



MONITORIMI I PUNËS SË AVOKATIT TË PROKURIMEVE

Raport Përfundimtar

MONITORING THE WORK OF THE PROCUREMENT ADVOCATE

Final Report



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FINAL REPORT

MONITORING THE WORK OF THE PROCUREMENT ADVOCATE

Prepared by the Center for Development and Democratization of Institutions

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ABBREVIATIONS

| | |
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| PA | Procurement Advocate |
| EOs | Economic Operators |
| CAs | Contracting Authorities |
| PPA | Public Procurement Agency |
| PPC | Public Procurement Commission |
| EPS | Electronic Procurement System |
| OEC | Offer Evaluation Commission |
| CDDI | Center for Development and Democratization of Institutions |
| MCCA2 | Millennium Challenge Corporation Albania Threshold Program II |

1. EXECUTIVE SUMMARY

Established for the first time by the law no. 9643, dated 20.11.2006, “On Public Procurement”, the Public Procurement Advocate is an independent institution defending bidders’ rights through monitoring and investigating public procurement and concession procedures in Albania, to assure adherence to the law and provide greater transparency and accountability from the competent authorities.

In accordance with the law “On Public Procurement”, the Public Procurement Advocate monitors the administrative procedures in the areas of public procurement and concessions, and investigates illegal and irregular actions or lack of action by contracting authorities, based on complaints or on his own initiative.

From December 2010 to March 2011, the Center for Development and Democratization of Institutions (CDDI) with support by the Millennium Challenge Corporation Albania Threshold Program II (MCCA2), conducted a study of the performance of the Procurement Advocate based on the experience of businesses that participate in the public procurement procedures, and the public institutions that issue public procurement (CA, PPA, and PPC). More specifically, the study evaluated the Procurement Advocate’s progress to date, benefits for the business community, public administration and the public at large, as well as issues that need to be addressed to strengthen its efforts toward an effective, transparent, and fair procurement process in Albania.

The study included: (i) five focus groups with 57 EO participants that have submitted at least one complaint to PA and one focus group with EOs that have not submitted any complaints to the PA. (ii) fifteen in-depth interviews with procurement specialists from CAs in six regions (Tirana, Korça, Vlora, Fieri, Elbasani, and Shkodër), (iii) and six in-depth interviews with public officials of the Public Procurement Agency (PPA), the Public Procurement Commission (PPC), and the Procurement Advocate (PA).

Key Findings from the Focus Groups with EOs

- Participants in the focus groups asked for the PA to be elected by representatives of the business community in order to adequately protect their interests.
- Regarding the legal competences of the Procurement Advocate, the participants in the focus groups thought that this institution should be changed from an advocacy institution to a decision-making institution in order to increase its efficiency.
- EO participants in the focus groups argued that the PA should take various initiatives to propose legislative changes to the public procurement law and create precedents, particularly for issues such as the abnormally low bid price and its misrepresentation, improvement of standard tender documents, and standardization of specific qualification criteria.

- Participants in the focus groups recommended that the PA become more proactive and closer to the business community through regular meetings.
- All participants in the focus groups recommended that the PA engage in training CA representatives.

Key Findings from in-depth interviews with procurement specialists and public officials

- The respondents proposed that the PA's recommendations be made legally binding over the CAs, because this would strengthen the authority of this institution.
- The representatives of the interviewed CAs proposed that the PPC and the PA should be legally authorized to cooperate and issue one decision per given complaint.
- Regarding the investigation procedure, some of the respondents emphasized that the PA should create internal regulations including an appropriate time frame within which an investigation must be completed.
- The respondents from the PA recommended that the PA be able to log into the EPS in order to investigate uploaded documents and reports the EPS produces.

Key findings and recommendations from Analysis of the PA's Legal Structure

- Appointment procedures of the PA should also involve representatives of the business community, because this would strengthen the authority of the PA and provide greater independence from the influence of the contracting authorities or the executive branch, thereby better protecting the interests of the business community.
- PA should make more use of the right that the law provides to draft regulations or manuals to fulfill its mandate. The PA should draft these documents, asking for cooperation with other institutions, and also make them public to all interested parties.
- The PA and PPA should prepare joint sublegal acts and regulations regarding the procedures and time periods for monitoring procurement procedures.
- The PA should prepare written procedures when conducting investigation cases. These procedures should include the means of requiring access to information, the time limits to guarantee access to CA's offices, as well as how to proceed if access is not guaranteed. It should also be more specific concerning the CA's obligation to notify in writing whether it took any disciplinary measure or the causes of its refusal.
- The institutions, or other actors participating in public procurement procedures, should focus on more than simple cooperation for a concrete procedure under investigation, on preparation of Common Instructions, that would define mutual obligations of each institution.

- PA should take various initiatives to propose legislative changes to the public procurement law and create precedents particularly in some areas such as: i) the concept of abnormally low bid price and its misrepresentation; ii) improvement of standard tender documents; and iii) standardization of specific qualification criteria.

2. METHODOLOGY

The study included: (i) 5 focus groups with participants EO's that have submitted at least one complaint to PA and 1 focus group with EOs that have not submitted any complaints to PA; and (ii) twenty-one in-depth interviews with procurement specialists from CA representatives in six regions (Tirana, Korça, Vlora, Fieri, Elbasani, Shkodër) including six in depth- interviews with the representatives from the PA, Public Procurement Agency (PPA) and the Public Procurement Commission (PPC).

a. Focus Groups: To organize the focus groups, CDDI used the data obtained from the PA. The database of EOs that have filed complaints was used to obtain the information on the number of complaining EOs and their distribution by district. Based on the total number of EO's that have filed complaints, the following main districts (Tirana, Elbasan, Fier, Shkoder, and Vlora) were selected as places to conduct the focus groups with this category of EOs.

Korça was selected for the focus group with EOs that have not filed any complaints, as Korça had a very low number of EOs complaining to the PA. Both the PA's database and the database of businesses that have participated in at least one public procurement procedure were used to select Korça -based businesses.

The objective was to understand the differences between these two categories of EOs in order to better evaluate their experience and perception of the PA's work.

To better organize the discussion, CDDI prepared two Moderating Guides for Focus Groups, which were approved by the project. The first guide was designed considering that the participants were EOs that had exercised the right to complain to the Procurement Advocate. This Guide was used in Tirana, Shkoder, Elbasan, Fier, and Vlore. A total of 46 EO representatives participated in these 5 focus groups. The second guide was designed for the focus group in Korca with EOs that had not filed any type of complaint to the PA. 11 EOs participated in this focus group.

b. In-depth interviews: As a sample frame for the interviews, the CDDI used the PA's database of CAs with complaints filed against them. The number of CAs in respective districts and the number of complaints filed were used as criteria to identify the CAs to be interviewed. Fifteen interviews were conducted with CAs in six selected districts including Tirana, Shkoder, Elbasan, Fier, Korca and Vlore. The interviewed CAs included central government institutions such as ministry, regional directorates at local level, hospitals, academic institutions, local government institutions including municipality and communes, and one state-owned company. A moderation guide was prepared to guide the in-depth interview.

In addition, six public officials of the three main institutions, PA, PPA and PPC, were interviewed.

