Effective corruption control: Implementing review mechanisms in public procurement in Kenya, Tanzania and Uganda[1]

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I. Introduction

Curbing corruption in public administration has become one of the major goals in development cooperation. Public procurement is highly affected by corrupt behavior due to its administrative complexity, financial volumes and close interaction between the public and the private sphere. Transparent procurement procedures and efficient organizational structures are therefore essential in order to prevent corruption-caused distortions of competition. Effective remedy systems in public procurement are crucial to strengthen general public trust in the rule of law and a reliable and impartial public sector. The research project will analyze and compare the three different remedy systems in procurement law in *Kenya*, *Tanzania* and *Uganda* with regard to their capacity to work as an anti-corruption tool. A special focus will be laid on the issues of independence, accessibility, efficiency and prospects of success.

The first part of the presentation will briefly introduce the remedy systems of the three countries, while the second part summarizes our findings of a 5 week study visit to Nairobi, Kampala and Dar es Salaam where we conducted a series of expert interviews and shared experiences with relevant stakeholders in public procurement to get further insights on the actual implementation of the law, especially with regard to legal remedies.

II. Public Procurement and Corruption in Kenya, Tanzania and Uganda

In almost all countries in the world public procurement through government contracting represents a large – if not the largest – percentage of economic activity. In all three countries investigated a considerable percentage of the annual budget is spent through public procurement. At the same time, the countries are highly affected by corruption: *Kenya* ranks

[1] In February 2012 the Ruhr-University of Bochum, Faculty of Law, started a two-year research project financed by the Fritz Thyssen Foundation. It seeks to analyze the specific conditions within the procurement systems of Kenya, Tanzania and Uganda, and their actual eligibility to reduce corruption in public procurement processes. This paper represents findings within the frame of the research project. For further information see http://dbs-lin.ruhr-uni-bochum.de/ls_kaltenborn/en.

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139, *Uganda* 130 and *Tanzania* 102 out of 176 countries (score 27, 29 and 35 and on a scale from 0 (highly corrupt) to 100 (very clean)) in the Corruption Perceptions Index (CPI) 2012 published by Transparency International.[3] As corruption remains to be one of the major factors that hinder social and economic development, especially developing countries in sub-Saharan Africa have a strong interest in strengthening public procurement systems and curbing corruption.

A first comparison of the legislative material has shown minor deviations of the procurement laws in the three countries and a great similarity of the legal frameworks in general. The legal frameworks were established between 2003 and 2007 and are based on the UNCITRAL Model law on Procurement of Goods, Construction and Services (1994). Basically procurement activities are regulated by procurement acts and accompanying regulations. Currently all of the systems are undergoing reforms at different stages. Reformed legal frameworks are expected within the next two years.

A procurement process or cycle can generally be divided in five steps:

- Demand determination
- Preparation phase / process design and preparation of bid documents
- Contractor selection and award
- Contract implementation
- Final accounting / audit

Several moments within the procurement process are especially prone to corruption because they are subjective and therefore allow biases that easily remain undetected. I.e. specifications or terms of reference can be designed to favor a certain supplier. The contractor selection and award phase may allow exchange of confidential information before submission of tenders or biases while evaluation of tenders. At that stage it can also occur that clarifications are made in favor of certain bidders or are not shared with all bidders.

III. Review mechanisms and their anti-corruption potential

Administrative and judicial review processes provide the possibility for bidders to claim their subjective rights under the rule of law. At the same time they are meant for controlling the

[3] http://cpi.transparency.org/cpi2012/results/.

compliance of procurement procedures with legal frameworks. Their preventive effect lies in the contracting parties´ awareness that procedures can be monitored ex-post by (independent) authorities. Furthermore the use of legal remedy by bidders can initiate in-depth investigations in case of suspicion of corruption. Compared to external monitoring bodies, bidders have an informational advantage on deviations from standard procurement processes due to their immediate involvement. Judicial review, in addition to the effects of the administrative review system, is crucial because it complies with the principles of checks and balances and creates an enduring process of establishing principles developed by the judiciary.

IV. Review mechanisms in Kenya, Tanzania and Uganda

The three countries investigated share a general dichotomy of administrative and judicial review.

