fulfill this matter of form. Not always announced prices of bidders were introduced into the protocol, which later gives a possibility for manipulations at the final identification of a winning bidder. The protocol is vised without indication of prices and the announced low prices of bidders then increase.

Unfortunately, the Law “On Public Procurement” does not contain a requirement that during the bids opening procedure the protocol must be vised by each of present bidders. It is necessary to eliminate this defect.

In one of regions all suppliers were invited to the office separately, that is why a procedure of the contract award was conducted according to the unclear mechanism.

3. According to comments of procuring entities, a large problem was a collusion of bidders in respect of the price policy, especially in the sphere of food products. The increased cost of food products is indicated in bids, and procuring entities have nothing to do but to select one bidder with less increased price among other bidders.

4. A major part of commentators confuses concepts “low evaluated cost” and “evaluation by the lowest price”. A criterion of the bidders’ selection is the lowest price that was the opinion of a majority of bidders. For the budget - low prices are the main aspects.

According to their opinion, many of them think that at “evaluation by the lowest cost” a qualitative characteristic is not taken into account at all. For a majority of potential bidders a detailed sense of this term is not clear.

Unfortunately, the Law “On Public Procurement” does not contain a legal definition or a method of these two concepts use: “low evaluated cost” and “evaluation by the lowest price”. This is one of shortcomings of the law.

The Article 1 of the Law “On Public Procurement” contains a definition of the term “evaluated cost”. This is a price of a proposal with corrected arithmetical errors, applied preferences granted to internal producers and domestic contractors, as well as the conversion of all bid prices to the same currency and other criteria specified in bidding documents.

It is indicated in para 4 of the Article 27 of the Law “On Public Procurement” that “the winning tender shall be the tender which meets in substance the requirements of the bidding documents and which has the lowest evaluated cost”. Therefore, it is necessary at interpretation of the term “lowest evaluated cost” to proceed from a sense of these two articles, which in practice gives rise to vagueness and incomprehension.

5. When a contract is given to “one hands”, in many cases it means that a lot with inhomogeneous composition of goods, services was tendered and it is very difficult to carry out a supply, in this case the state tendering can be split intentionally.

Unfortunately, the Law “On Public Procurement” does not contain a direct prohibition of intentional splitting of the lot. This allows a procuring entity to carry out different manipulations in order to avoid the law requirements on minimum and maximum threshold amounts at selection of the procurement method and obtaining different co-ordinations with an authorized body on public procurement. It is necessary to eliminate this defect in the law.

The Law “On Public Procurement” must also contain minimum requirements to the lots compilation procedure.

Such procedures as a “request for quotation method” and “single-source procurement” also require improvement. For example, such unclear wordings from para 2 of the Article 38 of the Law “On Public Procurement” allow to split a lot and to apply a “single-source procurement” method:

“The Procuring entity with the consent of the State Body may make a decision on conducting a single-source procurement only in the following cases:

- if it performs additional orders within six months from the moment of concluding a contract, not exceeding 15% of the value of the previous procurement and maintains the same norms, parameters and standards;
- at signing of a contract for research, experiments or preparation of a scientific opinion;
- if the specific types of good, works or services are available only from a particular supplier (contractor) or any supplier (contractor) has exclusive rights in relation to the given goods, works and services;

- at procurement for the execution of a creative work project or a creative activity in the area of arts or culture;
- in case of the urgent need in procurement connected with circumstances which the Procuring entity could not foresee”.

6. The following, probably the main problem at the contract awarding are heads of procuring entities. In the Art. 13 para 7 of the Law “On Public Procurement” it is said that a Head of a Procuring entity shall have no right to be included into a membership of a tender commission of this entity. In reality members of the tender commission are employees on staff of this procuring entity, that is why they are in full official dependence on the head of the procuring entity. A decision of the management plays a main role in selection of this or than supplier and any disagreement with it, is fraught for an employee, a member of a tender commission with dismissal from this entity.

World Practice Recommendations. Things to Do before the Procurement Process Starts:

- **Debarment: Exclude from bidding processes bidders that have been involved in corrupt deals;**
- **Implement Integrity Pacts before the process has started (ideally starting in phase 1); More information on integrity pacts below;**
- **Use open competitive bidding whenever possible. Use noncompetitive processes (restricted bidding or direct contracting) only where truly justified and fully explained and documented;**
- **Ensure that during the bidding clarification phase (questions and answers), the questions and the answers given are shared with all the bidders and not just given to a few;**
- **Restrict or manage contact between bidders and procurement staff or members of the decision committee to avoid unclear situations to both and the other bidders;**
- **Set up and use a conflict of interests register for officials that allows managing possible conflicts of interests with bidders and officials involved in the selection and decision making processes;**
- **Develop and use strict rules regarding civil servants that ensure they are well selected, trained, paid, supervised and controlled, that they have to provide disclosure of assets and income (their own and their families), and that outside jobs require approval; and**
- **Develop Red Flags for staff such as**
 - **Expensive lifestyle unexplained by known income;**
 - **Frequent social contacts with suppliers and contractors and other clients;**
 - **Unapproved external jobs;**
 - **Absence of complaints where complaints are to be expected;**
 - **Frequent award of contracts to the same bidder; and**
 - **Unexplained and undocumented delays in the process as compared to the time plan.⁴**

⁴ Curbing Corruption in Public Procurement, Transparency International, p.37

2.2.6. Contract Execution Stage

There are loopholes of different nature at the stage of conducting a procurement process, as well as at previous stages. For example, a construction sphere (designing): a supplier (contractor) meets with an official in charge of execution of the technical control of this or that construction project, in order to give him a bribe, that an official “does not notice” that a technical execution is not ensured properly (use of low quality cement or less quantity of steel for wall strengthening, etc.) Saving of monetary funds of different nature allows a supplier (contractor) to submit a low price in the bid and thus to achieve a contract award.

An official, who took a bribe, can promote (not to prevent) frequent price increases at different stages of the contract execution; very often the approval of the senior officer is not required for such actions. An official, who took a bribe, may approve different types of changes in the contract according to which the supplier (contractor) may insist on implementation of additional works, for which later he shall be entitled to demand additional payments, not included into the contract. It is possible to avoid such situations if to use in practice frequent, spontaneous and objective **checks** or to carry out **an external control** by the civil society.

World Bank “Red Flags” or potential manipulation indicators during contract implementation phase:

- *Contract specifications or scope of work altered after contract awarded;*
- *Site inspection indicates that work performed was not in accordance with the technical specifications (below-specification civil works, goods and services are accepted);*
- *Technical specifications of materials provided do not correspond to the specifications agreed upon in the contract;*
- *Site inspection indicates that project completion is less than that certified or that a completed project is not operational;*
- *Goods or services not being used, or being used for purposes inconsistent with intended purposes;*
- *Wrong quantities of goods and materials being delivered;*
- *Delays in the delivery of goods or services in any part of the project implementation process;*
- *Replacement of nominated consultant staff by less qualified and inexperienced personnel;*
- *Frequent changes in key staff of PMU/PIU;*
- *Changes in PIU/PMU and Bank staff responsible for post-procurement verifications;*
- *Lack, or low level, of oversight of the physical works;*
- *Absence of or insufficient post-procurement verification of scope of work and physical inspections;*
- *Site diaries and meeting minutes are not maintained;*
- *Instructions are not given in writing to contractors;*
- *Incomplete records in PIU/PMU – significant number of missing documents*
- *High frequency of Change Orders to the contract”;*
- *As-built’ drawings are photocopies of technical specifications in the bidding documents;*
- *The detailed drawings, ‘as-built’ drawings, back-up data sheets contain errors or repetitive entries;*
- *Failure to pay progress payments and invoices on a timely basis;*
- *Excessive number of signatures required to approve progress payments;*
- *Evaluation of contractors’ performance not recorded;*

- *Cost overruns are inadequately explained or justified;*
- *Customer/Client dissatisfaction with completed facilities.*⁵

Things to Do During the Contract Implementation:

- *Set up an independent monitoring system that will check contract implementation as for compliance with agreed specifications including quality. Random on-site checks prove to be an effective tool; and*
- *Have clear and pre-established limits for contract change orders. Many procurement laws have them incorporated and they can also be incorporated in the contract without the need of a law.*⁶

- **Problem of payment.** At this stage many suppliers indicated at one of large problems – untimely payment for works, goods and services. Sometimes payment is delayed for a period up to 1 year. Time of payment for goods, works, services is artificially delayed in spite of the previously assigned amount fixed in the budget. Some procuring entities ask companies to solve a payment problem directly with the Treasury. That is why it is necessary to introduce a paragraph into a contract agreement on charging percentage for a period of payment delay according to the bank’s interest rates.

In Article 21 “Contents of Bidding Documents”, in Article 31 “Acceptance of Tender and Conclusion of Contract”, in Article 53 “Negotiations and Award of Contract”, Article 58 “Public Procurement Contract” of the Law “On Public Procurement” matters related to payments is not reflected in details.