3. FINDINGS FROM FOCUS GROUPS WITH EOs

A. Understanding the PA

All EOs that have filed complaints were aware of the Procurement Advocate and its basic role in the procurement process. They had been informed for the first time since the creation of this institution through the procurement legislation. Legislation was the main way EOs knew about this institution and its functions and how they could address their complaints regarding a procurement procedure. Also, the Public Procurement Agency (PPA) was active to let EOs know of this new institution. As one operator said: “The PPA notified us in writing about the latest changes in the public procurement law including the establishment of the Procurement Advocate.”

It should be noted that operators who were active in the procurement process and in interaction with PA were aware of every amendment to the legal framework of public procurement, which makes them explore all the opportunities allowed by law to raise their claims in regard to procurement procedures.

Another source of information on the PA was the exchange of information among EOs themselves. One of the participants said: “I wanted to file a complaint and I addressed the PPA at that time, but a colleague of mine who had previous complaining experience informed me that the Procurement Advocate had been created, so I addressed my complaint to it as well. This is how I was first introduced to the PA.”

EOs invited to the focus group held in Korca were the exception, because many had never heard of the PA. One had recently checked the website to be informed about its existence. All others became aware of its role and functions during this focus group.

For almost all participants, the PA is perceived as a new possibility to complain about any type of concern regarding procurement procedures. When they participated in the procurement procedures and did not agree with the Contracting Authority’s decision, complaining to the CA and PPA/PPC in some cases was not enough. “CAs did not take into consideration our complaint, and often rejected it, because they wanted to defend their opinion and decision” said one economic operator, “and, complaining to the PPA did not resolve our problem, so that’s the reason that introduction of PA made us optimistic in finding a solution to our concerns.”

The EOs expectations regarding the PA were very high at the beginning. In all focus groups participants consider it as their legal defender in a procurement procedure, because as one operator in Korca acknowledged: “The word Advocate means to protect my interests in this process, not decide and act against me.”

Operators knew that the PA investigates and monitors the procurement procedures and the way CAs administer them. But as PA focuses on the complaint itself, this has made some EOs somehow skeptical of its role in improving the procurement process. Their expectation is that PA needs to do a thorough investigation of the whole procedure when there is a complaint, and not focus only on the complaint itself. Thus, one operator said: “I complained to the PA regarding a CA that had exceeded the legal number of necessary qualification requests for the tendering object. PA did not undertake any kind of investigation regarding this complaint.” In

case of a complaint related to a disqualified operator, PA should also conduct an investigation of the whole procurement process, in order to affect even reduction of standard documents required by the CA.

Another aspect that has raised the level of skepticism on the PA's role is the fact that this institution issues only recommendations, which in most cases are not considered by CAs. Several business representatives expressed this concern, and one of them asked: "Since this institution issues only recommendations, which in most cases, according to my experience, were not taken into consideration by the CAs, then why should I waste my time submitting complaints to this institution?"

However, complaining to the PA, as admitted by many participants, often is finalized by a recommendation that supports them. There are cases when PA's recommendation is not in line with the PPA's decision (now Public Procurement Commission (PPC)' decision), or not even implemented by the respective CAs. Still, some economic operators considered the recommendation as something positive, because it at least gives them the satisfaction that their claims were right and conform to the law.

It was obvious that the EOs opinion on the PA as an institution and its role were affected by the "fate" of their complaint. Those who received a positive recommendation, even though not implemented by the CAs, view the Procurement Advocate and its recommendations as more helpful in a procurement process, because it directly affects CAs in being more responsible in administering procurement procedures. Also, the fact that they can use the PA's recommendation during a potential trial process makes them more positive toward PA.

Nevertheless, EOs in Shkodra tell a different story. Almost all participants there had the feeling that PA is not an institution working to assist them. They basically judge PA based on what the PA's recommendation says. "I did not have a positive experience with PA because the decision was not what I expected. I might continue to file complaints in the future only hoping, not believing in this institution."

EOs expressed different views of the fact that PA issues only recommendations regarding their complaints. Despite this, their general opinions converge, as mentioned by an operator in Korca: "PA's recommendations should have obligatory power to CAs (PA has to issue a decision), because this is the only way to strengthen its influence and role over CAs as well as to contribute to improving the procurement procedures."

B. Interacting with the PA

Economic operators have addressed the PA mainly for the following issues:

1. Problems with specific qualification criteria in the Standard Tender Documents, drafted by CAs.
2. Problems with deadlines: there are irregularities of dates and deadlines in the Standard Tender Documents that are not the same as those published through EPS, especially regarding the bid opening time.
3. Problems with the cancellations of the procurement procedures. CAs cancel the procurement procedures in the last days, which results in higher costs to EOs.

4. Problem with the disqualification of economic operators because of an abnormally low offer price.

They have submitted complaints to PA after receiving no reaction or consideration by the respective contracting authority. In this case economic operators in Korca are an exception. Because they, not being aware of the existence of the PA, complained only to the contracting authority about the procurement procedures they participated in, and tried to solve their problems only with this institution.

All EOs with a complaint experience admitted that reaching the PA to file a complaint is efficient, in that it is a simple and cost-free procedure. "An EO can submit the complaint to the secretary of the institution and from this moment on, he/she can not have any contact or information regarding the progress of the complaint, but they have always been answered by the PA."

One of the most debated issues was about the way the PA investigates the complaint. The EO's experiences varied from one district to another. Basically, they were not happy with the way PA has addressed their complaints.

Economic operators consider as necessary further communications/contacts with specialists during the process of addressing the complaint, because this will help them to better understand and accurately address the complaint, to shorten the complaint review process, and eliminate uncertainties on the complaint. They brought several experiences that they considered positive and fruitful, because PA specialists contacted them and listened to their arguments of the complaint and began investigations. One of the operators said: "If we converse with the PA we have the possibility to explain and argue our claims, which helps PA to have a more comprehensive and accurate perception of our complaint."

The issue of a timely response by the PA was another concern expressed by many participants. "Receiving the response to a complaint lasted 2-3 months time," said one operator. "This actually made the complaint invalid, because it failed to suspend the procurement procedures and the contracting authority had already signed the contract with the winner." The same problem was encountered by a number of participating EOs, who argued that receiving a late response or not receiving one at all has cost them financially. It also has damaged their trust in the PA. An EO in Tirana said: "I don't need that institution any longer, as it did not help when I needed help." Although this was not an issue for the rest, the EOs emphasized the importance of a timely response by PA.

When asked about the professionalism of PA's staff, participants mentioned that they can only judge by the response they get, because they rarely or almost never have been contacted by PA's specialists. They shared different experiences, for some the response was well explained and seemed right to the point, while some others said that the PA's answer was just a short line, not enough to convince even them. In addition, considering that PA's recommendation is almost never considered by the contracting authority, this casts doubt on the professionalism of PA's specialists. "We could not comprehend if the staff of PA was unprofessional or PA was issuing partial recommendations" said one of them. EOs discussed specific cases, such as:

- there are two different recommendations for the same type of complaint,

- recommendations are delayed; and
- PA's recommendation is the same as the decision of CA or PPA/PPC.

The first type of occurrence was the most debated issue, especially among EOs in Shkodra and Tirana, where EOs brought their real experience and even presented the correspondence with PA.