1. Administrative review

Administrative review is the first step for bidders to seek legal remedy in case of any breach of law by the procuring entity during the procurement process. Administrative review is a one-stage procedure in *Kenya* (PPDA Sections 93 ff., Regulations 67 ff. PPDR), two-stage in *Uganda* (PPA-U Sections 89 ff.; Regulations 343 ff. PPDAR-U) and even three stages are foreseen in *Tanzania* (PPA-T Sections 77 ff., Regulations 109 ff. PPDAR-T). In *Tanzania* and *Uganda* the first step is a complaint to the Accounting Officer of the procuring entity itself. If the procuring entity does not redress the complaint, aggrieved bidders can escalate to the next stage – the procurement authority. In *Tanzania* the third stage is the administrative review authority, a body specially created to handle bidder´s appeals and that does exist in *Kenya* accordingly. Meanwhile in *Kenya* the complaint has to be submitted directly to the administrative review authority; complaints to the procuring entity and the procurement authority are not foreseen by law. While the administrative review is pending, procurement proceedings are – partly upon discretion of the procurement / review authorities – suspended (*Kenya*: non-discretionary, PPDA Section 94 PPDA; *Tanzania*: for seven days in case of timely submission of the complaint (non-discretionary), PPA-T Section 84 (1); further suspension by the procuring entity or procurement authority (discretionary), Regulations 112 (1), 113 (4) (b) PPDAR-T; *Uganda*: discretionary, Regulation 347 (4) (b) PPDAR-U).

After having investigated on the issue, the authorities / review bodies basically can reject or uphold the appeal. In case the complaint is – wholly or partly – upheld, they shall indicate the corrective measures to be taken (*Tanzania*: PPA-T Section 81 (3) (b); *Uganda*: Regulation 347 (7) (c) PPDAR-U), i.e. can annul the procuring entities´ decisions, terminate the procurement proceedings, give directions to the procuring entity on further actions or even substitute the procuring entities´ decision (*Kenya*: PPDA Section 98; *Tanzania*: PPA-T Section 82 (4)). An order of compensation payments is explicitly foreseen by law in *Tanzania* (PPA-T Section 82 (4) (f)).

2. Judicial review

Bidders who are not satisfied with the outcome of the administrative review have the possibility to proceed with judicial review in court (*Kenya*: PPDA Section 112; *Tanzania*: PPA-T Section 85), though in *Uganda* this is not explicitly mentioned in the procurement laws. While in *Kenya* the High Court is mandated to decide on judicial reviews in public procurement, in *Uganda* and *Tanzania* the courts of competent jurisdiction decide (i.e. *Tanzania*: Commercial Courts). Under the new *Tanzanian* procurement act jurisdiction will be transferred to the High Court as well.

3. Annex: Corruption cases

When corruption is detected the procurement authority / review body on the administrative level has the mandate to investigate but is not endowed with enforcement powers. All countries provide for institutions that are specially empowered to deal with cases of corruption and fraud. In *Kenya* the Ethics and Anti-Corruption Commission (EACC) is mandated to deal with corruption cases. The *Kenyan* procurement authority (Director-General) reports relevant cases to EACC. Accordingly in *Tanzania* corruption cases are referred to the Preventing and Combating of Corruption Bureau (PCCB). A Memorandum of Understanding institutionalizes the cooperation between the procurement authority and PCCB. In *Uganda* several institutions (with partly unclear or overlapping mandates) are in charge of corruption cases, as to mention the Inspectorate General of Government (IGG), the Public Accounts Committee (PAC) and the Criminal Intelligence and Investigations Directorate (CIID). Considering this institutional setting, it is striking though that in *Kenya*,

Tanzania and *Uganda* there has not been a conviction in a major procurement-related corruption case so far.