In order to eliminate this problem it is necessary to introduce into the law provisions regulating payment principles and responsibility of the procuring entity for untimely payment. These may be financial sanctions in the form of penalties, percentage, fines, etc. Besides, the procuring entity at definition of the procurement budget must stipulate some amount for payment of financial sanctions and suppliers’ (contractors’) losses probable in future.

This problem is pressing for procuring entities, the activity of which is financed from the state budget. A situation when a procuring entity asks a company to solve a financial problem directly with the Treasury is illegal, because the Treasury does not take part in tendering and legally does not bear any responsibility both before a procuring entity and a supplier.

The Ministry of Finance and the Treasury often provides financing not in due time, which **entails a cancellation of carried out tendering, because a period of the bid validity expires, in the result a contract is not signed** which in principle must not take place because of the amount assigned for this in the budget cost estimate. And unfortunately, the Ministry of Finance and the Treasury do not bear any responsibility for frustration of tendering.

Besides, nobody reimburses a bidder his expenses on participation in tendering which was cancelled. The Law “On Public Procurement” does not regulate this situation.

⁵ Curbing Corruption in Public Procurement, Transparency International, p.45-46

⁶ Curbing Corruption in Public Procurement, Transparency International, p.47

- **Periods of works implementation and goods supply are not always adequate, companies are put into rigid timeframes, which as a consequence, results in the quality deterioration.**

Periods of works implementation and supply of goods must be a subject of negotiations between a procuring entity and a supplier before conclusion and signing a contract. These matters are regulated in the Article 31 “Acceptance of Tender and Conclusion of Contract” and in the article 53 “Negotiations and Award of Contract” of the Law “On Public Procurement”.

Unfortunately parties in this situation are not in equal conditions, because a procuring entity has more rights:

- in case of non signing by a selected supplier (contractor) of a contract or non-provision of a bid security a contract shall be concluded with the next ranked bidder in compliance with the Article 27 of the Law “On Public Procurement”.
- If the negotiations fail to result in an acceptable contract the procuring entity upon coordination with the State body shall terminate negotiations and invite the next ranked consultant for negotiations on this matter or a repeated consultant selection shall be conducted (para 6 of the Article 53 of the Law “On Public Procurement”).

In compliance with para 3 of the Article 58 of the Law “On Public Procurement” the provisions of the Civil Code of the Kyrgyz Republic shall be applied to the public procurement contracts. In this situation fundamental principles of the civil legislation are violated on recognition of equality, autonomy of will and property autonomy of bidders in relations regulated by it, freedom of contract (Art. 2 of the Civil Code).

III. Calculation of Economic Losses in the Sphere of Education in the Kyrgyz Republic

There are methods of economic losses estimation in the world practice at conduction of public procurement. Thus, for example, the Organization for Economic Cooperation and Development (OECD) uses a System of National Accounts for estimation of the total portion of public procurement in the GDP. It is based on calculation of Final Consumption Expenditures (FCE), which includes the State expenditures for individual consumption, such as social payments, as well as Collective Consumption Expenditures, such as defense and scientific researches.⁸ (footnote of OECD). For calculation of the total cost of public procurement in FCE indicators of gross investments into fixed capital (GIFC) and indicators of revenues obtained from the State sales (SS) with a deduction of indicators of fixed assets depreciation (FAD), indirect taxes and payroll indicators and social payments to employees (PE). Thus, we derive a volume of total expenditures (TE) of the State for procurement of goods and services.

$$TE = FCE - FAD - IT + SS + PE + GIFC,$$

where: *TE* – total expenditures for public procurement,
FCE – final consumption expenditures,
FAD – fixed assets depreciation,
IT - indirect taxes,
PE – payments to employees,
SS – state sales,
GIFC – gross investments into fixed capital.

Unfortunately, this method does not allow to calculate the effectiveness of public procurement. Based on this method specialists from “Transparency International” of the Czech Republic developed their own methods of economic losses calculation. Their methodology consisted of evaluation of the economic losses volume at the national and municipal levels. At the national level a methodology of calculation was carried out on the basis of data from the Ministry of Finance, Czech Statistical Committee and results of the Supreme Audit Office (Chamber of Accounts). In the result of revealed deficits in public procurement of the Czech Republic there was found out that approximately 15% of State funds were used ineffectively.

At the municipal level there was used a methodology of comparing prices of goods, services at different methods of contracts award. It appeared that an average price of goods, services without conduction of tendering was higher by 13.5% in comparison with a price at conduction of the open tendering. At calculation of the losses indicator caused by ineffectiveness at the national and municipal levels in 2004, the amount of economic losses made up CZK 32.4 billion.

Unfortunately, the use of Czech methodology in Kyrgyzstan is impossible due to non-provision of information on conducted public procurement.

Another method is based on collection of information at the final consumers of public procurement – population and state bodies, which are indicators of effectiveness. This method was developed by the Research Centre (RC) “SANDJ” (Kazakhstan) by means of assessing a satisfaction of a consumer with effectiveness of public procurement.

Economic losses in the sphere of education were calculated according to this method. At present a system of education in the Kyrgyz Republic is financed at two levels – republican and local. Public procurement in the educational sphere is conducted centrally by District Educational Centers which are not final consumers of these services.

For evaluating a level of the final consumers' satisfaction and calculation of economic losses 2 questionnaires were applied for directors and household managers, developed by the RC "SANDJ". Parents were also interviewed in order to find out satisfaction of final consumers, as they could give an impartial assessment and in many cases incurred material expenses.

Semi-structural interviews were conducted with school directors and household managers, parents. For calculation of economic losses a questionnaire was divided into the following blocks: capital repair, current repair, textbooks, equipment, utilities, as these are basic expenditure items financed from the state budget. A size of additional expenditures of the total amount of allocated funds was determined in these blocks. Replies on questions related to additional expenses incurred by schools for the same expenditure items which the State has already financed were regarded as indicators on additional expenses. Inasmuch as schools receive certain types of goods and services according to distribution, they are not able to control the quality of procured goods or services.

Methods of Economic Losses Calculation in the Sphere of Education

A methodology of economic losses calculation in breakdown by schools was based on revelation of:

- additional expenses of schools connected with a low quality of goods and services;
- low quality work of repair teams;
- delay in financing;
- price changes at fixed cost, transfer of funds from one item to another, etc.;
- spent funds for maintaining school in normal condition at unavailability of proper financing;
- contingencies.

All these are ineffectively used funds or economic losses which are made in the system of public procurement of general educational schools.

33 schools in three regions of the Kyrgyz Republic took part in this survey:

- 1) Bishkek – 22 schools
- 2) Osh town and Osh region - 8 schools
- 3) Karakol town – 3 schools

A goal of this survey is estimation of economic losses based on the level of beneficiaries' satisfaction or its expression in terms of monetary equivalent of ineffectively used amount. I.e. we convert a qualitative indicator into a quantitative expression. Thus, for example, if a parent assessed a quality of repair equal to 80%, accordingly, 20% of the allocated funds were used ineffectively. This method assumes an assessment of the goods quality or procurement by consumers according to a scale where each item is assigned a percentage of effectiveness. One of calculation methods is a comparison of the necessary amount and anticipated operating life of the made procurement. This method is based on the assumption that a good or a service of good quality has the larger cost and accordingly a larger period of operating life. A good or a service of low quality may appear to be more expensive than a good or a service of good quality due to additional expenses required for

their repair or improvement of their quality. A comparison of the price and quality by a method of evaluation of anticipated period of operating life of the made procurement gives a possibility to define economic losses. Thus, using collected information on procurement made by each school, their economic losses are calculated at that, an average indicator is derived then for all schools.

This approach based on the assumption that the opinion of final consumers must be taken into consideration. There is a reason to believe that such a subjective approach quite coincides with an actual situation, as parents who often collected money for procurement of goods or their repair and for different services are aware of their market value. Thus, this approach gives a possibility to evaluate economic losses at a more objective level.

Losses for capital repair are calculated according to the following formula:

$$\text{Losses} = \text{quest.5.2} + \text{quest.5.10.B} + \text{quest. 5.13. B} + \text{quest. 5.16.B} + \text{quest. 5.19.B} + \text{quest.5.21.B} + \text{quest.5.29.B} + \text{quest. 5.5* (33*quest._paren.5)/100}$$

- quest. 5.2 = no expenses
- quest. 5.5 = 323900
- quest. 5.10.B = no additional expenses
- quest. 5.13.B = 17000
- quest. 5.16.B = 323900
- quest. 5.19.B = no additional expenses
- quest. 5.21.B = no additional expenses
- quest. 5.29.B = 195560
- quest._paren 5 = 0

$$\text{Example of calculations: } 17000 + 323900 + 195560 + 323900 * (33 * 0) / 100 = 178950$$

“quest. 5.2” and other questions of such format are designed for directors and household managers.

“quest._paren. 5” is attributed to a question from a questionnaire for parents.

