

# **F**ollow **T**he **M**oney

The Case of Azerbaijan



Edited by Vugar Bayramov

# **FOLLOW THE MONEY**

**Edited by Dr. Vugar Bayramov**



The report was prepared by Center for Economic and Social Development (CESD), Azerbaijan with funding of Partnership for Transparency Fund (PTF)

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**Baku 2010**

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## Executive Summary

The influx of petrodollars to the country in recent years has paved the way for considerable expenditures in the state budget and the State Oil Fund of the Azerbaijan Republic (SOFAZ). Azerbaijan's oil revenues are mainly allocated to finance projects for road construction, transport, water supply, building of houses for refugees and IDPs. The major challenge now is to spend these revenues efficiently and transparently. In fact, all the problems stem from gaps in public procurements and lack of competitive environment whilst conducting tender procedures. With funding from USA-headquartered Partnership for Transparency Fund (PTF), our case study on tenders announced for the projects and programs funded by SOFAZ showed that even no tender had been carried out in restrained terms, while tenders claimed to have been conducted violated all provisions of the Law on Public Procurement. Since no announcement about tender and its results was published in organ of press; the names of all tenderers bidding for the project were not publicly disclosed; the announcement did not provide information about engineering study, the description of goods to be delivered and works to be performed.

The requirements to contractors' qualification Indices were not determined and assessed while selecting contractor. And all items of the Article "Conflict of interests at public procurements" of the law were violated. Those tenderer, having close links with organizer of tender, was declared the winner. In certain circumstances, amid tender procedures companies close to relevant agencies had entered into a formal consortium with qualified foreign companies, in order take advantage of selection criteria. This is why the performance and technical parameters of SOFAZ-financed projects are unavailable to the public. What is most remarkable is that some projects, nothing else than, have been under implementation for years and their termination or completion still seem impossible. Each project cost went 30-40 percent higher versus the initial contract values. In fact, the additional cost to the large-scale project should not exceed 15 percent in the worldwide practice. If more, the price surge is impacted by no economic, but other factors.

It should be noted that all the projects funded by SOFAZ are requested by state agencies: the Oguz-Qabala-Baku water pipeline project, the implementing agency for which is Azersu Open

Joint Stock Company, whereas the Social Development Fund for Internally Displaced Persons (SDFIDP) has been entrusted as the main implementing agency to implement the project of the improvement of social condition of refugees and internally displaced persons, Melioration and Water Industry Company - the Samur Absheron irrigation system reconstruction project, the country's Transport Ministry – the Baku-Tbilisi-Kars (BTK) project. Under the law, tender procurements must be implemented by these agencies. Since in compliance with the law applicability area of the Law on Public Procurement, all public procurements of goods, works and other services worth AZN 50,000 (fifty thousand) and more, performed by public bodies (including state share in charter fund of which is 30 and more percents at the account of state funds, loans and grants obtained by state and received under state guarantee) shall be conducted by methods of open tender. According to the documents on the SOFAZ-funded projects, all procurements have been conducted by methods of open tender. Official data show that 8 tenders have been carried out for the Samur Absheron irrigation system reconstruction project and another 8 tenders for the Oguz-Qabala-Baku water pipeline project. ALL tenders announced for the Baku-Tbilisi-Kars (BTK) railroad project have been conducted in Georgia and Turkey. There is no official information about the implanting agency and funder in respect of tenders conducted for settlement of the problems of refugees and internally displaced persons who were forced to flee their native lands as a result of Armenian-Azerbaijan, Nagorno Karabakh conflict. Nevertheless, sources in the State Oil Fund claim that all procurements had been conducted through open tenders. But the organizations that are curious about tender procedures are unaware of such procurements.

The number and names of the companies bidding as tenderer for the SOFAZ-funded projects are not announced. In fact, the names of all tenderers first must be announced in order to prove that tender is not formal. The names of tenderers that bid for these projects - the Oguz-Qabala-Baku water pipeline project, the project of the improvement of social condition of refugees and internally displaced persons, the Samur Absheron irrigation system reconstruction project, and the Baku-Tbilisi-Kars (BTK) project. Executing agencies are reluctant in responding to related information inquiries. SOFAZ as the source of financing does not have oversight mechanisms for procurement contracts, utilization of funds. The dates of tender procedures are different in reports posted on its website.