V. Implementation

Despite their different institutional designs, all three public procurement review systems in *Kenya*, *Uganda* and *Tanzania* are based on sound legal frameworks and provide for effective remedy systems. Nevertheless, laws are only as good as their implementation. The best remedy system on paper can be dysfunctional if bidders do not claim their right to review. Considering the fact that the problem of corruption in all three countries is related to a comparatively fragile rule of law and weak judicial systems, one can conclude that the trust of bidders in working review mechanisms is less strong than in countries where citizens can rely on proper justice. This article therefore argues that the public procurement laws in *Kenya*, *Tanzania* and *Uganda* in general and the respective review systems in particular are suitable to serve as anti-corruption instruments, but that their impact ultimately depends on the actual implementation by bidders. Four main factors are considered to influence the bidders' decision to seek administrative and judicial review and to make the systems eventually effective with regard to anti-corruption. *Independence* of the review bodies is a precondition for the arbitrary function of the institutions and the trust of bidders in fair procedures. Since the entities are embedded in a broader setting of public administration and a complex system of checks and balances, full independence is hard to achieve. It will be discussed, however, what are the main risks for conflict of interest and how they are approached by the different institutions. *Accessibility* is the degree to which procedural provisions facilitate or impede initiation of review processes. The provisions on exemptions from grounds for objection and standstill periods will be compared. Finally, bidders are economic players calculating their cost-benefit ratio before going into a review procedure. The *efficiency* of the process is therefore an important factor as well as *prospects of success*.

Implementation of review systems was explored during a field study between May 9th and June 4th 2013 in Nairobi, Kampala and Dar es Salaam. A total number of 38 experts (procuring entities and bidders; procurement authorities; academics and lawyers; national and international donor organizations, foundations, CSOs) were interviewed. The main findings of expert interviews and documentary research on the issues of independence, accessibility, efficiency and prospects of success will be represented in the following.

1. *Independence*

In countries where corruption is systematic and steered by political and economic elites, the independence of review bodies is essential. If bidders perceive review authorities as subordinates of political decision makers, they will not trust in their neutrality and hence refrain from lodging requests for review. The judiciary, on the one hand, must be independent from political decisions in order to be able to investigate, prosecute and convict corruption cases. However, all three countries suffer from considerable influence from the executive on the courts. Administrative review authorities cannot be separated from the complex system of public administration, full independence is therefore not realistically achievable. The procurement and review authorities in *Kenya*, *Tanzania* and *Uganda*, for example, are established under the respective Ministries of Finance which represents a conflict of interest, the Ministry being a procuring entity itself and, at the same time, the superior entity appointing review board members. It is important though to identify potential conflicts of interest within the review bodies and implement strategies to reduce these weaknesses of independence.

With regard to the relationship between review bodies and procurement authorities, the institutional settings of the three countries are different. In *Kenya*, the Public Procurement Oversight Authority (PPOA) is not involved in the review procedures conducted by the Public Procurement Administrative Review Board (PPARB). PPOA can therefore execute public procurement proceedings for its own needs like any other procuring entity. However, the Act stipulates that PPOA provides administrative services to PPARB (PPDA Section 25 (3)), inter alia paying allowances to PPARB members and providing secretariat services. Requests for review are hence received and registered by PPOA and forwarded to PPARB. This is a concern for reviews launched against PPOA as a procuring entity, as the respondent party is in charge of forwarding the claim to the board. In *Tanzania*, the Public Procurement Appeals Authority (PPAA) is institutionally independent from the Public Procurement Regulatory Authority (PPRA). Both bodies do not act as procuring entities, but procure their supplies and services via an external procurement agent; they are hence not potential respondents in a review process. The conflict of interest is located in the double function of PPRA that, on the one hand, gives advice and information to procuring entities on procurement procedures, and represents the second stage of administrative review proceedings on the other. This has led to complaints from bidders who had been advised by PPRA during the tender procedure on a

certain issue, but when it came to an appeal on the very same topic, PPRA had decided contrary to the previously made recommendations. This is one of the main reasons why PPRA will not be an integral part of the review system in the future as stipulated in the new Act from 2011. In the case of *Uganda*, the Complaints Review Board is not a separately established body, but works as an ad hoc committee of the Public Procurement and Disposal Assets Authority (PPDAA). The committee consists of PPDAA's heads of department and is therefore currently the least independent body of the three countries. This will change with the enactment of the new procurement law where a separate appeals body will be established, functioning as an administrative tribunal.

Of special interest with regard to independence are the procuring entities receiving complaints at a first administrative review stage in *Uganda* and *Tanzania*. It can be argued that the proximity of the procuring entity facilitates access to review procedures. On the other hand, independence and neutrality are hardly given where the institution conducting the tender procedure is also in charge of reviewing its own procedures. The decision making of the procuring entity is related to its relationship with the procurement oversight authority: The authority monitors compliance of all procuring entities. When it becomes aware of deviations in the procurement process like in the case of administrative review, the concerned procuring entity will most probably come to the audit fore of the authority. In order to avoid tight control by the authority, the procuring entity has two options: Either it will review the challenged procurement process thoroughly to make compliance waterproof; or it will decide in favour of the complaining bidder in order to avoid escalation to the next review stage. The first scenario is desirable, the latter highly prone to corruption. It is therefore disputed if procuring entities should be mandated to conduct review procedures or not.