Regarding the third issue mentioned above, EOs brought up concrete cases when the PA's response was the same, almost the same sentence, as the one they received by CA or PPA/ PPC.

When this issue was discussed with other EOs, they also associated it with the PA's impartiality in addressing complaints. "Although the PA focuses only on the facts and explanations provided in the complaint, he afterwards takes the information provided by the contracting authority. I sent complaints to the PA after I repeatedly received negative responses by the CA, hoping for a fairer and more neutral attitude by PA" said one of the EOs.

While the PA's response might have been correctly addressed according to the law, EOs believe that the PA should have been on their side, and expected a different response from the one issued by CA or PPA/ PCC.

Some of the participants linked the issue of PA's impartiality with the way PA is appointed. According to the law, the Procurement Advocate is appointed by the Parliament and reports to it, and this – as perceived by economic operators - compromises its function, the way it addresses complaints or conducts monitoring, as well as the recommendations it issues. To them, while PA is elected by the Parliament, it is very difficult to avoid intervention of public institutions in pursuit of its duties.

According to EOs, business community should have a legally defined relationship with the institution of Procurement Advocate. Some EOs said that the PA should be elected by the business community. Others mentioned that legal options should be explored to allow businesses to be represented in this institution. An EO in Tirana expressed doubts concerning the PA's impartiality because he is elected by the Parliament: "In this case the PA has a moral obligation and dependence on the Parliament and politics. This institution should be elected by the business community, so it will be impartial and the business's interest will be legally protected."

Economic operators unanimously think that PA should work more toward increasing transparency of its work. Communication with the PA takes place through a paper-based system and only in cases when the PA contacts them during the investigation of their complaints. While the PA's web page is considered helpful by some EOs, it is not often used by them. One participant in Korca, who briefly checked the PA's website for the first time, said that this is an appropriate way of being transparent, and that the information was updated. All were very familiar with the PPA's website, especially the EPS, but not with the PA's site. In this situation, EOs communicate with one another to share their thoughts and opinions, trying to create precedents on how to find a solution on specific cases. For them, frequent and continuous contacts between PA and business community are essential to better understand this institution and what he does for the business community. Operators in Korca who were informed on the existence of PA stressed the need of organizing such meetings where they could exchange

opinions and share experiences with PA specialists. As an example, an operator in Korça stated the case of the People's Ombudsman, who organized meetings with interested citizens twice a year in the Municipality of Korça: "This practice should be used by the PA as well. He can organize meetings with economic operators to hear their opinions and suggestions."

C. PA's role as an institution in the procurement process

Almost all EOs shared the opinion that creation of the Procurement Advocate was in itself an improvement, and essential to protect the business's rights in public procurement procedures. However, they emphasized that the PA's legal status makes it very difficult to fulfill all the legal obligations to the economic operators.

While EOs acknowledged that PA, through its recommendations, have tried to improve the procurement process and make it more fair and objective, this effort is not visible as long as recommendations are not considered by CAs and then not implemented.

Introduction of the Public Procurement Commission is seen by EOs as a replacement of what PPA used to do. They were very critical of the fee they have to pay to have their complaint reviewed by this commission. In this light, EOs believe Procurement Advocate remains necessary, in that the PA will conduct an investigation of their complaints without a fee. Once the necessary legal changes are in place and his role and competences are strengthened, the PA will become a real factor in increasing transparency and making public procurement procedures more fair.

When discussing the cooperation among all four actors in a procurement process, the CAs, PPA, PPC, and PA, EOs were aware of the legal responsibilities of each stakeholder, but seemed confused when asked to evaluate their cooperation and interaction. Almost every EO shared the opinion that there is lack of adequate interaction among the procurement institutions that is clearly reflected in the lack of enforcement of the recommendations issued by PA or even, in some cases, of the decision issued for the same complaint by PPA/PPC. This causes confusion among EOs as to whether their complaint was addressed in a legally correct manner. In addition, the fact that CAs repeatedly make the same mistakes, shows that they do not "feel" the pressure to obey the law. In this case, more efforts are needed by all institutions, PA included, to create precedent cases and train CAs in order to avoid further problems.

The Procurement Advocate through his recommendations becomes more helpful in a procurement process, because his recommendations pressure CA representatives to be more responsible in administering procurement procedures.

In many cases, even though the CA has violated the law, as noted in the PA's recommendation, they do not consider his recommendation and instead continue the procedures knowing they are infringing the law. An operator in Tirana suggested that the Procurement Advocate, in cases of flagrant violations of the law, should not only stop at assigning administrative measures to CAs, but should also address the other institutions such as PPA, PPC, etc., to bring these violators to prosecution. In this way, the contracting authorities will be more aware and will carefully respect the law in the course of conducting their duties.

4. FINDINGS FROM IN-DEPTH INTERVIEWS WITH PUBLIC OFFICIALS

A. Interviewees' experiences with procurement procedures

The majority of interviewees were lawyers (93%), while the rest were Procurement Unit specialists or persons authorized to address EO complaints. Their years of experience with public procurement varied from one to fifteen.

The number of procurement procedures to be administered by the CA's is defined in the annual budget. The average number of procurement procedures administered by the selected CAs was thirteen, while the number of concession procedures reached to around two hundred.

The average number of complaints addressed to the selected CAs was five to six, while there is almost one complaint for every concession procedure. The number of recommendations the PA made to the interviewed CAs varied, averaging four to five.

The CA representatives said they did not keep statistics on the number of complaints submitted to PPA/PPC or PA against their institutions, even though they were notified when an EO filed a complaint against their CA. Some CA representatives said that during 2010, complaints against them were filed only with the PA, and not with the PPA or PPC; this was different from the procedure used during 2009. Other CA representatives said that EOs did not make a single complaint to the PA, because all problems were solved by the CA.

Most of the interviewees said EOs mainly complain in the last stage of the procurement procedure, after the Offers Evaluation Commission (OEC) has published its evaluation for final qualification. "EOs always complain when they learn that they didn't win or when they don't agree with the OEC's decision," said an interviewee. Some CA representatives said EOs use complaints - frequently with unsound arguments - as a tool to display dissatisfaction towards the OEC's decision, which often delays or cancels the procurement, as one interviewee mentioned: "The tenders we administer hold considerable value and there are a high number of bidders. And while I cannot specify the specific nature of the complaints, I can confirm that every OEC action is subject to complaint."

According to CA representatives, EOs cited the following issues in their complaints:

- Problems with tender notification publication such as delayed tender notification, and/or the incorrect date and time listed that a bid would be open or tender documents would be available;
- Flaws and inconsistencies in the Standard Tender Documents;
- Unfair evaluation of the EO's offer by the OEC;
- Misinterpretation of abnormally low cost offers.

According to the PA representatives, EOs lack the proper administrative structure and/or legal expertise to deal with specific public procurement procedures. EOs often complain because they don't understand or have misinterpreted the Standard Tender Documents including qualifying

criteria. This could be avoided if they used a lawyer. Also, all interviewees agreed that EOs still need relevant and on-going training programs.