Quest. 5.5* (33* quest._paren.5)/100 – losses expressed via satisfaction of the final consumers-parents, where (33* quest._paren.5) is a percentage of dissatisfaction. A scale from 0 to 2 is used in this formula for the quality evaluation:

- 33*0 (high quality) = 0 (% of dissatisfaction)
- 33*1 (average quality) = 33 (% of dissatisfaction)
- 33*2 (low quality) = 66 (% of dissatisfaction)

A formula for the current repair is similar to a formula of capital repair. I.e. losses were calculated by periods, by supplies of materials of low quality, by works carried out at a low quality, by contingencies.

$$\text{Losses} = \text{quest.6.10B} + \text{quest.6.13.B} + \text{quest.6.16.B} + \text{quest.6.20.B} + \text{quest.6.21.B} + \text{quest.6.4* ((33*quest._paren.8)/100)}$$

- quest. 6.4.=7300
- quest.6.10.B= no additional expenses
- quest.6.16.B= no additional expenses

quest.6.20.B=3000
quest.6.21.B=10000
quest._paren.8=1

Example of calculation: $3000+10000+73000*(33*1)/100=37090$

Losses at procurement of textbooks are calculated according to the principle of their quality evaluation. If the quality is evaluated by teachers and parents as 70%, then 30% of the cost represent losses. An average value is derived from indicators based on teachers and parents. Additional expenses, quest.7.6., are also added.

Losses= $((20*quest.7.3)/100*quest.7.1)+((20*quest.7.4)/100*quest.7.1)+quest.7.1*((33*quest._paren.14)/100)/3+quest.7.6$

quest. 7.1=17881
quest.7.3=3
quest.7.4=3
quest.7.6= no additional expenses
quest,_paren.14=0

Example of calculation:

$((20*3)/100*17881)+((20*3)/100*17881)+17881*((33*0)/100)/3=7152$

$((20*quest.7.3)/100*quest.7.1)+((20*quest.7.4)/100*quest.7.1)$ – are losses expressed through the satisfaction of directors and teachers, where $(20*quest.7.3)$ is % of non-conformance of the textbooks contents to a necessary level and $(20*quest.7.4)$ is % of dissatisfaction of teachers by the textbooks contents.

A scale from 0 to 4 is used in this formula for evaluation of the quality:

20*0 (high quality)=0 (% of dissatisfaction)
20*1 (above average)=20 (% of dissatisfaction)
20*2 (average quality)=40 (% of dissatisfaction)
20*3 (below average)=60 (% of dissatisfaction)
20*4 (low quality)=80 (% of dissatisfaction)

$quest. 7.1*((33*quest._paren.14)/100)$ – losses expressed through satisfaction of the final consumers-parents, similar to a formula on repair. It is necessary to remove in question 14 of the questionnaire for parents subpara 3 as non-use of textbooks of new generation is excluded in the educational activity.

As for the equipment a scheme is the same as for repairs. I.e. all additional expenses and evaluation of parents take part in calculations. For equipment it is necessary to add expenses because of the consumers' dissatisfaction with equipment and not used equipment.

Losses=quest.8.13.B+quest.8.16B.+quest.8.19.B+quest.8.21.B+quest.8.22.B+quest.8.10*((25*quest._paren.11)/100)

quest. 8.10.=75000
quest.8.13.B= 7500
quest.8.16.B= no additional expenses
quest.8.19.B= no additional expenses
quest.8.21.B= no additional expenses

quest.8.22.B= no additional expenses

quest._paren.11=0

Example of calculation: $7500+75000*((25*0)/100)=7500$

A scale from 0 to 3 is used in this formula for the quality evaluation, so a satisfaction ratio is equal to 25:

$25*0$ (high quality) = 0 (% of dissatisfaction)

$25*1$ (above average) = 25 (% of dissatisfaction)

$25*2$ (average quality) = 50 (% of dissatisfaction)

$25*3$ (below average) = 75 (% of dissatisfaction)

The following calculation is used for utilities:

Losses=quest.9.4, only if 9.5=1,+quest.9.8.B+quest.9.10.B+quest.9.11.B

Saved funds returned to the budget, expenses due to difficulties connected with transfer from one budget item to another, low quality and contingencies are summarized.

Thus, there was made a calculation of public procurement efficiency at the macrolevel in respect of a final consumer.

Capital Repair

Among interviewed schools of Bishkek City only 45.5%, in Osh – 63% carried out a partial capital repair of roofing, waterproofing, sewerage and heating systems. Repair was implemented during several years according to the received funds. In Karakol a partial capital repair was carried out at all interviewed schools.

At interviewed schools of Bishkek City – 54.5%, in Osh – 38% capital repair was not carried out during recent 15 years.

A complete capital repair is necessary in a major part of schools as during a long period of time due to a lack of depreciation fund, school buildings were not repaired. Every year schools of Bishkek City have to spend in average 321,083 soms per year for maintaining and normal functioning of their buildings, in Osh – 150,000 soms per year. In view of the fact that a republican and local budgets do not stipulate complete financing of the capital repair, a basic part of expenses is covered by funds received from funds supported by parents. It is possible to say that owing to parents, schools are maintained in order and were not stuck in insanitariness, as cleaners and security officers, mainly received increase in pay in the amount of 400 soms from the support funds available at schools. There are also additional sources of incomes, where premises or halls which are not functioning are given in rent.

Capital repair is carried out by Administration of Education or District Educational Centers. A District Educational Centre identifies necessary works, allocated amount, conducts a competition on selection of repair teams. An overwhelming majority of school directors and all the more parents do not take part in this process. Schools make up and submit an act of defects, which is not always implemented in full scope and in the form in which it is necessary according to evaluation made by schools.

An average amount of allocated funds for partial capital repair at interviewed schools in Bishkek makes up 222,211 soms, in Osh – 320,600 soms, in Karakol – 260,666 soms.

Financing of capital repair is made by republican and local budgets. In Bishkek City in average 48% of the required total amount for partial capital repair are provided by sponsors, school support funds, consisting of contributions of parents. In Osh and Karakol towns after prohibition of parents' contributions, schools exist at the expense of the State funds and grants from international organizations.

There are cases when in 33% of schools at implementation of capital repair there were used construction materials of poor quality. Directors under pressure have to procure material of poor quality. Expenses arising from this make up in terms of money – in average 20,700 soms per school. At schools where it is necessary to re-make works which have been done with poor quality, parents incur expenses for such works. At schools where there is a shortage of funds for additional repair works, such repair remains in the form in which it has been done.

A majority of interviewed school directors expressed opinion that a main reason for such situation was a lack of mechanisms which allow to demand from the executors to re-make repair works. Taking into account that capital repair is carried out by Administration of Education and not by school, there are certain difficulties at complaining related to results of the poor quality repair.

Expenses connected with implementation of poor quality works, were recorded at 24% of schools, in average this amount makes up 9,350 soms per one school. At interviewed schools expenses connected with implementation of repair of poor quality, were financed from a special account of the support fund at school.

56% of interviewed schools came across with a problem of fixed prices at establishment of the total amount long before allocation of funds. A difference was financed at the expense of parents' funds. These cases take place because seasonal price fluctuations were not taken into consideration and schools had to constantly come across with this problem.

A part of directors (22%) pointed out that a transfer of funds from one expenditure item to another is a difficult. Usually these funds are returned to the budget, which results in idle time of allocated funds. There is a possibility to re-distribute funds within the framework of one expenditure item.

A delay in financing does not have an extensively spread nature, but nevertheless, 17% of directors pointed out that such delay created inconveniences at conduction of repair during summer vacations, as there is a certain schedule which allows to carry out repair only during summer period. *“Our teachers during summer vacations spend all time at school, because we start repair with a large delay and try to finish all works before September 1”*.

78% of the interviewed directors said that they carried out capital repair of schools by procurement through tendering, 6% - pointed out that they procured from a single source, 11% - pointed out that selection was made on the basis of the price proposal, 6% - do not know what method of procurement was used by them.

From among 100% of the interviewed directors: 50% point out that 3 bidders took part in tendering, 6% - told about participation of two bidders and 19% - told about four bidders. 25% of directors do not know what number of bidders participated in tendering.

47% of directors told that they did not possess information on price proposals in submitted bids and the tendering proceeding itself is not transparent.

At the question who wins in tendering more often, opinions were split in the following way:

- 17% - a winning bidder is a company which has offered a “kickback”;
- 39% - a winner is a company which offered the best proposal;
- 33% - a company which proposed the lowest cost is a winner;
- 11% - worst quality.

It follows from the above that poor quality and high prices are criteria which do not exclude each other, but vice versa.

According to the information obtained from school directors, in 33% of cases carried out repair works are accepted by the Administration of Education, 17% answered that the acceptance was made by the Administration of Education and school director. 33% more

point out that the Administration of Education, school director and parents are present at acceptance of repair works. Directors indicated also at the fact that in 11% of cases the acceptance of capital repair works is made by the Department of Capital Construction (DCC) of Bishkek municipality, which carries out a technical supervision of municipal objects, 6% record that parents and a director are engaged in acceptance of works.