2. Accessibility

Accessibility is a major factor influencing the bidders' willingness to initiate procurement reviews. If entry requirements are few and low-threshold, more tenderers will request reviews and therewith exercise a corruption controlling function. Many features of legal frameworks affect access to review systems, such as the amount of administrative fee payable by bidders, the language in whi,ch documents are issued, the geographical distance between the bidder and the review body and the general level of professional capacity in public procurement. In the following, the procedural provisions on formal exemptions from grounds for objection and

on standstill periods will be discussed with regard to their effects on granting or preventing access to review systems.

In all three countries, grounds for objection in the review process are one or several breaches of the procurement acts or regulations. However, the laws in *Kenya* and *Tanzania* exempt some stipulations from being challengeable, hence limiting the access to review in certain cases. In *Kenya*, only bidders who have actually submitted an offer to the procuring entity can request a review (PPDA Section 93 (1), Section 3 (1)). This provision discriminates against those suppliers and service providers that were unlawfully prevented from participating in a procurement procedure, e.g. due to a lack of neutrality in the specifications of the subject matter, customized in a way that only one bidder could respond to the tender. The manipulation of specifications or of terms of reference is a common means to carry out corrupt agreements between the procuring entity and the bidder as the risk of detection is relatively low. Another way to distort competition would be to apply emergency or single tendering instead of the prescribed procurement method in order to award the contract directly to the favoured supplier or service provider. It is therefore crucial for anti-corruption that also bidders that were unlawfully barred from participation can request administrative reviews.

The *Kenyan* law also excludes the choice of procurement method and the rejection of all offers from grounds for review, as well as procurement procedures that have already resulted in a signed contract and frivolous appeals (PPDA Section 93 (2)). The choice of procurement method and the rejection of all offers are also excluded from review in *Tanzania*, together with the shortlisting on the basis of nationality and the refusal of the procuring entity to respond to an expression of interest (PPA-T Section 79 (2)). Both the choice of procurement method and the rejection of all tenders are often used, however, to manipulate the tender process in order to award the contract to one preferred bidder. As mentioned above, the choice of procurement method by the procuring entity determines the degree of competition from single sourcing up to international open tendering. Whereas open tendering is supposed to be the default method in all three countries, restricting participation is the main interest of a procuring entity involved in corrupt activities. Bidders disadvantaged by the choice of method should therefore have the right to request a review in order to ensure competition and to prevent favouritism. Secondly, the repeated rejection of all offers can also lead to a manipulated tender result. In case of an unwanted tender outcome, the procedure can be cancelled and repeated up to the point when tender participation eventually decreases and the contract can be awarded to the only remaining bidder – with whom a corrupt agreement exists

and who is often contracted to inflated prices. The rejection of all tenders should therefore be challengeable at least when done repeatedly for the same tender.

Whereas the disqualification of certain grounds for objection makes it impossible for bidders to request a review, standstill periods determine at what stage of the procurement process, namely before or during contract execution, a request for review can be lodged. Challenging a procurement decision that has already resulted in a contract is much less promising for bidders than reviewing a procurement procedure that has been put on hold.

As mentioned above, procurement procedures that have resulted in a signed contract are not challengeable in *Kenya*. The rationale for this provision is to secure the efficient and uninterrupted contract execution. In order to give bidders the opportunity to lodge their requests for review before the procurement contract has been signed and entered into force, standstill periods between the decision on the tender result and the actual contract signature are stipulated in *Kenya* and *Uganda*. In *Kenya,* the standstill period begins with the notification of tender outcome and lasts for at least 14 days (PPDA Section 68 (2)). It covers hence the entire timespan bidders are given for submitting a request for review (Regulation 73 (2) (c) PPDR); consequently, no procurement contract can be signed before the deadline for submitting requests for review has elapsed. Upon receipt of a request for review, PPARB informs the procuring entity that the procurement procedure is to be put on hold until a decision on the request for review is taken. The *Kenyan* law provides thus both for sufficient time for bidders to claim their right to review, and for uninterrupted contract execution at the same time. However, it is not specified in the Act or regulations how the notifications of tender outcome are to be sent out to the bidders. The standstill period starts with *giving* notification, which can be very different from *receiving* the notification. By creating artificial sending delays, the timespan for reaction and submission of a request for review can be reduced considerably. In *Uganda,* the procurement regulations stipulate a standstill period of five or ten days between the notice of best evaluated bidder and contract award, depending on the procurement method applied (Regulation 224 (4) PPDAR-U). Bidders have a total of 15 days, however, for submitting their request for review, which are not covered entirely by the standstill period. Consequently, bidders can claim reviews in *Uganda* for procurement that is already in the stage of contract execution. The problem of informing bidders about the outcome of the tender procedure and the beginning of the standstill period discussed in the case of *Kenya* is solved by stipulating that notices must be sent with proof of receipt (Regulation 224 (6) PPDAR-U). Contrary to the other two countries, the *Tanzanian* law