Almost all interviewees said that the EOs participating in procurement procedure carefully follow the complaint procedure. They are very strict in meeting the deadlines specified in the law for an administrative complaint. In this regard, CAs agree that including the standard complaint form in the Standard Tender Documents has helped EOs comply with the procedures, and made the complaint process easier and less time-consuming for them.

The CAs generally consider reviewing complaints a legal obligation that they try to comply with fully and precisely. However, some CAs recommended that EOs no longer have the opportunity to file complaints to CAs. One interviewee said, "We really do not know what satisfactory response to give to the EO, because as we all know and have experienced, EOs will continue complaining to the PPA/PPC as well as to the PA."

B. PA's role in the procurement process and the interaction between CAs and the PA

B.1 PA's role in the procurement process

More than half of the CA representatives said the PA's role is well defined among all institutions that deal with procurement procedures, but the PA should make sure that his or her recommendations are enforced. However, some interviewees chose not to comment on these issues.

Almost all agree that establishing the PA has had a positive effect on many aspects of the procurement procedure, including improving the CA's work, strengthening the relationship between EOs and CAs, and increasing OEC member professionalism. "Really, it is a different form of addressing an issue, which helps us," said one interviewee. Another CA representative said, "[The] PA's recommendation helps us understand our mistakes and correct them."

All interviewees see the PA as an additional supervisory institution for the procurement procedures. The PA oversees the procedure, helping to identify and correct mistakes, making CAs more aware and responsible, and contributing to their professional development. "While the concession procedures we administer vary widely, PA recommendations have helped somewhat to standardize and improve them," said one CA representative. However, for him, "the PA should have more responsibilities as an institution, so that the recommendations are taken into consideration and not just remain suggestions."

CA representatives value both investigations and monitoring activities that the PA conducts. Even though none of the CAs interviewed have been monitored to date under investigations initiated by the PA, the CAs said that this institution should exercise all duties specified by law. A PA should investigate complaints as well as monitor on his own initiative the administration of procurements, as both these actions play an important role in increasing transparency in the procurement process. At the same time, they keep CAs under pressure and close watch so that the same mistakes are not repeated. "The investigation into complaints is more complete, and so is the monitoring. Even though I do not have experience with the latter, I consider it very important because CAs can be made more accountable and responsible," said one CA representative.

The PA representatives said that the Advocate's role in the public procurement process is well defined in the Public Procurement Law. The PA observed that recommendations are helping make CAs and EOs aware that there is an institution, with a website where they can address their complaints.

The PPC representative said the PA's role is to protect the interests of the EOs by having a transparent procurement procedure. The increased number of complaints shows that EOs believe in this institution and that it does a good job of protecting their rights.

The PPC/PPA interviewees agreed that the PA's role is clearly to be a watchdog over public procurement pursuant to the public procurement law. The PPC/PPA interviewees expressed a need for the PPC to have a parallel system, but with better defined rules in terms of organization, timelines, fees, and decisions used to address EO complaints. The interviewees generally thought the PA rules are not well defined, mainly citing its lack of authority to enforce implementation of decisions/recommendations. This also creates confusion for the CAs, especially when the PA recommendation and the PPC decision differ.

B.2 Investigative procedure and cooperation with CAs

Working relations between the PA and the CAs are cooperative. Both PA and CA representatives confirmed that the PA follows the same procedure with every CA. The communication between them is always done officially, and in writing. As soon as the PA decides to begin the investigation process, it notifies the CA regarding all documentation needed to verify the EO's complaint.

The documents the PA requests from CAs include information on the procurement process under investigation, its progress, and the records/reports of the OEC and - in complex cases when the PA considers it necessary - the documents bidders have submitted online. From all the interviews, it seems that the PA's request to have more specific information or documents does not depend on the stage of the procedure, but on the PA's need to clarify a particular point during the procedure.

Almost all the interviewed CAs pointed out that, most of the time, the PA focuses not only on the specific complaint, but extends the investigation to cover the whole procurement process.

Both CA and PA representatives confirm that the investigation process is always held at the PA's office. In cases when the PA considers it necessary, he or she calls the representatives in the corresponding CA to his or her office in order to access and verify the files that the EO uploaded. "The requests to access information regarding the complaint are always in writing. There have been cases when I went to PA's office when they needed to access the documents in the EPS", said a CA representative. While this procedure has worked for both sides until now, the CAs suggest, as one CA representative put it, "It would work better if the PA could log into the EPS so that there is no need for us to go there; this will also shorten the time investigation procedures take."

In the case of concession procedures, the communication with the PA is conducted via mail. One CA interviewee said that "PA requests only written information from us; we send them what

they require, including the bid documents. This procedure has worked for us.” Most of the CAs believe the investigation process is thorough and professional, and has had a positive effect. In some cases, they said, that the investigation process has been very detailed, exceeding what the complaining EO asked for. However, some of them had mixed experiences and expressed doubts concerning the PA’s professionalism. According to the PPC representative, “the PA’s investigation procedures are complete and well organized . . . there is nothing to correct in this regard, as they fulfill the PA’s role as defined in the procurement law”.

One issue on which CA representatives are divided is whether or not the complaining EO or other EOs that participated in the procedure that the PA is investigating should be involved and/or questioned during the investigation process. Some CAs do not object to the inclusion in the investigation process of the complaining EOs and other bidders for the tender in question, and they even argue that their participation can help explain reasons for the complaint and help resolve it. Other CAs believe that there is no need for the EOs to be directly involved in the investigation, because they have already made their arguments and submitted the required documents in the complaint. A third group of CAs believe that the PA should decide on a case by case basis whether or not to include EOs in the investigation process.

In general, there is no communication with the complainant during the investigation process, according to PA representatives. However, in some cases, EOs and CAs need to discuss technical issues.

Upon receiving the PA’s recommendation, the OEC decides whether to comply with it. The majority of CA representatives said they that they comply with the PA’s recommendation when it is the same as the PPA/PPC’s decision. Some CAs said that, if the EO filed the complaint with the PA but not with the PPC, they complied with the PA’s recommendation. In all other cases, CAs said that they comply with the PPA/PPC decision as required by law. Many CA representatives cited cases in which EOs complained to both PA and PPC, and the CA then had to wait for the PPC decision, even though it had received the PA’s recommendation and considered it complete, clear, and legally sound. However, almost all the interviewed CAs mentioned that they still take the PA’s recommendations into consideration in the following procurement procedures they conduct.

For the PA representatives, the different conclusions do not mean that the law is violated; it’s simply an issue of interpretation.

Sending the recommendation to the CA is the last interaction between the PA and CA, according to the PA representatives. The CA does not inform the PA whether it complied with the recommendation, and they are not legally obliged to do so. Instead, the PA staff checks online to see if the CA has taken their recommendation into consideration. This is the reason why the PA cannot state the exact percentage of recommendations that the CA has considered.

B.3 Evaluation of the PA’s work

CAs agreed that the PA’s recommendations generally address the issue/complaint correctly and professionally. The legal reasoning is thorough, rarely leaving room for interpretation. One CA representative said, “[The] PA always provides explanations, even in detail, and the PPC should do the same because it is their decision that is going to be enforced.”