Directors state, that they are not able to make an influence on a decision taken by the commission on acceptance of repair works, as this aspect is not stipulated in the acceptance act of repair works. Moreover, it is just at this stage schools, which refused to work with suppliers dictated by the District Educational Centre, have difficulties at submission of the report on carried out works to this body.

According to the assessment of directors, additional expenses make up in average 49,730 soms per school because of poor quality of repair, delays in financing or by any other reason. Contingencies in average make up 44,055 soms per school of the total amount of allocated funds.

<i>Economic losses, in % from a total sum of the allocated means</i>	
	<i>Capital repair</i>
<i>Bishkek</i>	<i>49%</i>
<i>Osh</i>	<i>47%</i>
<i>Karakol</i>	<i>36%</i>

Current Repair

Until 2006 current repair works were carried out at all schools of Bishkek City at the expense of parents' funds, basically, parents collected for a current repair 160 soms per one child. In 2006 for the first time during many years schools were allocated funds for implementation of the current repair. Schools carry out current repair works irrespective of Educational Centres, but a part of construction materials for this purpose were procured centrally, i.e. after conduction of general tendering, schools receive construction materials indicated in their application. There are single cases when significant funds are allocated to school, but at that, a school director has not been got acquainted with any financial document (consignment bills, financial reports, acceptance certificates on carried out works).

The following funds were received per one school in average for current repair: in Bishkek City – 107,000 soms, in Osh – 87,500 soms, in Karakol – 104,000 soms.

A major part of school directors point out that they try to include into their applications a list of goods, the quality of which will not differ greatly with such materials, which schools procured themselves. But nevertheless, schools do not always receive goods and services corresponding by price and quality. It was said at one school: *“We received Chinese paint by the price of the Russian paint. After painting a cleaner cleaned the floor several times, and paint was washed away”*.

At conduction of tendering by school one of conditions for a bidder selection is a bid price. From 100% of directors 91% of them think that quality of repair suffers from the obligation to select a good or a service by the lowest price.

Allocated funds for implementation of good quality repair are insufficient. 18% of directors said that they did not receive funds from the local or republican budget and carry out repair completely at the expense of parents' funds. For implementation of good quality repair it is necessary to have in average 544,000 soms. With funds allocated by the State and collected by parents last time in average at the amount of 90,000 soms, an average period of buildings operation is 1 year. At allocation of the necessary amount of 544,000 soms a period of buildings operation is increased in average up to 3 years. If sufficient funds are allocated,

then repair would have been carried out without participation of the parents' committee and collections would have been abolished.

Nevertheless, after introduction of prohibition on material funds collected from parents, they continue to help schools, having created at them Public Foundations. But Public Foundations created at the expense of parents' funds are imposed with a tax, from which double taxation is arising, as at receipt of wages parents also deduct taxes to the state treasury.

At implementation of the current repair at 21% of schools there were arisen problems connected with use of materials of poor quality. At schools where parents carry out usual retail procurement themselves, such problems were not arisen. Expenses at schools which came across with such problem make up in average 26,000 soms and a basic amount is financed from the parents' funds. Additional expenses connected with a poor quality of carried out works were recorded at 18% of schools, in average at the amount of 24,500 soms. And these expenses are mainly financed from parents' special accounts.

18% of interviewed schools suffer from delay with financing. Such schools have to carry out repair works not waiting for receipt of funds, and later when funds are received they will make settlements with contractors. School itself finances all expenses. By these reasons schools conclude contracts with such contractors who agree to receive full payment after implementation of necessary works, but here schools have to come to a compromise and to agree on supply of such construction materials with which a contractor works. This does not give schools guarantees that repair will be made at the proper level.

The current repair is mainly carried out by teachers. Schools themselves carry out the assessment of necessary repair works, in this case allocation of funds for assessment works is not stipulated. The assessment is made by director, household manager, or parents are involved in this work, who can give a competent assessment. Among the interviewed directors only in single cases an officer from the District Educational Centre helped at assessment at schools. It is possible to say that money for additional expenses at current repair is received from a part of teachers' salaries.

Contingencies make up in average 3% of the total volume of allocated funds or 77,500 soms. A lack of professional assessment of repair works and occurrence of certain difficulties at this or that stage of work requires additional financial or human resources.

One more reason for contingencies is an existence of a series of expenditure items, which are not taken into account at preparation of school budgets. These are expenses for desodorization, cleaning of school territory by special equipment from roots of long standing trees, which during growth destroy a foundation of buildings, sidewalks, sites at schools. "A crack appeared on our building, and in order to define safety of further operation of premises we applied to the Institute of Seismology for conduction of assessment and the cost of their services was 3,000 soms for us". According to the opinion of directors, these works are necessary to carry out for maintaining a building in normal condition and this is the task for municipal complex for provision of urban amenities.

In general economic losses on current repair in three regions of the country made up:

<i>Economic losses, in % from a total sum of the allocated means</i>	
	Current repair
Bishkek	43%
Osh	45%
Karakol	59%

Textbooks

An average cost of textbooks received recently makes up: at schools of Bishkek City – around 54,400 soms, in Osh – 11,000 soms, in Karakol – 10,230 soms. A number of textbooks procured using the State funds in general makes up 47% of the total number of textbooks. At that, the quality of textbooks content corresponds to the requirements on the subject in average by 52% and satisfies teachers in average by 52%. According to specificity of the subject 91% of Bishkek schools additionally buy textbooks and other materials for improvement of the educational process. All additional expenses connected with purchase of training materials make up in average 40,500 soms per school of the total volume of allocated funds.

In the result of calculation of economic losses on textbooks it was revealed that these losses made up in Bishkek – 55%, in Osh – 44%, in Karakol – 49%. Such economic losses are stipulated by the fact that the content quality of many textbooks supplied to schools does not answer necessary requirements or the teaching material is written by a complicated academic language and parents themselves buy textbooks which disclose subjects better. In order children understand better educational subjects teachers have to adapt material into a more accessible form, which requires certain additional costs (Xerox copy of handouts for a lesson, which sometimes results in the amount of a textbook cost). Some **textbooks, for example, on history for 8-9th Forms, on mathematics for the 4th Form** (Bekboev) are hardly applicable in the teaching process. Some schools receive a large number of books, which are not used in training and lie dormant at libraries. Librarians say in this connection: *“It would be better to give these textbooks to such schools which need them”*.

At present certain standards are preserved, but plus to the standard there exists a possibility to use at lessons additional materials, such as encyclopedia, video, audio materials. Basically, textbooks included into the curriculum are developed by the Ministry of Education and are designed for general educational schools. But gymnasiums, experimental schools require textbooks for in-depth study of some subjects. In such cases teachers recommend parents to buy necessary textbooks themselves. But at general educational schools teachers also recommend parents to buy additional training literature, especially in humanitarian blocks.

According to directors' comments, the same textbooks are issued as have been issued 20-25 years ago: one and the same textbook is re-issued from year to year.

For example, in one book in its new redaction there were additionally included only four new themes, as for the rest content there were no any changes. Up to this year there existed a practice of textbooks testing, for this purpose opinions of teachers were collected, which were not sufficiently impartial, as this process was carried out without participation of heads of the teaching department, directors.

In 2007 the Ministry of Education, Academy of Education and municipal Management Administration of Education initiated official testing of textbooks with participation of school directors, teachers-experimentalists. It is possible to point out that this is a good starting, but here, according to the directors' opinions, criteria of textbooks assessment, proportions of different themes content in a textbook are not available. Only one textbook was assessed on one subject, at primary school – two textbooks, mainly, these were textbooks fixed in curricula and virtually there was nothing to select from.

Case-study: If to consider a textbook “Native Literature” for primary forms in terms of proportionality of themes on patriotism, hygiene, different terminology, then it is absolutely does not answer these requirements. According to the opinion of teachers, children of present generation come to school prepared to such extent that it is impossible to teach them by means of this literature.

Thus, economic losses take place because of procurement of textbooks which are not used at schools and because of purchase of additional textbooks.

<i>Economic losses, in % from a total sum of the allocated means</i>	
	<i>Textbooks</i>
Bishkek	55%
Osh	44%
Karakol	49%

Equipment

From among the interviewed schools of three regions – Bishkek City, Osh t. and Karakol t. – equipment is procured from budget funds only in Bishkek City. Basically, the equipment is procured at the expense of funds from different funds of international organizations in the form of grants and a small amount from parents’ funds. In Osh and Issyk-Kul regions schools are almost not provided with equipment (furniture, computers, office equipment) and equipment available at schools was morally obsolete, but continues to be at the balance sheet of school as a dead weight. Equipment or furniture, received by several schools, is taken at the balance, but actually consignment notes at some schools on the basis of which the received equipment is entered into the books, are received much later than the supply. *“Procured computers are just brought to us, but at that there are no any documents guaranteeing service maintenance within 3 years and in case of failure we have to repair equipment at the expense of parents’ funds”*.