Another night side of these projects is that technical characteristics of procurements are protected as “secret”. If procurements were conducted by methods of transparent tender, technical characteristics would be open. Regarding the length of the Oguz-Qabala-Baku water pipeline, different figures are shown in both official and media reports, provided by contracting and implementing agencies. Technical parameters of the Samur Absheron irrigation system reconstruction project still remain unopened. Some activities within the project of the improvement of social condition of refugees and internally displaced persons (IDPs) have been postponed. For example, No bathrooms are designed for the houses in most regions built for refugees and IDPs. Finally, some contracts have been awarded to an inactive company. Consider delivery of glass fiber pipes and pipe materials within the Oguz-Qabala-Baku water pipeline project.

According to Article 76 of the Law on Public Procurement, procurement agency prior to commencement of tender procedures shall set supposed price of goods (works and services) to be procured as per current legislation. If necessary, procurement agency shall attract professional assessors to fix supposed price of goods (works and services) to be procured. Procurement agency shall keep supposed price of goods (works and services) to be procured in secret until the day of opening of tender packages and shall use it to assess tender results. If price of any tender proposal significantly differs from supposed price of relevant goods (works and services), procurement agency shall be entitled to reject such offer. The SOFAZ-financed projects have violated these provisions. Overstated figures, appropriated funds point to falsification of procurements carried out for the projects, or there is no favourable environment to carry out public procurements.

Baku-Tbilisi-Kars (BTK) the only project financed by the Oil Fund where its tender announcement reflects schedule of provision of services, Project’s performance characteristics, the volume of goods to be transported to an early stage, etc. Marabda-Kartsahi Railway Company, the authorized body for the Georgian government, organized all procurements on the project. For comparison, consider the Samur Absheron irrigation system reconstruction project: the Azerbaijan Joint Stock Company of Melioration and Water Economy, sometimes called Melioration and Water Industry Company, the project is entrusted to, has failed to conduct

procurements. Companies bidding for tender to supply materials for construction-assembly work are unknown. There is such impression that Georgia's relevant agencies seem to be more experienced and transparent unlike their Azerbaijani friends. Although tender is organized in foreign countries, the Transport Ministry as one of the implementing partners, as well as co-chair of Coordination Council, which is oversight body with exclusive right to control credit provided to Georgia within the project has not held responsible for the project. There is no information on the project at the Ministry's website.

Execution of the "State Program on education of Azerbaijan youth in foreign countries in 2007-2015", which is partly financed by the State Oil Fund, is realized by the Ministry of Education of the Azerbaijan Republic. Program performance is unavailable to the public.

## **INTRODUCTION**

Most of the resources, accumulated in the State Oil Fund are directed at financing different projects and at transfers to state budget. In the overall amount of 297,9 million AZN have been spent to finance the Azerbaijan Republic's participation share in the Baku-Tbilisi-Ceyhan project, named after Heydar Aliyev (finished in 2006); 615.8 million AZN have been spent in order to increase the domestic social issue of refugees and IDPs, and in order to solve the problems concerning their relocation; 583.9 million AZN have been employed in order to construct water pipe from Oguz-Qabala region to Baku; 387.7 million AZN have been used for the reconstruction of Samur-Absheron channel; 11490.0 million AZN have been transferred to the State budget; 90 million AZN financed the capital of State Investment Organization; 48.1 million AZN funded the "Baku-Tbilisi-Qars new railway" project; 12.1 million AZN financed the "State program, concerning the opportunity of education in foreign countries for Azeri youth; 87.6 million AZN funded the regulation of SOCAR's participation share in project concerning ACG. Considering that most of the projects are in delay, allocating means for projects from Fund's next year budget is not an exception. Although, millions AZN have been spent, projects'

implementation is incomplete and stretches for years, the public opinion has no information about these malfunctioning. The most serious problem concerning the projects financed by the Fund is their high financial evaluation and the continuous increase of prices during their implementation. The main reason is that the tenders, aiming at choosing the project's executor, barely have place and the requests of the state procurements are not satisfied. Research concerning projects, financed by Oil Fund, and held with the support of USA's PTF organization, showing that, in some cases, tenders financed by the State Oil Fund have not been held at all, and those few that took place, did not correspond any request the of law on "State procurements".