Some of CA interviewees expressed concern that sometimes the PA's recommendation (and the PPC decision) goes beyond the subject of the EOs complaint, creating confusion on how the CA should process the decision/recommendation. The PA representatives also emphasized the need to reference correct precedents - especially to document abnormally low offer prices and proof of discrimination, as these are two of the main issues cited in EO complaints.

The time required to receive the PA's recommendation is considered by the CAs as a problem. Almost all of the interviewees agreed that should they receive the recommendation in a shorter time period, that this would help them complete the procurement procedures faster, which is especially important in cases when there are urgent public needs for the procuring object. However, CAs mentioned that in cases when an EO files complaints to the PA and to the PPA/PPC at the same time, the PA has responded faster.

PA representatives said that the law does not specify an appropriate timeline for the investigation or monitoring process: "We have no time limits in addressing the EOs complaints, but we try to answer them as soon as possible. It depends on the CAs, who should provide relevant information/ documents on time to shorten the investigation time."

The PA staff is professional, very qualified, and responsible, according to the CA interviewees. They carefully follow all the necessary procedures when interacting with other institutions, all the correspondence is documented and legal references and recommendations are well argued and based on the law. The PPC staff have a similar opinion about the PA's staff, except that they think the PA's staff is too small in number. About the PA's number of staff, even a few CAs interviewees noted that it is small.

The majority of CA interviewees said they were not aware the PA has a web page where they can find all the published recommendations. The rest said they have visited the site, but very rarely, and only when they needed to check on a specific published recommendation.

All the interviewees from PA, PPA, and PPC, however, said that the PA's website is a place for all interested parties, especially EOs and CAs, to review and/or reference recommendations. For one of the PPC's representatives, "[The] PA is among those few public institutions that make all its decisions available online. This is a key indicator of the transparency and impartiality this institution brings to the procurement process."

B.4 Interaction between PA and other institutions - PPC/PPA

The formal interaction between the PA and PPA is strictly informative. The PA is required to send their recommendations to the PPA, as the latter oversees the public procurement law's administration. Interviewees noted that they believe no further interaction is required between the PA and the PPC, as defined in the laws. As one PPC representative explained, "Actually, there is no definition in the legal framework of any institutional report between [the] PA and PPC. The lawmakers thought that PPC should be independent and unaffected by the thoughts of others." For all interviewees from the PPC and PPA, their institutions' roles are well defined in the law; each of them has its role within the legal frame and no changes or other improvements are needed. Some of them believe that the PA should have a closer relationship with the CAs

because the recommendations are intended to help them. Others believe strengthening the PA's status is solely tied to interaction with the EOs.

One of the PA interviewees suggested that legal improvements (mainly the secondary legislation) are needed to improve cooperation between the PA and PPC. "I suggest that in the case of an EO complaint to both the PPC and the PA, the recommendation that we make should be considered by the PPC prior to issuing their decision."

Some CAs recommend that the "silent consent" principle should be applied when the PPC does not meet the decision deadline. In these cases, the PA's recommendation would have to be enforced. Accordingly, the procurement process would go forward without needing the PPC's decision. The most problematic issue for the CAs is how to proceed when the PA and PPC have differing recommendations for the same complaint. Although this does not happen often, when it does occur, it causes confusion. One of the CAs said, "The PA and PPC should find a way to cooperate with each other, because the lack of a cohesive decision damages their reputations."

One of the CA respondents suggested the PA exceeds its legal authority in two ways: 1) by undertaking an initiative to decide on administrative measures concerning CA representatives, and 2) monitoring a procurement procedure after the contract with the winning EO has been signed. "There should be changes in the law if the PA wants to continue taking on such responsibilities."

5. FINDINGS FROM ANALYSIS OF THE PROCUREMENT ADVOCATE'S LEGAL STRUCTURE

A. Establishment of the PA and its Competences

The Procurement Advocate Institution was established by Law No. 9643, dated 20.11.2006, "On Public Procurement", as amended². This law provides the legal basis to establish the Procurement Advocate (PA) Institution and it determines the framework of its activity.

As provided in the law, the PA is an independent institution that reports to the Assembly of the Republic of Albania. Article 14, paragraph 1 of the law identifies the PA's mandate as follows:

"The Public Procurement Advocate protects the rights and legitimate interests of the candidates, bidders or suppliers from the irregular or illegal actions or omissions of the contracting authorities in the field of public procurements, through the monitoring and investigations of the public procurement administrative procedures."

According to the article cited above, the main purpose of this institution is to guarantee protection of the interests of the entities participating in a procurement procedure or competition from the incorrect application of the competitive procedures by the CA's.

² Law No. 9800 dated 10.09.2007, Law No. 9855 dated 26.12.2007, Law No. 10170 dated 22.10.2009, and Law No.10309 dated 22.07.2010

According to Article 7 of Law No. 9663, dated 18.12.2006, "On concessions", the PA is also conceived as the only institution to protect the legitimate interests of the bidders in procedures to award concessions. Paragraph 1 of this Article provides that:

"The monitoring of the implementation of this law as well as sub-legal acts adopted under and pursuant to the law, during the concession procedure, to protect the bidders' legitimate interests, is made by the Public Procurement Advocate"

In the concession area, as defined above, the PA is the only body that has the responsibility to monitor the competitive concession procedures.

In accordance with the above laws, the PA is established with the only purpose to protect the interests of the entities participating in the competitive procedures from the actions or omissions of the Contracting Authorities (CAs) that are against these procedures. Both laws consider the PA as an institution whose authority is not to review an administrative complaint against an administrative act of the CA, but rather as an institution established with the only purpose to ensure legal compliance and a fair implementation of the competitive procedures by the CA, thus guaranteeing protection of the legitimate interests of the entities participating in these procedures.

B. Findings

B.1. Appointment Procedures Provide Inadequate Protection from Influence by Executive Branch of GoA

Although the law provides independence from executive power through its placement under the People's Assembly of the Republic of Albania, the appointment procedures of the PA allow for influence by the executive branch of government.

In compliance with Article 15, paragraph 2, the PA is appointed by the People's Assembly upon the nomination by the Council of Ministers. Based on the functions assigned to this institution, in order to guarantee its independence, it would be more appropriate to have also the participation of the stakeholders in the selection of the PA candidate. For example, a sublegal act could require the CoM to consult with stakeholders before nominating the Advocate.

This type of appointment procedure would provide greater independence from influence by contracting authorities or the executive branch; thereby better protecting the business community from abusive or illegal actions.

B.2. PA's Right to Appeal Its Recommendations to Higher Bodies is not Specified

The law considers the PA as an independent institution, and its intervention in the procurement process is seen and considered as a necessity to guarantee regular, transparent and fair procurement procedures. The PA does not make direct decisions to provide administrative relief in response to a complaint, but instead issues recommendations to remedy violations that it has determined upon investigation.

To better accomplish its mission, the PA should also have the authority to pursue its findings by appealing to bodies that supervise the CA and as far as the People's Assembly, through a report, by proposing specific measures to remedy the violations made. Such a right is not clearly and completely defined in the law in force. The law needs to be improved in this respect because a process to remedy a violated right cannot be accomplished only by informing the CA through the recommendation, but by requesting correction of the identified violation.