The equipment at 73% of schools in Bishkek is procured by the Administration of Education, at 9% of schools - it is received from the Ministry of Education and Science. At 5% of cases - schools themselves purchase equipment at the expense of parents’ charitable funds, in 13% of cases - the equipment is purchased by parents themselves. Among them 73% think that tendering takes place, 4.5% - do not know what method of procurement is used, 4.5% think that tendering was not carried out, 14% suppose that a selection was made on the basis of a price proposal, 4.5% of directors think that a procurement method is a usual retail purchase.

A majority of interviewed directors – 84% - do not possess information on a number of bidders participating in tendering. Another part of directors who possess such information, in 11% of cases point out that there were 4 and more bidders and 6% point out that a number of bidders was equal to 3 (three). Accordingly 27% of directors do not know whether the price depends on a number of bidders. But nevertheless, 55% of the interviewed think that the price of equipment depends on a number of bidders. Those who consider that there is a correlation between submitted prices and a number of bidders think that this difference makes up in average 11%.

During the last year the equipment was allocated in average per one school at the amount of 142,000 soms. An overwhelming majority – 59% of directors – does not know what was the amount of supply. Directors were also not informed on the contract amount, on terms of maintenance, which must be free of charge during a certain period of time.

School directors think that an operation period for which the equipment was designed is in average 7 years. An actual operation period of procured equipment is approximately 6 years.

The equipment in Bishkek is financed at the expense of the State funds. But approximately 63% of the procured equipment is financed by parents. In average it makes up 79,000 soms per one school.

Around 9% of schools suffer from poor quality of the procured equipment. Additional expenses connected with poor quality of the equipment make up in average 10% or 10,000 soms in terms of money, this amount may be spent also for provision of services of different nature, for example, carpenter’s services etc. *“At selection of the equipment a supplier shows furniture of good quality, at supply we receive absolutely another quality of furniture which starts to fall to pieces already in half of a year”*

Basically these expenses are fully covered by funds received from the school support funds, i.e. parents’ contributions. As school directors pointed out, the procured equipment needs repair during the same school year, in which it was procured.

At all interviewed schools supply of the equipment itself is carried out without money transfer. Schools do not procure independently a certain quantity of necessary equipment, but are only waiting for its supply. In average 23% of directors of interviewed schools expressed dissatisfaction with quality of supplied equipment, it required either replacement or improvement. For improvement or replacement one school in average requires 50,000 soms. All interviewed school directors pointed out that there was no procured but not used equipment. Contingencies in average make up 20% of the total cost of equipment or 14,400 soms.

In general economic losses in Bishkek city by the item “Equipment” is 22%.

<i>Economic losses, in % from a total sum of the allocated means</i>	
	Equipment
Bishkek	22%

Utilities

At all interviewed schools of Bishkek City utilities are paid by the Educational Centre of the district where this or that school is located from the funds allocated by the local budget. In this connection schools do not have problems related to the received financing, redistribution of funds, contingencies. It should be pointed out that 59% of directors are not satisfied with provided utilities during the heating season, as a building is not heated properly. Telephone lines at schools are often disconnected for several weeks as payment was not made in due time.

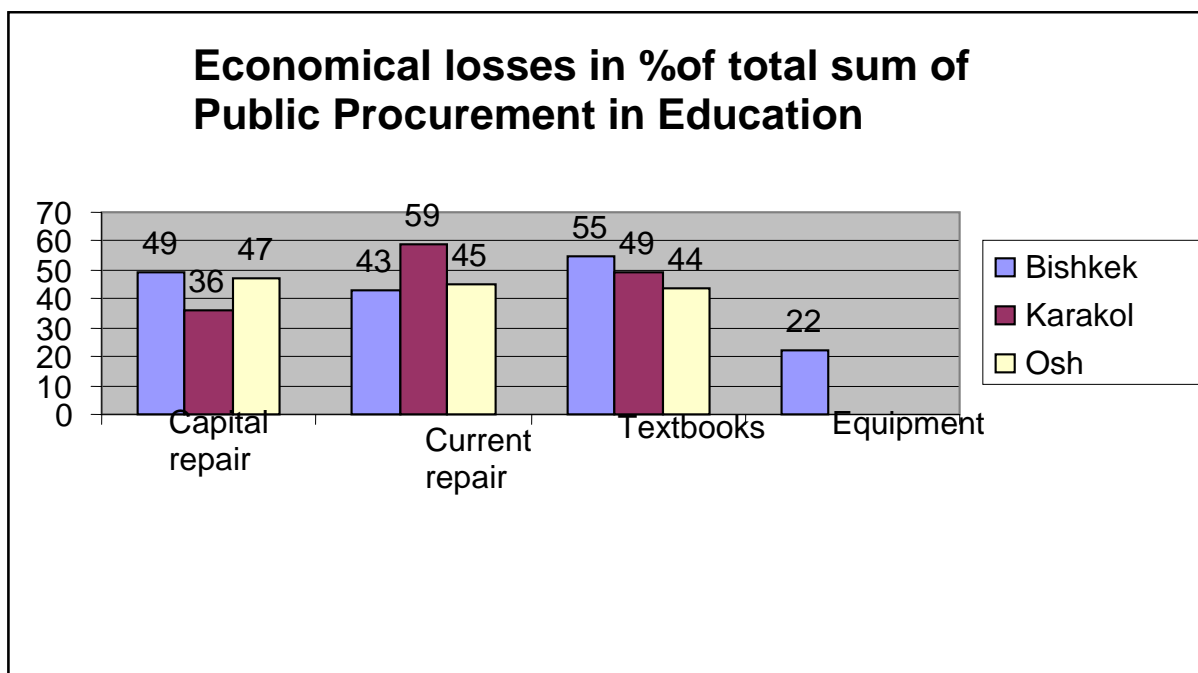
Economic Losses

Thus, in average economic losses in the educational sphere in Bishkek City made up 42%, in Karakol town – 48%, in Osh town – 45%. Schools financed by the state budget were taken into account at estimation.

Table 1. Economic losses, in percentage of the total amount of allocated funds

<i>Economic losses, in % from a total sum of the allocated means</i>					
	Capital repair	Current repair	Textbooks	Equipment	Total
Bishkek	49	43	55	22	42
Karakol	36	59	49		48
Osh	47	45	44		45

Table 2. Economic losses in percentage breakdown by three regions of the Kyrgyz Republic in the form of a plot.



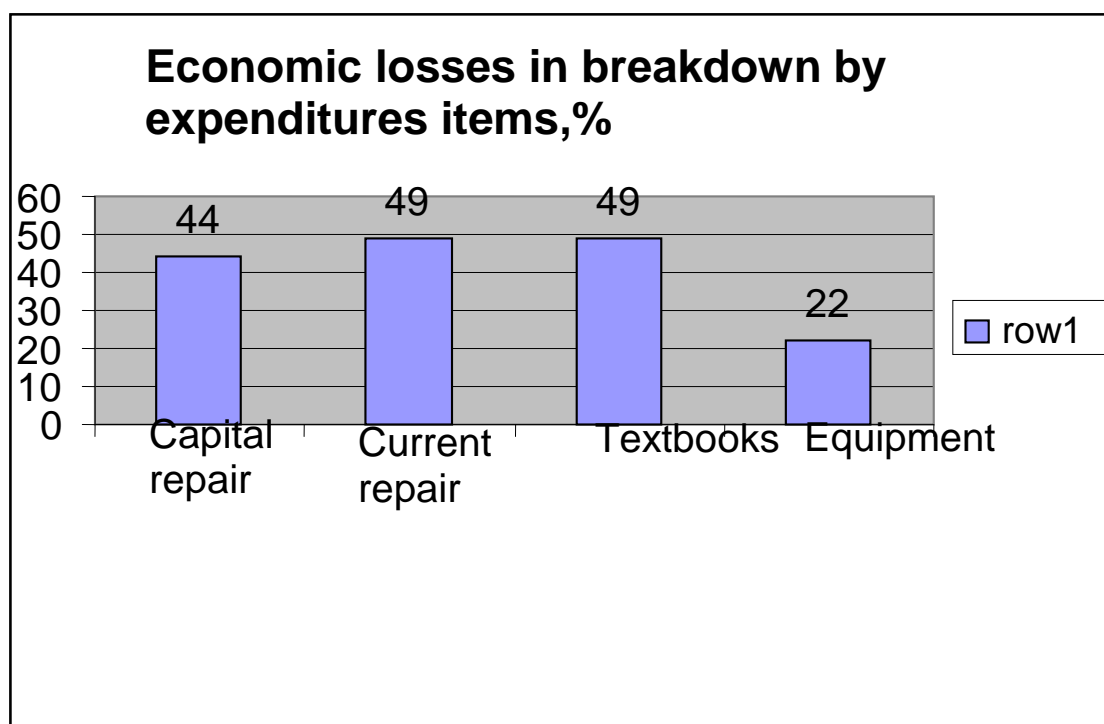
It is evident from the table that in general economic losses in Bishkek City make up 42% of the total amount of allocated funds. The largest percentage of losses on repair falls on capital repair – 49%.