The customers of the projects, financed by the OF, are state structures. Thus, customer of the project: on construction of water pipe from Oguz-Qabala region to Baku is "Azersu" OJSC; on increasing of social-domestic situation of refugees and IDPs, and solving the problems, concerning their relocation is IDPs' Social Development Fund; on reconstruction of Samur-Absheron channel is Meliotarion and Aquaculture Join-Stock Company; on "Baku-Tbilisi-Qars new railway" is Ministry of Transport. Holding tenders on these projects by customers is a law requirement. Because according to the law "About State procurements", projects carried out by government (and also Join Stock Companies with government's share more than 30%) and with value more than 50 000 AZN, have to be held by open tender.

In the documentation related to the projects financed by Oil Fund, is stated that all the tenders have to be held openly. According to official figures, 8 tenders have been held for the reconstruction project of Samur-Absheron channel, and 8 tenders on the construction project of water pipe from Oguz-Qabala region to Baku. There is no information concerning tenders regarding the increase of domestic social issue of refugees and IDPs, and the problems concerning their relocation, neither in customer's nor in financing organization's official resources. Despite it, Oil Fund confirms that works on projects, financed by them are distributed by tenders. But, even organizations interested in projects have not been informed about the majority of the tenders. The main reason is that media did not advertise them. However,

according to the 25.1 paragraph of 25<sup>th</sup> item of the law on tender suggestions' attracting, tender's advertisement has to be promoted in local state newspapers and international broadcasts at least 30 bank days before the day in which the tender's envelope is opened for the first time, and 20 bank days before the second time. There are no such tender announcements in the most of projects financed by Oil Fund. Sometimes, despite the announcement is given, the name of the organization that won the tender is not publicized. For example, one of the essential requirements for the construction of the water pipe from Oguz-Qabala region to Baku was mentioned in official media but, afterward, the winner's identity have not been bared. According to the 5.3 paragraph of 5th item of law **on contract coming into force and informing the public about it**, the information about procurement contract has to be published in the same newspaper that published tender announcement within 5 days. The announcements, published in newspapers are often discordant with legislation. This allows further mismanagement in the conduction of tenders.. The announcement of tender held on procurement of works on "Construction of Taxtakorpu water basin with Water electricity Station" which is a part of reconstruction of Samur-Absheron channel, was published in "Xalq" newspaper 11.08.2006. this announcement did not suit the law requirements. There was no mention about name, volume and delivery place of goods, characteristics and placement of works that would have been done, description of services that would be rendered, also the terms of delivery and completion of work or schedule of services were omitted. That is why the date of project's completion is unknown. Preparing of announcements, that don't suit requirements increases expenditures and directs them incorrectly. The fact that requirements are not clearly stated allow the compa,ny to increase arbitrarily the price.

Neither State Procurement Agency, nor "Azersu" OJSC, IDPs' Social Development Fund, the Melioration and Aquaculture Join-Stock Company and the Ministry of Transport place official announcements about tenders on their websites.

The number and the names of the companies that participate to tenders financed by Oil Fund are kept in secret. Whereas, when proving the informality of tender process, this is the most needed information. The names of the organizations that take part in tenders such as "reconstruction of Samur-Absheron channel", " Baku-Tbilisi-Qars new railway", "construction of water pipe from Oguz-Qabala region to Baku" are also unknown. Customers often avoid answering such kind of

questions therefore we can consider that works are agreed among organizations without holding tenders. Provisions specified by law show the same. According to the 29<sup>th</sup> item of law “ **About State Procurements**”, the cost of participation in tender is determined by procurement company in terms of not being more than 0.5% of the overall cost, projected for tender’s subject and 1.5 times from tender’s expense. All expenses of tender’s holding are paid from participation fees. If tenders on some of the projects financed by Oil Fund were held, there would have been documents confirming that at least 30 companies have paid participation fee to the customer.