The law clearly states that: *if the PA identifies no violations at the end of an investigation process, then it explains to the complainant in writing, if there is any, the reasons to terminate the investigation as well as forwards the information to the Public Procurement Agency.*" However, the law does not define what happens if the PA has identified violations and what CA should do upon receiving the recommendation. In this regard, the law needs to be improved by highlighting the CA obligation to reply to recommendations or provide information on violations identified by PA.

PA should make more use of the right that the law provides to draft regulations or manuals to fulfill its mandate. The PA should draft these documents, asking for cooperation from other institutions, and also make them public to all interested parties.

B.3. Lack of Detailed Procedures Leaves Opportunity for Abuse and Non-transparent Investigation

The PA's internal procedures are regulated by Articles 69, 70, 71 and 71 / 1 of Law No. 9643, dated 20.11.2006 "On Public Procurement" and Article 7 of Law No. 9663, dated 18.12.2006 "On concessions". According to these provisions, the PA can act on a direct complaint from an entity or by its own initiative. Both laws specify procedures for investigation of specific types of complaints. According to both laws, the PA is authorized to conduct a full and thorough investigation only concerning the procedure followed, not for the substance of the cases that it reviews.

Article 70 of the Law "On Public Procurement provides that *"Based on a complaint, or on its own initiative, the PA may start an investigation procedure, if he/she observes or suspects that there has been an infringement of this law."*

In the case of initiation of an investigation in response to a complaint, there are legal provisions in place, starting from the moment the complaint is registered until the completion of its review. However, for the review of cases initiated by the PA itself, the law does not provide procedures, thus leaving them at the discretion of the institution itself. The law should provide both general principles and the procedures for cases when the PA takes the initiative to start an investigation. Specifically, the Law on Public Procurement is flawed with regard to failure to set a time limit for investigations that the PA initiates on its own. Instead it authorizes the Procurement Advocate to set a time limit, which is inconsistent with international best practice and general legislative principles for investigatory bodies.

While the law defines the PA's right to monitor a procurement procedure, it fails to clearly state how the PA can intervene in each of the stages of this process. The failure to do so might bring consequences for both the CA and participating subjects. A sub-legal act or a joint regulation prepared by the PA and PPA can regulate this area.

B.4. Inadequate Specification of Investigation Procedures Impedes Ability of PA to Obtain Necessary Information

The laws "On public procurement" and "On concession" provide the general procedural principles and recognize some fundamental rights for the procedural actions of the PA. Both laws, especially the first one, provide in detail the timeframes for investigation following a complaint regarding the procedural actions, the right of parties as well as the rights of the PA to conduct an investigation on a competitive procedure.

However, further detail is needed to specify the procedural actions that the PA should conduct, as they are described neither by the sub-legal acts, nor by the internal regulations of the PA. In contrast, the Public Procurement Agency (PPA) and the Public Procurement Commission (PPC) are subject to procedures detailed in the sub-legal acts.

Article 70 of the law provides the framework on which the PA bases its investigation, but does not provide further details on how these rights are to be applied from the procedural and practical point of view. For example, the PA has the right to access public administration offices (CAs) when conducting an investigation. However, the procedures and guidelines to do so are not clearly defined. These would include the means of requiring access, the time limits to guarantee access to CA's offices, as well as how to proceed if access is not guaranteed.

B.5. Lack of Cooperation by the CAs Might Impede the Investigation Process

While the above-mentioned laws have determined the legal basis of an investigation of a competition procedure, they are silent on how the PA should proceed if the subject CA fails to act or comply with the PA's requests regarding the investigation underway.

For example, the Law provides the PA's the right to request documentation from CAs but does not appropriately define the consequences a CA would face if it does not comply with such a request.

The Law also does not assign responsibility clearly to any specific individual within the CA to provide information or documentation, etc. Instead Article 73 assigns the Director of the CA the responsibility to obtain the information from the knowledgeable individuals within the CA. This provision impedes the PA's ability to conduct the investigation process and can negatively impact the final results.

Additionally, although Article 73 of the law defines that: "*Refusal of the civil servant, functionary or public authority to cooperate with the Public Procurement Commission, Public Procurement Agency and Procurement Advocate is a reason for these institutions to request the responsible authority the undertaking of disciplinary measures*", it does not state what happens if the disciplinary measure is not taken. The law should be specific about this point, as well as the CA's obligation to notify in writing whether it took any disciplinary measure or the causes of its refusal.

B.6. There is no Visible Cooperation among Parties Involved in Procurement Process Investigation (PA, CA, PPA and PPC)

After analyzing both of the above mentioned laws, as well as other laws, including the Code of Administrative Procedures, which regulates the activity of the state administration, we find that there is no duplication in the legal responsibilities of these institutions, and that each of them has its own defined mandate. But, the law itself does not state explicitly and clearly on how these institutions cooperate.

The Paragraph 3 of Article 70 provides that: *“even when the PPA is reviewing the complaint with the same object, the PA coordinates actions in conducting the investigation”* has been abrogated with the Law no. 10170, dated 22.10.2009 “On several addenda and amendments to the Law no. 9643, dated 20.11.2006 “On Public Procurement,” as amended. With the abrogation of this provision, the law fails to state clearly the ways of cooperation between these important institutions in the field of procurement

The law should define cases and areas of cooperation among these institutions in order to mutually support each other’s activities and improve the legal framework on procurement procedures, starting with the PA obligation to inform not only the CA of the conclusions/recommendations of an investigation process, but also the PPA and the PPC.

Article 71/1 foresees that the only opportunity for cooperation is in the event that PA proposes recommendations to improve the legal framework. PA also has the right to propose amendments or improvements to administrative regulations approved by the CAs, if they run contrary to the law. Both paragraphs of article 71/1 grant the PA a very important role to request improvements of procurement procedures; however, its role ends with the presentation of recommendations. In this regard, the law must foresee the obligation of the institutions that receive recommendations/suggestions to reply to the PA and cooperate with it, in order to incorporate them in the legal acts or administrative regulations.

Overall, all these institutions should focus more than on simple cooperation for a concrete procedure under investigation, but also on preparation of Joint Instructions, that would define mutual obligations of each institution. Another approach that the PA should use to enhance cooperation, specifically with CAs, is signing Memoranda of Cooperation with CAs, mainly focusing on the support the latter should provide to the PA to carry out the investigation/monitoring process.

In order to enhance the PA’s role and contribution towards more transparent and fair procurement procedures, the Law should require state institutions to forward to the PA draft amendments to the laws or sub- legal acts affecting the procurement process.

The law also needs to be improved regarding the PA’s obligation to inform the participating/complaining bidders in an investigated/ monitored procurement procedure of the conclusions of such investigation. Although this obligation can be inferred, the law does not clearly define it. Doing so, the PA will improve the cooperation with the businesses while the latter can use such documents in court, when necessary.

MODERATION GUIDES

GUIDE FOR FOCUS GROUP WITH ECONOMIC OPERATORS

A. Presentation of the project

The moderator makes a short presentation of himself/herself, the overall goal of the study and purpose of the focus group as well as the duration of the discussion.

This meeting / discussion is part of a study that the Center for Development and Democratization of Institutions is performing with the support of the Second Phase of the Millennium Challenge Corporation for Albania Program (MCCA2). MCCA2 is a two-year agreement between the Government of Albania and the Government of the United States, funded by the Millennium Challenge Corporation (MCC) and administered by the United States Agency for International Development (USAID).