In Osh town the losses' percentage made up 45%, the largest losses also fall on capital repair as well as in Bishkek City. The reason for it is poor quality of repair works, construction materials of poor quality, as well as a long service period of buildings. Buildings need complete capital repair but it is not carried out at any school.

In Karakol town the largest percentage of interviewed schools falls on the current repair – 59%, mainly it is because of materials destined for school repair, supplied by suppliers. Even at visual inspection in Karakol town, schools look much worse in comparison with schools in Bishkek and Osh town: walls of buildings are painted in grey colour, because a shop which was transferred funds, supplies products which are not bought up to schools.

Economic losses on capital and current repair were estimated in the following way: all additional expenses incurred by schools plus parents' opinion on the quality of implemented repair were taken into account at losses estimation. In formula schools which have carried out either capital or current repair using funds received from the State budget were taken into consideration at calculations.

Table 3. Economic losses in breakdown by expenditure items, %



A percentage of the total amount in breakdown by expenditure items shows the most ineffective used expenditure items: current repair – 49%, textbooks – 49%, capital repair – 44%. A high percentage of economic losses on the current repair is stipulated by the fact that many schools are not allocated funds for implementation of capital repair. In this connection administrations of schools have to solve all arisen problems related to the repair within the framework of the current repair. Besides, according to the assessment made by directors, the quality of construction materials procured through competitive tendering does not coincide with the spent amount.

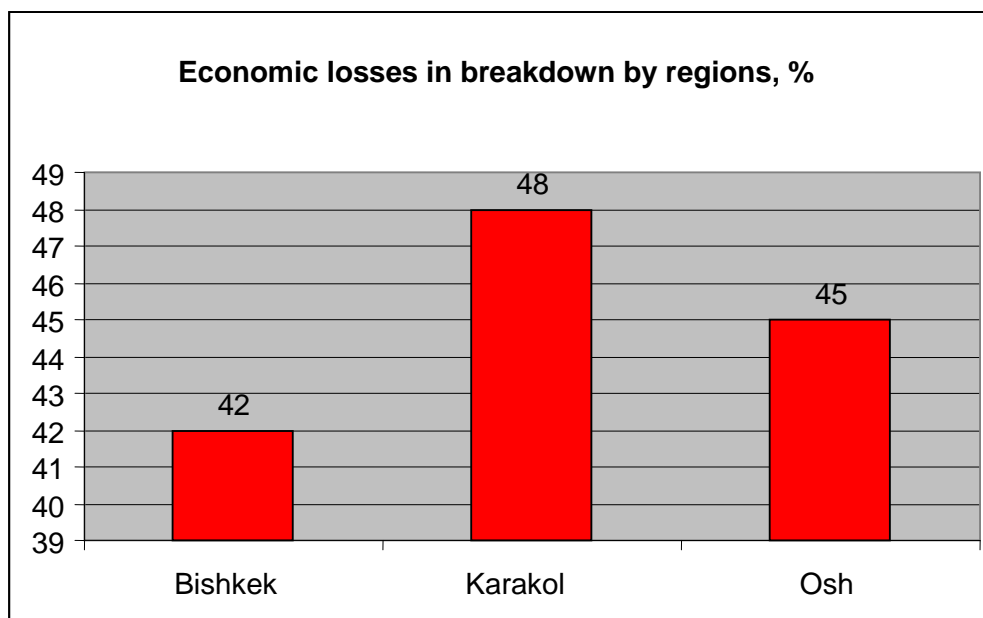
Almost a half of funds allocated for procurement of textbooks (49%) is used ineffectively. At many schools a library stock is not replenished by new literature, only textbooks approved by the Ministry of Education unfit for use are received by schools. Taking into account a significance of schools and an educational system for the State at education of citizens of the Kyrgyz Republic, it is without any doubts, that the State suffers the greatest losses.

In the neighbouring Republic of Kazakhstan the largest economic losses based on results of similar survey were revealed also on procurement of textbooks. Such similar problems are not random, because we have inherited a Soviet system of approach to strengthening of educational standards. May be quite another approach is necessary in the sphere of public procurement of textbooks for solution of the matter related to its effectiveness. For example, announcement of tendering for the best works of authorship on new interactive educational methods. A selection of the best works must be conducted by a commission consisting of specialists of different profiles.

The capital repair is a next item in economic losses (44%), may be such large indicators are results of financing peculiarities and implementation of repair in several stages during two-three years. At the partial execution of the capital repair its quality is deteriorated as certain types of repair works require a simultaneous implementation.

A percentage of the amount allocated per school in average in breakdown by regions is applied in description of economic losses.

Table 4. Economic losses in breakdown by regions, %.

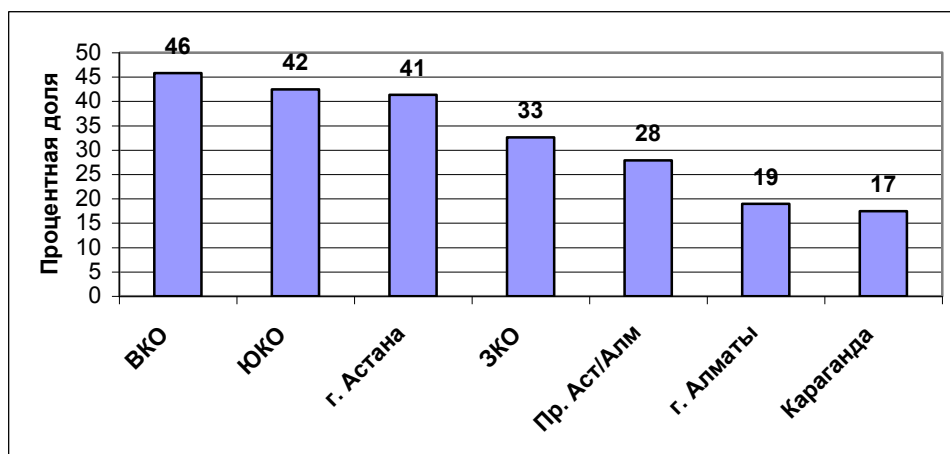


If to look at economic losses in breakdown by regions, then the largest economic losses take place in Karakol town – 48%, the second place is occupied by Osh town – 46% and the least indicator of economic losses is revealed in Bishkek City – 42%. Almost a half of the budget in the educational sphere is spent ineffectively in the result of poor quality of repair works, low quality of supplied materials and other procurement at schools.

Sometimes funds were spent on the same types of works. At some schools already in a half of a year repair works were carried out again. Sometimes the equipment of quite another quality was supplied, differing from the equipment which was shown to directors. Almost all interviewed directors were dissatisfied with the quality of food or food products which were delivered by suppliers who won at tendering. This suggests that a tendering process is conducted without taking into consideration qualitative characteristics of procured goods and services, in the result – schools receive goods and services of poor quality by inappropriate prices.

Similar problems of ineffective use of the State funds at schools exist in Kazakhstan as well.

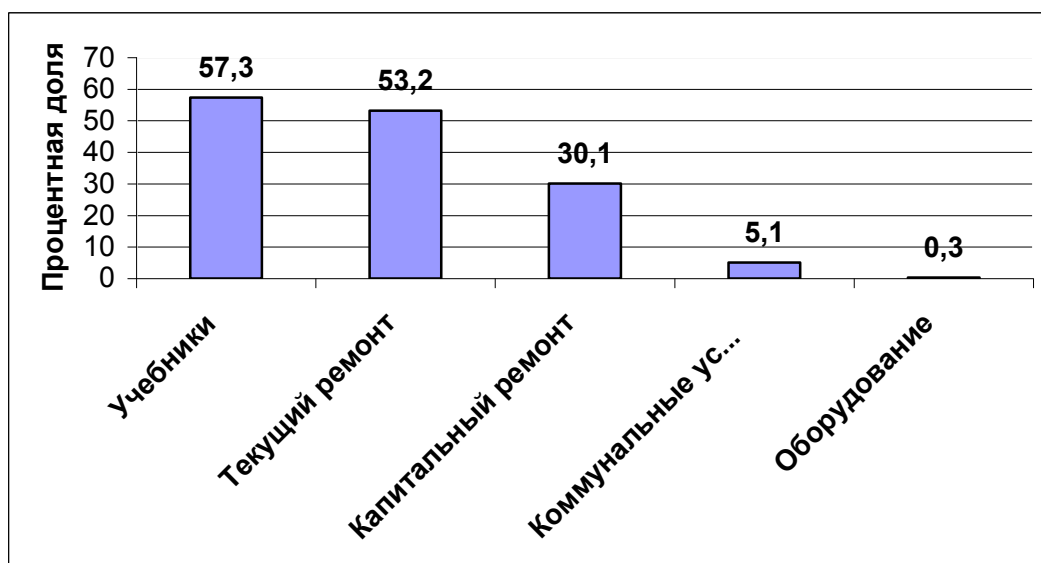
Table 5. Economic losses in breakdown by Kazakhstan regions, %



Thus, following results of the survey conducted by the RC “SANDJ” economic losses in breakdown by regions of Kazakhstan made up: in East Kazakhstan region – 46%, rather less – in South Kazakhstan region – 43% and in Astana City – 41% of the total amount of allocated funds per school.⁹

In Kazakhstan also economic losses take place mainly because of deficits in financing and poor quality of goods and services. In comparison with Kyrgyzstan, in Kazakhstan also an expenditure item used ineffectively is also the item “Textbooks” – 57.3% or in average 585,516 tenge, then current repair – 53.3% or 349,856 tenge.