On the other hand there are a lot of companies whose names are on the paper in order to simulate a competition, whereas they do not pursue any real activity. Customers answer the questions concerning tenders on projects financed by Oil fund, that most of participants represent foreign countries. For example, it is stated that in tenders on determining the qualification conformity during projecting and building of Oguz-Qabala-Baku water pipe, participated 12 companies, however “Azersu” OJSC does not announce their names to media but only notices that they represent 7 foreign countries. In fact, customers have to pretend that they have a lot of participants, because according to 11.1 paragraph of the 11<sup>th</sup> item, the number of participants in tender must not be less than 3. If it is so, procurement organization has to refuse to continue the tender and must inform the broadcast on which the tender announcement was placed.

The Oil Fund have no mechanism of control regarding the work procurements as a financing organization. In Fund’s reports tender dates are noted differently. For example, in previous reports was noted that the first tender on works in “Oguz-Qabala water pipe construction” project was held in 2005. There has been reported that in tender, held in order to prepare documentation for technical-economic justification and initial projection, the procurement winner was German “CES Consulting Engineers” organization. After a year, on January 6, they signed a contract in value of 2.14 million euro. This resources has been used fully. In last reports, the date of contract is noted as 6 January 2006. But the fact that the company was chosen on the basis of tender is not noted. Generally, watching the process of holding the tenders in social projects, financed by Oil fund is very difficult. The Oil Fund doesn’t have any mechanism controlling neither expenditure of funds neither the tender processes. Also, OF places general and incomplete information on its official website. If asking Fund the question about it, you’ll have

an answer: “ The projects’ financing is carried out only against fully justified financial documents presented by customer. These documents consist of copies of funds’ transfer order, documents concerning procurement processes, contract, works’ volume and costs schedule, account bill of contractor organization, certificate, signed by customer and executor companies, concerning volume of works done during the report time.” OF confirms that that before financing process, the documents are being analysed and recommends in order to increase fund using efficiency are being given. Customers are being informed if there are any shortages, found in the documents. (If the documents are not presented to the Fund, project will not be financed.

In the project on reconstruction of Samur-Absheron channel, discrepancy, concerning the date of tender’s holding can be also met. According to the Fund’s archives, there was a contract, signed with Turkish “Temelsu” company- the advisor of “Construction of Taxtakorpu water basin with Water electricity Station” object – concerning held international tender. Though, procurement date was not noted, the date of signing the contract between “Temelsu” company and Melioration and Aquaculture Join-Stock Company is noted as 18.10.2005. The contract was in value of 0.4 million AZN. 0.3 million AZN were paid from State Budget and 0.1 million from Oil Fund. Melioration and Aquaculture Join-Stock Company answering our questions during the tenders’ monitoring noted the contract date as 06.10.2006. In the contract it is told about “Temelsu” company’s services during the Consortium. Also, information about the contract is placed on the company’s official website. The date of signing the contract is noted there as 10/2005 and the date of service completion as 01\2006. Contract includes services not only as technical advisor, but also procurement projects’ for Taxtakorpu water basin and SES , documents’, the final project’s and reports’ preparing services. Monitoring show that organizations, which are close to the appropriate structures, in order to gain advantages by selection criteria, benefits from shortages in “Law about State procurements” and organize formal Consortiums for experienced foreign companies, which has been winners of tenders concerning projects’ services’ procurement. After tender’s results are announced, the cooperation with that company will be terminated.

One of the dark moments, concerning tenders held on projects is that technical settings are kept in a secret. If tender processes were transparent, technical settings would be clear. The length of

Oguz-Qabala-Baku water pipe is not clear yet. Customer and contractor organizations disclose different figures.