The goal is to assess the progress of Procurement Advocate's work to date and provide recommendations for further strengthening his contribution to making the public procurement process in Albania more effective, more transparent, and fairer. The period under study is January 2009 till now (September 2010).

The questions in this guide are organized in sessions to better describe interaction of EOs with the Procurement Advocate and its role. However, the discussion may reveal other important situations that would be useful to be elaborated.

You have been selected from the list of Economic Operators that have filed a complaint to the Procurement Advocate.

This discussion will take about 90 minutes. We would like to thank you in advance for participating.

Moderator: Please introduce yourself and what you do regarding the public procurement procedures.

B. Understanding the PA

17. How did you first learn about the PA? What did you first think of this new institution?
Explain how you see this institution and its functions.
18. What were your expectations? How does the fact that PA provides recommendations not decision affect the way you view this institution?
19. How useful/ helpful is PA in a procurement process?

20. What is for you a positive experience with the PA? How about a disappointment? What are the reasons in each case?

C. **Interacting with the PA**

Moderator: You have submitted at least a complaint, so we want to understand the interaction you had with the PA.

21. What were the reasons you submitted complaint to PA as you could have filed it to the CA only?

Moderator: Issues to be discussed (cost free to EOs; easy to reach PA; previous positive experience (complaint was resolved in EOs favor; confidence in PA's job accuracy and effectiveness; professionalism of staff; transparency as the recommendation goes to CA, PPA, and PPC).

22. What do you think of the way PA addressed your complaint in terms of accuracy, comprehensiveness, timeliness, efficiency, impartiality, transparency?
23. How do you judge the professionalism of PA's staff? Any areas of improvements you can suggest?
24. What do you think of the CA's reaction when received the PA's recommendation? Tell us some examples.
25. How PA's recommendation helped you when you filed complaint to PPA/ now PPC? Please describe your experience.
26. For those of you who have participated in a concession procedure, can you describe how your interaction with PA was?

Moderator: You know that PA has the right to initiate investigation of a procurement procedure even if there is no complaint.

27. For those of you that have been subject in these investigations, what do you think of them? How do you consider these investigations in terms of usefulness, effectiveness, transparency, and making the procurement process fairer?
28. What do you think of PA's website? How the information there has helped you as EOs and/ or helped in making the process more transparent? Any improvements you would like to be done?

D. PA's role as an institution in the procurement process

29. What do you think of the cooperation among public institutions involved in procurement procedures (CAs, PPA, PA, and PPC)? Anything you consider necessary to be change - legal aspect, procedural, etc?
30. What does PA do for you now that would have been impossible (or at least more difficult) without this institution? (the need for the PA) How can the interaction between EOs and PA can be improved?
31. It's almost a year and a half this institution is assisting EOs. Recalling PA's role and your experience, what do you think of the possibility of going to this institution again in the future? What are the reasons for yes or no?
32. What do you think it could be done to improve the PA's role in terms of making its work more effective, useful, and transparent? What you as EOs could do? What PA could do? (any legal changes, PA would share the complaints and recommendations with all CAs in order to avoid/ reduce the same type of complaints)

Thank you!

**GUIDE FOR FOCUS GROUP WITH ECONOMIC OPERATORS
THAT HAVE NOT FILED COMPLAINT TO THE PROCUREMENT ADVOCATE**

A.Presentation of the project

The moderator makes a short presentation of himself/herself, the overall goal of the study and purpose of the focus group as well as the duration of the discussion.

This meeting / discussion is part of a study that the Center for Development and Democratization of Institutions is performing with the support of the Second Phase of the Millennium Challenge Corporation for Albania Program (MCCA2). MCCA2 is a two-year agreement between the Government of Albania and the Government of the United States, funded by the Millennium Challenge Corporation (MCC) and administered by the United States Agency for International Development (USAID).

The goal is to assess the progress of Procurement Advocate's work to date and provide recommendations for further strengthening his contribution to making the public procurement process in Albania more effective, more transparent, and fairer. The period under study is January 2009 till now (September 2010).

The questions in this guide are organized in sessions to better understand the perception and opinions of those EOs that have participated in procurement procedures but have not filed any complaint to the PA. However, the discussion may reveal other important situations that would be useful to be elaborated.

You have been selected from the list of Economic Operators that were active on EPS starting from January 2009, but have never filed a complaint to the Procurement Advocate.

This discussion will take about 90 minutes. We would like to thank you in advance for participating.

Moderator: Ask EOs' representatives to introduce themselves and what they specifically do in relation with public procurement procedures.

B. General information

Moderator: Even though our first intention is to understand your perception and opinion regarding the Procurement Advocate, we want to start with some questions re procurement procedures. If you have filed complaints directly to CAs where you have submitted bids, or to PPA/ PPC please refer to that experience, where necessary.

10. What is your opinion about the public procurement system? What do you think of each of the institutions involved: Contracting Authorities, Public Procurement Agency, and Public Procurement Commission and their specific role? How familiar are you with each of them?
11. What do you think of your right to complain in a procurement procedure? How often do you use this right? (careful here: maybe these EOs have not filed complaints at all, even to the CA)
12. If you have filed a complaint to a CA, could you please describe this experience? The steps you took, how the complaint was addressed by CA's staff; the result; etc. What do you think would have been different if you had a recommendation from PA?
13. If you have filed a complaint to PPA/ PPC, could you please describe this experience? What do you think would have been different if you had a recommendation from PA? What are the reasons you think this way? (the procedure might have been fairer, more transparent, etc.)

C. PA as a institution in the public procurement system

Moderator: We want to know if you have enough information on PA institution and its role in helping EOs and assuring the correct implementation of the legal frame work on public procurement.

14. What is your understanding of the PA's role and impact, as a separate and independent institution, in the public procurement system? How did you first learn about it?
15. We know that you have not filed any complaint to PA? What were the reasons for not using this right? (there is no need as CA solved the problem; you thought that complaining at PA is not worthy as it provide a recommendation and not a decision; you have the perception from other companies that have file complaints to PA and they are

disappointed with the way the institution handled it or the timing of getting the recommendation or the accuracy, etc.)

16. In general, what is your perception of the PA's efficiency and usefulness in addressing a complaint?
17. If any of you have been subject of the PA's own investigations, please describe your experience? What do you think of the way they conducted the investigation, professionalism of staff, the results it brought, etc?
18. Have you ever seen the PA's website? What do you think of it? What should be done to make it more efficient and easy to use?

Recommendation

Moderator: From your perspective as an Economic Operator that never addressed to PA complaints, we need to discuss on your future behavior toward complaining process.

5. What's your general consideration / perception of PA as a institution that helps in making the procurement procedures fairer, transparent, and more effective? What about the PA's impact in making CAs more responsible in respecting procurements law?
6. Considering that this institution is assisting EOs, what should EOs do to improve cooperation with PA? What PA itself should do?
7. What do you think it could be done to improve the role of the PA among other procurement related institutions (PPA and PPC) in terms of making its work more effective and transparent?
8. Based on your experience with public procurement procedures, what changes would you like to see in order to make PA a more efficient and useful institution that you will rely in the future?