Table 6. Economic losses in breakdown by expenditure items, % (Kazakhstan)



⁹ Public procurement effectiveness. P. 35

Proposals

Taking into account difficulties which school directors come across with in economic activity of school connected with receipt of goods, works and services from departments carrying out procurement, there were introduced proposals aimed at provision of goods and services of higher quality.

Among interviewed directors 42% think that it is necessary to include a school director into a commission on selection of a supplier of services or goods. Directors also think it is expedient to take a country, producing goods, into consideration. 52% of the interviewed think that it is necessary to include a school director into a commission on acceptance of goods or services. Basically it is related to procurement of capital repair and procurement of the equipment, as here there is a great probability for corruption risks and school directors do not have any mechanisms of impact for improvement of the situation. More than a half of directors consider that is necessary to include a chairman of a parents' committee into a commission on conduction of tendering and selection of a bidder, as well as into a commission on acceptance of repair works. 33% of directors also think it is necessary to make adjustments in cost estimates in case of postponing tendering for the next year. Among interviewed directors – 61% of them gave voice for non conclusion of contracts with bidders who implement works of poor quality.

82% of directors expressed their wish to ensure a transparency of tendering proceedings at definition of clear selection criteria, conditions for participation, criteria of suppliers'-bidders' background and quality of previous works.

Conclusion to Chapter III

Summarizing the above said, it is possible to make a conclusion that economic losses in educational sphere take place because of several problems:

1. Inaccurate evaluation of needs at planning of procurement for provision of the educational process.

- Procurement of textbooks by multi-thousand circulations not answering educational programs requirements.
- Failure to take account of transportation and period of procured products delivery made by some procuring entities in the total cost estimates and contract conditions. When school itself carries out transportation of construction materials, assessment of necessary works, then additional expenses arise which were not taken into account in the total cost estimates, as a result, schools have to reduce expenses on basic types of works. And this is a transfer of costs under one item to another, which is, in principle, not allowed to do according to legislation. In this case it is necessary to improve general financial procedures related to public procurement.
- At distribution of funds it is necessary to take into consideration locations and year of buildings construction.

2. Supply of products of poor quality by unjustifiably high prices. Following the survey results, a main reason of economic losses is connected with poor quality of goods and services. This reason arises by virtue of partiality of tender commissions on bidders' selection. It is said in the existing legislation, in Article 13 of the Law "On Public Procurement" in para 8 that "In case if several procuring entities wish to procure the goods connected with one or several procurement subjects, the Government of the Kyrgyz Republic shall designate a concrete State Administration body to perform proceedings and conduct joint procurement in the centralized order on behalf of the mentioned procuring entities".

Within the established rules Administration of Education carries out centralized tendering for construction materials, repair works and catering, some part of procurement is made by school itself. But however, a huge number of directors does not participate in tendering proceeding at procurement of a large volume of goods.

As the survey showed, at conduction of tendering for procurement of goods for schools' needs, a quality criterion was not taken into consideration. At procurement conducted by Administration of Education, quality is badly controlled and monitoring of provided products is not carried out. As a result, a firm which supplies products of poor quality wins at tendering. Adjusted mechanisms are not available here, which allow administrations of educational institutions, not satisfied with a situation, to refuse from cooperation with an unfair supplier or to replace products of poor quality.

In order to obtain tangible results it is necessary to establish selection criteria, to prohibit award of contracts to bidders with bad reputation. To control quality of supplied products at the final stage, i.e. to verify a conformance of quality in bids with a product, which is supplied.

3. Imperfect financing system. In the result of interviews of many school directors some school received financing for capital and current repair, though their schools were in more or less good condition. Some schools, which were in a sorry state, did not receive any financing. A system of financing of all schools appeared to be unclear for us, and directors themselves could not give a concrete answer. Some directors expressed their wish to discuss these problems and to establish a priority of school financing, when, first of all, schools in bad condition have to be financed first.

The innovation in the financing practice through allocation of a certain amount per each school pupil was not justified. Such aspects remain not taken into consideration as: quadrature of building, a number of pupils for which a building was designed. Schools at which there is a shortage of pupils are deemed to be not very prestigious and at this type of financing they do not receive funds sufficient for maintaining a building in a normal condition.

In the result of conducted survey it was revealed that during 2006 economic losses in the educational sphere made up **in average 45%** of the total amount of allocated funds, i.e. almost a half of the state budget is spent ineffectively. At the reasonable approach to planning and conduction of public procurement, at securing a high competition and quality control there is a possibility for acquiring goods and services of good quality by optimal price which will allow to save State funds at our scanty budget.

IV. Instrument of Cooperation between State Agencies, Companies-Suppliers and Civil Society

If we resort to a world experience on regulation of public procurement, it is possible to separate basic principles of public procurement system functioning:

- Effective spending of budget funds;
- Saving spending of funds at procurement conduction (achievement of the best price/quality ratio under concrete conditions);
- Preclusion of the official position abuse by state officials at conduction of procurement;
- Securing a transparency (informational transparency) of procurement proceeding;
- Insuring of a fair attitude to all participants of the market at placement of state orders;
- Responsibility of state power bodies for adopted decisions on procurement.¹⁰

A public procurement market is rather attractive both for enterprises and for state procuring entities. That is why this sphere suffers from a lot of abuses and ineffective use of the State budget. At present a civil society plays a decisive role in conduction of transparent and honest procurement. An obvious example of different countries suggests it. For this purpose the organization “Transparency International” in 1990 developed a new instrument of the civil society influence mainly in countries of Latin America under the name of the Integrity Pact. In course of time this instrument started to be used not only in Latin America but in other countries as well.

What does it mean - the Integrity Pact? It is a voluntary agreement between a customer and a supplier, NGO or some third party, in which it is said that all three parties, especially the first two, a customer and a supplier, must abstain from corrupted actions. It is very important that such Pact is to be signed by higher management on the part of a customer and by another party, which participates in an application and is to be signed in an official situation. Thus, they demonstrate a good will on implementation of this Pact conditions.

Main elements of the Integrity Pact concept:¹¹

The Integrity Pact is a document, signed not only by two parties, a third party must be present – NGO, which can carry out monitoring.

There are different schemes by which a civil society can carry out a monitoring mechanism. It can be a monitoring group (NGO) or a person, which has support of organizations. For ensuring independent monitoring it is necessary to observe the following principles: 1) objectivity of selection criteria, 2) transparency of a payment method, 3) availability of unimpaired access to information and liberal disclosure of information, 4) a management system for collision of interests. A monitoring group should include:

- honest people, who do not give rise to any doubts;
- people, who have professional knowledge for conduction of expertise.

If local members of the civil society do not possess required merits, they must obtain such expertise from outside, if necessary, from other countries. Without conduction of the expertise at the proper level, problems cannot be identified, as a result, professional corrective proposals cannot be developed.

- Monitoring group must not be an object of veto for the Government;
- Monitoring group must have a free and unrestricted access to all relevant government documents;
- Monitoring group shall discuss problems and complaints with authorities. In case of the authorities’ inactions, it transfers relevant information to senior state bodies;

¹⁰ K. Perov. State procurement and perspectives of Russia’s entry into the WTO, p. 448

¹¹ Manual on curbing corruption in public procurement, Transparency International, p. 81

- Monitoring group must restrict **Confidentiality Commitment** in respect of certain types of information;

- Monitoring group must have a full access to a bidding documentation, evaluation reports, decisions on selection of a winning bidder, as well as to technical and financial reports; they shall participate in meetings and shall be entitled to ask questions.

If there are no relevant organizations of the civil society or when the Government is not ready to attract a civil society, it can cooperate with a business-sector. Companies from a private sector or a group of people usually carry out a necessary expertise and have all above enumerated rights of the civil society's organizations. Such agreement may become acceptable as it gives not only the right to make adjustments on any procedural problems or violations and the right to inform the public or state authorities on violations.

These instruments help to reduce corruption and to increase an equal competition. A basic task of such Integrity Pacts is to improve a transparency level on state tendering. Its task is also a change of behavior both as a customer and a supplier, creation of such environment in which competitors will feel themselves in safety. Everybody knows that a goal of business is profit and there is nothing bad in it. And, of course, representatives of business anticipate that they will work in such environment where they will compete with each other and for creation of a balance they have to bribe state officials. In the result this bribe is paid by a taxpayer. That is why it is necessary to fight this phenomenon, creating such environment where a fair competition is possible. And these Integrity Pacts represent an instrument, by means of which we can achieve a balance. It is possible to achieve success only in a case if a level of awareness in the public on how detrimental is corruption is very high.