A lot of works, concerning increasing of social-domestic situation of refugees and IDPs, were postponed. For example, there are not bath-houses in the most of the settlements. One more example of untransparency of tenders held on projects, financed by OF is that companies without any activity are allowed to the contest and declared as winners. There was similar situation with the tender concerning the purchase of glass-fiber pipes for Oguz-Qabala-Baku water pipe. There was tender announcement given by "Azersu" to the "Azerbaijan" newspaper on July 7 2006. Deadline for reception of documents was noted as 18 august 2006. The opening ceremony of "Azkompozit"- the winner of the tender- took place on 29 December. Since the names of other companies, participating the tender are kept in a secret, the reason of such step of relative structures is unclear for us. Either the qualification conformity of participants didn't meet the procurement of works, or suggested prices didn't satisfy the government. These two can explain why the entity belonging to the private sector was created within the social project.

According to 6.2.1. paragraph of the 6th item of the law concerning the requirements on contractors' qualification, professionalism in appropriate field, experience, technical and financial opportunities, workforce, managing competence and reliability are required. Searching of any of these requirements in companies without any activity is ridiculous. In general, tenders held on both of the projects regarding the construction of water pipe from Oguz-Qabala region to Baku and the reconstruction of Samur-Absheron channel do not fit the requirements of legislation, concerning the qualification conformity. "Azərkörpü" JSC – the winner of work procurement on "Construction of Taxtakorpu-Djeyranbatan channel" held within the "reconstruction of Samur-Absheron channel" project - implements transport projects better than projects concerning water basin. Soft sanctions and shortages in the legislation cause mismanagement in the works, increasing costs and causing delays. The projects "Construction of water pipe from Oguz-Qabala region to Baku", "reconstruction of Samur-Absheron channel" and "Baku-Tbilisi-Qars new railway" will cost much more than it was expected. Whereas for "tender" is meant the contest held in order to choose the best solution in order to carry out the procurement contract and send

by the participants. The winner of tenders must be the company offering the lowest and most profitable costs. Though the cost of the “construction of water pipe from Oguz-Qabala region to Baku” project by 480 million AZN including all taxes, increased to 583, 9 million AZN. In fact, the government had to inform the public opinion about the comparison of tender suggestions in general order, without going to get individualized on companies. This doesn't take place and that is why suggestions are unknown. therefore it is hard to prove that the winner was not select in accordance with any official's or high authorized governmental structure's interests. On the other hand, there is no well-founded explanation of project costs' increasing by executors. Organizations financed by SOF are usually enterprises related to state structures. As a rule, companies close to the state structure's leader that holds the tender are allowed to participate it whereas other companies are excluded due to pretexts. Even if they are allowed after a lot of deprivations, the winners of big projects are always companies close to customer state structure. For example, the winner of the procurement procedures, concerning the works on transfer of oil and gas pipelines within the Samur-Absheron channel's reconstruction territory was "Xəzərdənizneftqaz", close to State Oil Company, whereas the winner of the procurement procedure concerning the building of 70 houses in Gulamli settlement of Davachi region in order to relocate refugees and internally displaced persons settled there, was "Azəri-Servis" LTD, close to Ayaz Orudjov – president of the Social fund for Development of refugees and IDPs and the main executor of the project - “Azərkörpü” JSC ,close to the Ministry of Transport.

100% of "Azərsutikinti" OJSC's shares, which is the contractor of the project and 66% of "Azərenerjitikinti quraşdırma"s shares belong to the state. Constructing of settlements within the project, concerning the increasing of social-domestic situation of refugees and IDPs, and solving the problems, concerning their relocation, is carried out by enterprises close to the head of the IDPs' Social Development Fund.

The same foreign companies participate in the tenders. The same foreign companies participate in held consortiums. In fact, this also shows that tenders are not held transparently and the winners, in result, are those who were chosen from the beginning.

The most critical situation, concerning the transparency of tenders in projects financed by SOF is met within “Increasing of social-domestic situation of refugees and IDPs, and solving the problems, concerning their relocation” project. There have been 3 customer organizations in this project till 2007, and responsibility for answers on questions, concerning tenders was thrown by them to each other periodically. These organizations were: The State Committee on Issues, concerning Refugees and IDPs; the IDP’s Social Development Fund and the Agency on Restoration and Reconstruction of lands exempted from occupation. The information about tenders is guarded as a State Secret. There is no any legal document about it: when tenders on this project were held, names of chosen executors, dividing means among settlements, base on technical-economic ground of projects. The main reason is that tenders on these projects did not take place. Altogether just 10-15 tenders were held out of 100 works. The information about: companies, which have built 16,051 houses till today; whether they were chosen by tender results or not; tender conditions; mechanism of spending financial means,-all this information is closed and private.