contains no provision at all concerning standstill periods. The procurement contract enters into force when a written acceptance of a tender has been communicated to the successful bidder (PPA-T Section 55 (7)). Since bidders can request a review within 28 days after they became aware of the circumstances (PPA-T Section 79 (1)), a high number of administrative reviews in *Tanzania* are conducted on contracts in execution phase. The incentive to launch a request for review is therewith considerably reduced.

3. Efficiency

The duration of the *administrative review* process differs in the three countries. Under *Kenyan* law a bidder´s review has to be filed within 14 days from occurrence of the complained breach of law (Regulation 73 (2) (c) (i) PPDR). The administrative review authority (PPARB) is obliged to decide within 30 days (PPDA Section 97 (1)). As an internal target the *Kenyan* review authority aims to issue the decision within 25 days, containing 21 days for investigations and hearings and 4 days for the actual decision. During the financial year 2011/12 decisions could be issued in 25.5 days. The duration of the whole administrative review in *Uganda* can take up to 61 days including bidders´ deadlines to submit their applications for review. On the first level, the procuring entity (Accounting Officer) has to decide within 15 working days (Regulation 347 (1) PPDAR-U); the procurement authority (PPDA) on the second level has to issue its decision within 21 working days (Regulation 350 (4) PPDAR-U). In contrast to that the entire three-stage review process in *Tanzania* takes 146 days, whereas questioned experts stated 106 days duration, effectively. The Accounting Officer as well as the procurement authority (PPRA) and the review authority (PPAA) have to deliver their decisions within 30 working days (Regulations 112 (3), 113 (6) PPDAR-T; PPA-T Section 82 (5)). This might negatively affect bidders´ motivation to file reviews as especially small and medium enterprises / bidders might not have the financial capacity and human resources to endeavor the whole review period. It is therefore worth mentioning that the second stage will be abolished in the reformed *Tanzanian* procurement act in the future, which will lead to a shortening of the duration of the review process.

Additionally in all countries sufficient capacity in public procurement is a major challenge not only amongst bidders but also within procuring entities as well as procurement and administrative review authorities. This naturally occurs in remote more than in metropolitan areas and also affects review mechanisms. As procurement authorities and administrative

review authorities are short in staff this can influence the duration and documentation of administrative reviews. For example in *Kenya* the procurement authority is provided with about 50 staff and has to oversee and regulate all of the newly built 47 counties.

In all countries bidders´ initiation of *judicial review* remains exceptional. In *Kenya* a total of 40 judicial reviews have been initiated since 2007. In *Uganda* and *Tanzania* the total numbers of reviews initiated in the last years are much lower (Uganda: 5; Tanzania: 8). One reason why bidders generally hesitate to initiate judicial reviews can be long timelines of proceedings. Judicial reviews take much longer than those on the administrative level. Court procedures can take several years. Losses of evidence or sudden refusals of witnesses to appear in court are not unusual. As the procurement proceedings are not suspended while the judicial review is pending, bidders also lose interest in claiming their rights in court *("bidders want to do business, not to fight in court")* or they simply cannot afford to wait for the decision.

4. Prospects of success

In *Kenya* 37 % of all *administrative reviews* between 2007 and 2012 were upheld. In *Uganda* 36 % of all procurement authorities´ decisions (2nd stage) and in *Tanzania* 61 % of all procurement and review authorities´ decisions (2nd and 3rd stage) were upheld between 2009 and 2012. Though in *Tanzania* the prospect of success therefore is higher it is also perceived that documentation of procurement processes is fragmentary which may affect or hinder review decisions that properly include all relevant aspects of the case.