Speaking on a practice of executing such Integrity Pacts, they are executed in different countries in a different way. In some countries the Pact is used only in order to conduct a selection of companies through tendering. In some countries they go further. It means that a non-governmental sector conducts monitoring or a review of the whole process of Public Procurement.

Columbia, Mexico, Ecuador and Pakistan achieved more success in execution of the Integrity Pact. Recently Integrity Pacts started to be conducted in Germany and Lithuania. For example, Integrity Pacts were successfully conducted in Pakistan on water supply and sewerage project, in the result huge amounts of money were saved. As it was a complicated project, consultants under the project had to be selected at the initial stage. According to the assessments the amount of US\$ 4.22 million had to be allocated for the cost of the consultants' work, who had to implement this project. As they implemented the Integrity Pact a contract at the first stage was awarded at the amount of US\$ 1.04 million. Thus, saving of US\$ 3.13 million has been gained under this contract. After consultants have been selected, a contract amount at the second stage of the construction itself made up US\$ 88.6 million, and a contract was awarded at the amount of US\$ 74.63 million, as a result US\$ 14 million were saved. In general under this tendering the amount of US\$ 17.18 million was saved.

The following example is related to Ecuador, where the Integrity Pact was also used in tendering proceedings.

Ecuador. Independent Monitoring of Telecommunications Band and Sub-Band Auction Processes.

Between 2001 and 2003, CLD, TI's National Chapter in Ecuador, introduced Integrity Pacts and performed independent monitoring in two different processes: 1) Auctions for the use of bands and sub-bands associated with the provision of the Wireless Local Loop (WLL); and 2)

Auctions for the use of telecommunications bands and sub-bands associated with the provision of Mobile services (PCS or SMA). The goal of the Chapter was to improve transparency and accountability in the auction processes.

Both cases had the same approach and activities, which included:

- Signature of a Cooperative Agreement between CLD and CONATEL /NST establishing their mutual responsibilities. The Agreement included the implementation of the following items:

- Code of Conduct, to be signed by all public officials and employees involved in the process;
- Guidelines for Transparency in the Auction Procedure, outlining the process to be followed;
- Integrity Pact, to be signed by all bidders and the President of CONATEL; and

- Independent monitoring of the whole process by CLD.

- In the Code of Conduct, the public officials pledged to follow specific procedures on information handling and communications with bidding companies and not to accept to be hired by the company awarded the contract for a period of one year after it was signed. A Covenant of Confidentiality was signed by the members of the Bidding Commission as they were not required to sign the Code of Conduct. The Bidding Commission was composed of the President of CONATEL, representatives of SNT, the Telecommunications Superintendence and the Federation of Production Chambers, the Armed Forces Chief of Command, and the National Council of Modernization.

- The Guidelines included: access to information, careful management of privileged and confidential information and the elimination of discretionary selection criteria. The majority of the suggestions made by CLD were accepted by CONATEL and introduced into the documents,

- The IP was voluntary in the case of the WLL auction, because the bidding documents were already drafted and sold to the possible bidders when CLD entered the process. It was agreed that it would only be implemented if all bidders agreed to it. A public signing took place where all bidders accepted to sign the IP. Those who qualified were permitted to take part in the financial bidding, which took place in the form of a public hearing. In the case of the PCS it was mandatory for all bidders as a requirement for pre-qualification. A public signing ceremony took place where all bidders agreed.

- CLD independently monitored and contributed recommendations at each stage and on every aspect of the auctioning processes. This included the following activities:

- Adapted the IP methodology to the specific conditions of this auctioning process;

V. Conclusions and Recommendations

A map of corruption risks is made in this Section in the form of conclusions and recommendations.

Map of corruption risks in public procurement

Corruption risks	Recommendations
1. Procuring entities have no funds for training at the Regional Training Centre of the Agency on Public Procurement, payment for which makes up 4,800 soms, in the result, many organizations are not able to send their officers for training.	At planning of the budget of procuring entities it is necessary to foresee funds for training of employees who conduct tendering.
2. A weak understanding of our legislation by procuring entities. During conduction of focus-groups procuring entities showed a bad knowledge of legislation and wished to attend training with examples and role games on the basis of not foreign but domestic experience, with practical application on the example of our legislation. It is pressing for regions.	To arrange training for procuring entities using examples and applying to the Kyrgyz Republic legislation. To conduct annual training in connection with innovations in the public procurement system and permanent turnover of employees, who attended training. To conduct regular attestations of employees for knowledge of legislation in the sphere of public procurement. To foresee a system of different incentives for employees, who passed attestation successfully and who have a good knowledge of legislation.
3. Procuring entities have no motivation for saving budget funds, as a balance of amounts is returned to the treasury. These amounts are cut and a procuring entity received a budget much less in connection with non-use of saved money.	To develop a system of incentives for budget funds saving. To improve a process of the budget development and approval in respect of public procurement matters.
4. Splitting of the threshold amount	To develop criteria according to which it would be possible to identify whether a threshold amount was split or not. To foresee a prohibition of splitting and responsibility for violation of this prohibition. To introduce relevant amendments into the Law "On Public Procurement" and in other laws related to these matters.
5. Reasonable planning and placement of social orders by exact definition of needs.	If population is a consumer of a certain good and service, it is necessary to coordinate goods procurement with population and other state bodies concerned in the form of public hearings or other discussion methods.
6. Unreliable published information on tendering in mass media /Bulletin - incorrect telephone, coordinates; - inauthentic date;	To regulate clearly and exactly matters connected with a procedure of publishing information on tendering in the Law "On Public Procurement".

<ul style="list-style-type: none"> - issuance of advertisement on the date of conducting tendering or just several days before conduction of tendering, as a result suppliers do not manage to execute SBD; - frequent cancellation of tendering after publications; <p>Erroneous placement of advertisements of one region into a column of another region.</p>	<p>To establish responsibility of a procuring entity for provision of unreliable information. To establish responsibility of officials of the informational centre for placement of advertisements.</p>
<p>7. Access to information. In some regions Bulletins are received with a large delay, when tenderings have already been conducted.</p>	<p>To arrange a timely delivery of Bulletins. To set out control of timely supply of Bulletins.</p>
<p>8. Difficulties with obtaining standard bidding documents:</p> <ul style="list-style-type: none"> - telephone does not answer; - a specialist is not available at his work place; <p>A package of Standard Bidding Documents (SBD) is over.</p>	<p>To define clear composition of violations and measures of responsibility of a procuring entity and its officials in the event of committed violations.</p>
<p>9. A procuring entity defines the cost of SBD according to its own discretion. This deliberate treatment becomes sometimes a barrier for SBD purchase, when a procuring entity established an ungrounded increased price, in this connection many suppliers are not able to purchase an SBD package.</p>	<p>To regulate (to revise and to finalize) matters of an SBD package purchase in the Law “On Public procurement”.</p>
<p>10. Unprofessional compilation of specifications.</p>	<p>If necessary to engage a professional consultant for conduction of tendering both at preparation of bidding documentation and at compilation of specifications for equipment or services.</p>
<p>11. Collusion of bidders in respect of the price policy at submission of their bids for tendering.</p>	<p>To carry out an additional analysis and evaluation of such situations, on the results of which to compile a separate package of recommendations.</p>
<p>12. Nontransparent award of contract:</p> <ul style="list-style-type: none"> - sometimes a commission does not give each bidder a protocol for voting; - not always announced prices of bidders are introduced into a protocol, which later enables a procuring entity to manipulate with a selection of a final winning bidder; - sometimes at the stage of a winning bidder announcement a commission calls bidders one after another and a procedure of a contract award is carried out according to the unclear mechanism. 	<p>To finalize requirements in the Law “On Public Procurement” on bids opening procedure (and protocol execution), a protocol must be used by each present bidder.</p>
<p>13. Influence of a procuring entity head on conduction of tendering:</p> <ul style="list-style-type: none"> - according to the Law “On Public Procurement” (art. 13, para 7) a head of a procuring entity shall not be a member of a 	<p>To study and to carry out an additional analysis of this situation. Following the results to prepare a separate package of recommendations.</p>

tender commission, but members of this commission, i.e. employees of this procuring entity are fully dependant on the head.	
14. Cancellation of tendering after announcement of a winning bidder.	The Law “On Public Procurement” should contain a concrete list of cases or grounds when tendering can be cancelled after announcement of a winning bidder. To study and to carry out an additional analysis of this situation. Following the results to prepare a separate package of recommendations.
15. Delay in payment after contract award.	It is necessary to introduce into the Law “On Public Procurement” a provision, regulating payment principles and responsibility of a procuring entity for untimely payment. These can be financial sanctions in the form of penalties, percentage, fines, etc. Besides, a procuring entity at determination of the procurement budget must foresee a certain amount for payment of financial sanctions and losses of suppliers (contractors) possible in future.
16. Officers of SAPPMR are not able to trace tendering proceedings in remote regions.	Increase of the SAPPMR staff number in regions for conduction of control of the public procurement proceeding or to consider a possibility to delegate NGO powers on monitoring in remote regions.