All works on this project are intrusted to the companies that belong to the head of IDPs’ Social Development Fund. Works on building houses, infrastructure and objects in Fizuli region were divided among companies only after Ayaz Orudjov became a president of IDPs’ SDF. Construction of irrigation objects and transformer halts in order to provide settlements in Fizuli and Bilasuvar with irrigation water, was intrusted to "Gidromaşservis" CJSC, which belongs to Ayaz Orudjov. Today a chairman of "Gidromaşservis"’s Observation Council is Ayaz Orudjov’s brother-Akif Orudjov. Works in settlements of Bilasuvar region were shared in times of Fikret Topchubashov (former chairman of IDPs’ SDF). Most of the terms of the “ Law On Public Procurements” were violated within the “increasing of social-domestic situation of refugees and IDPs” project. According to the 13th item of “ Law On Public Procurements”, concerning conflict of interests, contractors that have juridical, financial or organisational dependening from purchasing organisation cannot be allowed to participate in tenders. those who have relations with representatives and officials of competitors,that participate in procurement procedures, or have been representatives and officials of pretendants, that participate in procurement procedures during past 3 years can not work as representative, advisor or on any other post related with procurements. Between 70% and 100% of works regarding the “increasing of social-domestic

situation of refugees and IDPs” project were entrusted to subcontractor organizations. Contractors preferred just to control the process. Although, customers could do it by themselves. According to the law, contractors that won of the tenders can sign a contract with subcontractors only with the agreement of purchasing company and only if this is one of the conditions included in the contract. In all other cases, the execution cannot be entrusted to subcontractors without agreement of the purchasing organization. As we noted before, results of tenders in our country are evident in advance and companies close to the purchasing organization, even their own Limited liability companies are allowed to the tender area. That is why law items are not followed. As a result means get mismanaged.. Competitors in tenders held on this project also note that these are not held in compliance to law. They say that during “tender”, carrying formal character, objects are really being sold. Only 30-40% of reparation and construction works are carried out within the project on increasing of social-domestic situation of refugees and IDPs, whereas the rest of the money is being stolen Moreover, technical bases and workforce of contractors -the winners of tender- doesn't correspond with conditions of “carrying out of large-scale works”. Ok I understand. Maybe you mean ‘the technical knowledge, together with the manpower employed by the contractors are not sufficient in order to carry out the large-scale works requested by the contact’. Contractors usually have regular a technical-engineering staff of 10-12 members, which is not enough for large-scale works.

The “Baku-Tbilisi-Qars railway” is a combined project of 3 countries (Azerbaijan, Georgia and Turkey) whose implementation is managed by Georgia. There are a lot of rumours today, about how “Azəriñsaatservis” has become a winner of the tender, held on railway's Axalkalaki-Kartsaxi section. According to information, given by neighbouring country, indicators of “Azəriñsaatservis” only partially suited the tender's conditions . Therefore the competitors in the tender had not satisfied tender's commission. On the eve of these events, Azeri media were writing that the reason of “Azəriñsaatservis”'s superiority in such a big project as “Baku-Tbilisi-Qars” was that, part of the Georgia side in the project was financed by Azerbaijan. Moreover, we want to notify that construction schedule of Baku-Tbilisi-Qars railway was broken many times. Nevertheless, it is the only project financed by SOF, which has noted the volume of works that would be done and materials that would be purchased, together with technical parameters of the project, volume of goods that would be carried by the railway at the first times.

“Marabda-Kartsaxi Dəmir Yolu” Limited Liability Company, implementing function of plenipotentiary organ from Georgia in this project, has held tender on each of the services. Melioration and Aquaculture Join-Stock Company has not held tender concerning providing the project with materials within “Reconstruction of Samur-Absheron channel”. The company that participates in the construction as a supplier of materials is unknown. Therefore appropriate structures in Georgia in comparison with Azerbaijan are more experienced in tenders’ holding and follow transparency principles. Though tenders in this project were held abroad, the Ministry of Transport as a co-chairman of Connecting Council, controlling exceptional competencies in using the credit given to Georgia, was not reported about tenders neither from partners nor customers. There is no information about it even on their official website.