IN-DEPTH INTERVIEW GUIDE WITH CONTRACTING AUTHORITIES (CA)

Instructions for the moderator:

4. The guide will be used as reference to conduct the in-depth interviews with CA representatives and specifically with the Specialist or authorized persons that had/have administered complaints submitted by Eos and the implementation of the PA's recommendations.
5. The interview will take place in his/her office where the interviewee will feel comfortable and may have access to the data/ information requested by the interviewer.

6. There are explanations below some of the question, written in *Italic font*. They are for the moderator to consider and use to spark the discussion, not as direct question to the respondent.

Interviewee data:

Institution: _____

The Interviewee: _____

Job position: _____

Address: _____

Telephone: _____

Email: _____

Interview data

Interviewer's name

Date of the interview:October 2010

Interview starting time end time

District _____

Description of the Study

We want to inform you that the CDDI is conducting a study to monitor the Procurement Advocate work, with the support of the Millennium Challenge Corporation Albania Threshold Program II (MCCA2).

This is a two-year program realized by the cooperation of the Government of Albania and the Government of the United States, funded by the Millennium Challenge Corporation (MCC) and administered by the US Agency for International Development (USAID).

Through this In-depth interview we aim to get your experience and opinion on Procurement Advocate's role in the procurement process in Albania as well as your input/ recommendations on improving its interaction with you, other institutions and economic operators in making the procurement process fairer, more effective and transparent. We are open to any recommendations you consider necessary.

You have been selected as a representative of your institution, having administered a complaint that has been filed by a bidder/ EO during 2009-2010.

All the information you provide in this interview will be treated as confidential, which means that no interviewee will be identified by name in the study report or elsewhere – only the aggregate results will be reported.

We'll be happy to share with you the summary of the results and recommendations of this project.

For any question and information, you can contact CDDI at ilir.aliaj@qzhdi-al.org or phone +355 69 209 5 28

I. Interviewee's experience with procurement procedures

27. Could you tell us briefly about your institutions' experience as well as yours with procurement procedures?

Moderator: ask about data on number of the procurement procedures this CA has administered from 2009 till September 2010, the respondent's years of experience, number of complaints submitted by EOs (in total OR on average per procedure), number of complaints that you have resolved by yourself without any intervention (recommendation/ decision) from the PA or the PPA/ PPC).

Let's start with a normal procurement procedure.

28. In general, what are the reasons/issues that EOs complain about? Which steps of the procurement procedure do they complain the most about?

(Moderator: get information on the types of complaints administered by this CA)

29. What do you think of EOs? How well prepared are they to understand and follow the procurement rules. *(for example, submit correct documents; submit them on time, etc.)*

II. Interaction between the CAs and the PA

You know that EOs have the right to submit complaints to the Procurement Advocate regarding procurement procedures and he initiates an investigation to address it.

30. How do you generally receive the request from the PA so that he could have at his disposal the documentation of the procurement procedure? *(in writing - formally, by phone, the PAs' specialist comes to you, etc.)*

31. Based on your experience, what documents does the Procurement Advocate ask for when they investigate a case?

Moderator: the PA may ask just for the file of the complaining EO or for the entire set of documents for that procurement procedure

32. How thorough/complete/adequate are the investigation procedures that the PA uses?

33. How transparent do you think is the investigation procedure that the PA uses? What do you think of EOs involvement while PA investigates the case?

(should the PA contact the EO personally to further discuss/ understand the complaint or the PA does investigation based on what EO mentioned in the "Complaint" documents)

34. How and where does an investigation process take place? Could you please describe one?

(the PA's specialist visits and discuss with the CA, or CA just supplies the documents with no further interaction with the PA)

35. What can be done to improve the investigation procedures to make it more effective?

(Any legal regulation issued by the PPA, or the PA, or any amendment in the law)

At the end of every investigation, the PA issues his recommendation and now it's your turn to consider it or not.

Moderator: ask how many recommendations issued by the PA have been registered in your institution for the year 2009 until September 2010? OR on average per procurement procedure; number of recommendations considered by the CA and number of recommendations that have not been considered).

36. Could you please tell us what do you practically do with the recommendation?

(CA discusses it internally; interact with the PA after receiving the recommendation; formally reply or not to the PA on measures taken to correct the problem)

You know that the complaining EO has a copy of the recommendation.

37. Could you please describe how your interaction with the complaining EO is? How about with the rest of participating EOs?

III. CA's evaluation of the PA's work

38. Referring to your general experience, how do you consider the PA's recommendation in terms of?

- *how correctly and accurately they address the specific complaint;*
- *the timing – whether it is submitted to you within the legal time limit;*
- *how accurately and thoroughly it considers all the legal framework*
- *the way it's written (clearly, it does not leave room for further interpretation, etc)*

39. Upon receiving the recommendation, what are the reasons for complying or not with it?

Please tell us two examples.

40. How did the PA's recommendation help you to improve the way you administer the procurement process? What did you do better in the next procurement procedure that was a direct result of what the PA had previously recommended?

You know that the PA monitors a procurement procedure even without a complaint.

41. If your CA has been monitored, how and where has the monitoring process happened? Was it different from the investigation that usually starts with the EOs complaint?

Moderator: ask for data on the number of the PA's monitoring and how many has the CA has complied with.

42. What do you think the PA should focus on more in the future: investigation following a complaint or initiate it's own monitoring of the procurement procedure? Please tell us your reasons?

43. What's your opinion about professionalism of the PA's staff? What do they do correct? What wrong?

44. What specifically do you visit the PA's website for and how often?

45. What do you think of it? What else should be in the website to assist you better?

(for example, easy to use, find what you look for; information is updated, etc.)

46. Is there anything (legal or regulatory) missing in the PA's functions and competencies that creates problems when you deal with this institution? *In other words, if PA had this competence, it would have helped CAs a lot the procurement process?*

IV. Complaints among three different institutions CA/PPC/PA and their cooperation

The EOs complaint used to be investigated by the PPA. Now, there is a new institution, the PPC, which issues a decision regarding the EOs complaint.

47. What do you practically do when you receive two different responses for the same complaint, the recommendation by the PA and the decision by the PPA/PPC? Could you please describe it through an example?

(for example, definitely comply with the PPA/PPC's decision or request the PPC to review the decision based on the PA's recommendation)

48. What would be the reasons that you would rather comply with the PA's recommendation and not with the PPA/PPC's decision? How much does the fact that the PA issues recommendations affect your decision as CA?

49. In general, how did the PA's work impact the entire procurement process?

(in terms of transparency, accountability of both EOs and CAs, effectiveness)

50. In your experience, how would you describe the way the CA, the PA and the PPC cooperate/interact among them? *(how effective, transparent, on time,). What's missing? What goes well, what doesn't?*
51. Do you think the relationship among these institutions is legally well-regulated? In other words, does each of them have clearly defined competencies that assure a fair and transparent procurement process? Do you have any suggestions about what has to change or be amended?
52. In your opinion, how can the PA's work be improved? What should the PA itself do? What should other institutions do?

(PA provide trainings; meet CAs regularly to discuss cases investigated/ monitored and his recommendations)