The prospect of success of *judicial reviews* is perceived as very low in all countries though resilient figures were not available at the time of the study visit. Due to the aforementioned long timelines and – at least perceived – low prospects of success bidders of all three countries hesitate to seek for judicial review. As far as corruption in public procurement is concerned there has not been a single conviction in a major corruption scandal so far. This fact may contribute to bidders' common perception that seeking legal remedy – both, administrative and judicial – is not worth the effort. In *Uganda* it may also distract bidders from seeking judicial review that the procurement authority on its official website advises bidders to seek for arbitrary solutions instead of judicial remedy. It is claimed that administrative reviews do not only to avoid costly litigation but also offer fast resolution and privacy.

A lack of trust in remedy systems and in the rule of law in general is evoked by the impression that investigations – on administrative and judicial level – are carried out in favor of a certain result and that review decisions might be based on ostensible – mostly formal – reasons hiding others behind. As far as corruption is concerned the general lack of trust in the legal system and the rule of law after all might be increased by the fact that big corruption cases related to procurement have not led to any convictions so far.

Finally another reason why bidders do not seek review does not root in the prospects of success of review mechanisms itself but in bidders´ relationships with the procuring entities. A common reason why bidders refrain from complaining about procurement procedures is that they intend to obtain and promote their business relations with the procuring entity. Therefore they do not want to "offend" the procuring entity and to risk that they will be omitted in future tenders. Review mechanisms therefore are not primarily perceived as a means to strengthen procuring entities compliance with the law and to assure bidders´ subjective rights but as an offence that distracts procuring entities from business relationships with "combative" bidders.

VI. Conclusions

Review mechanisms in public procurement provide bidders the opportunity to exercise a controlling function. Procuring entities are more compliant with legal provisions when they are monitored; the right to review therefore entails preventive anti-corruption effects. Although the oversight authorities conduct assessments and procurement audits, bidders involved in procurement proceedings have an informational advantage compared to external monitoring bodies and have also higher incentives to challenge decisions as they are directly economically concerned by the tender outcome. On the investigative part of anti-corruption, reviews can bring corrupt behavior to the attention of the authorities and, in the ideal case, to prosecution. The effective impact of review systems on anti-corruption is therefore entirely dependent on the participation of bidders.

Four factors have been discussed, influencing the decision of bidders to seek administrative or judicial review. First, the aspect of *independence* has an indirect effect on the behavior of bidders, as it determines the degree of credibility of review bodies to decide neutrally. The administrative review bodies in *Kenya*, *Uganda* and *Tanzania* have reached different levels of independence, especially in their relation to procurement authorities. However, all review

bodies are understaffed and underfinanced, which undermines their striving for greater independence. Courts are perceived by bidders as an instance used only for very important procurement cases as judicial procedure are extremely time and cost consuming. In addition, bidders suspect considerable political influence on these high-volume cases and therefore doubt strongly the independence of judicial reviews. *Accessibility*, secondly, defines under which circumstances bidders can claim their right to review. In *Kenya* and *Tanzania*, certain grounds for objection are excluded from review procedures, whereas the *Ugandan* law grants open access to review as long as a breach of law is on hand. Standstill periods, the timespan between the tender outcome and the contract award, are meant to facilitate review initiation for bidders before the procurement contract has entered into force. In *Kenya*, the provisions preclude any review process during contract execution, while in *Uganda* some and in *Tanzania* even most reviews are conducted after signing the contract.

Before bidders decide to claim their rights they carefully weigh advantages and possible disadvantages of review processes. This also includes considerations on – thirdly – the *efficiency* of review procedures and – fourthly – their *prospects of success*. In terms of *efficiency* the short duration of *administrative review* processes in *Kenya* relates to the relatively high number of reviews filed within the last years. As *"bidders want to do business and not to fight in court"*, short timelines therefore can be assumed to have a positive effect on the general willingness to issue reviews. Especially in judicial reviews low prospects of success, long timelines, costly procedures and a general mistrust in the legal system are the main reasons for a reluctant use of legal remedy in public procurement. Another major reason for a hesitant use of review mechanisms – both, administrative and judicial – in public procurement in all three countries is the will to keep good relations with procuring entities.