State project on education abroad of Azerbaijani youth in 2007-2015 is carried out by the Ministry of Education. Payment of all expenses concerning education abroad (fees, visa registration, living and accommodation expenses, daily meal, providing with essential educational literature, medical insurance, motion expenses to the accepting country once a year, organisational expenses) and also the cost of these expenses is determined by Ministry of Education annually, basing on payment documents. Tenders on this program do not take place. The Ministry of Education carries out execution of this project by itself.

The Chamber of Accounts and the Ministry of Finance are structures that control the rationality of expenditure and the compliance to requirements expressed in the contract. Procurement Agency also has a role in this. The organization must give annual reports and place information about procurements’ condition and conditions of tender contract on their official website. Although the Chamber of Accounts and the Ministry of Finance make their own calculations, they don’t announce them to the public. Though Procurement agency places reports in 3-4 pages on their websites, they keep secret upon information about most of the purchases. Agency does not consider itself responsible of tenders and does not include this kind of information into reports. Nevertheless, according to the 583rd decree of the President of Azerbaijan Republic, dated on May 16 1997, State Agency on Procurement was established in order to implement the state policy in the field of purchasing goods (works or services) at the expense of state resources. Duties of this organization are stated by the 855th decree of the President of Azerbaijan

Republic, dated on February 20 2003, in correspondence with 4th item of “ Law On Public Procurements”. Following tasks were entrusted to the Agency: creating and perfection of normative-legal base, regulating state procurements in the Azerbaijan Republic, providing control on legality of purchasing goods (works, services) on state resources, providing control on contracts’ fulfillment, carrying out activities in order to increase qualification level of specialists working in state procurement field, creating of information base about state procurements and other duties determined by legislation of the Azerbaijan Republic. According to the decree, state procurements in the cost of 250 million AZN or above have to be implemented by open tenders, whereas if less than 250 million the organization can use any of procurement methods. On the other side, according to the resolution of Cabinet of Ministers of the Azerbaijan Republic, the copy of total protocol, concerning tender results and prepared by tender commission, has to be presented to the State Agency on Procurement in 3 bank days after its signing.

At the same time, appropriate organ of Executive authority has to: control execution of contract, provide control on legality of purchasing goods (works, services) on state resources, investigate questionable areas, stop procurement procedures till 7 days, if any cases, when legislation was disturbed, are found, raise probability of liquidating the tender results if it is needed. The main role of this organ is determining the composition rules of reports on state procurements and providing public opinion with information and documents, regulating state procurements, and also informing about it. All these requirements are not met. Annual reports of State Agency on Procurement, placed on their website, shows that only 10-15% of expenses on bought macro services are implemented by procurement.

SOF also doesn’t consider itself responsible for problems concerning tenders. Nevertheless, as financing organization and as responder for correctness of documentation, the Fund must analyze suggestion packets of not only winners of tender but also other pretendants’.

SOF does not hold audits on tenders held on the projects. The reason is that, there is “ Law On Public Procurements” in the Azerbaijan Republic and all implemented procedures are noted in it. But as we noted before, State Procurements agency does not control correspondence of tender procedures to available legislation.

Is it interesting to note that the membership process of the commission member's is kept secret.

The most decisive time in providing the project's transparency is the time of project's execution. Fulfillment of each project, financed by SOF, has been delayed for years.

### **Main Points on Oil Sector in Azerbaijan**

Azerbaijan has been earning massive oil revenues from its burgeoning energy trade since 2005. The oil revenues are currently reaching the country's state budget and state-run oil producer SOCAR, yet the State Oil Fund of the Republic of Azerbaijan, sometimes called SOFAZ, accumulates the bulk of these revenues. The Oil Fund's assets already top \$13 billion: for the first 3 quarters of 2009 alone, SOFAZ has collected AZN 5.2 billion in oil revenue. The oil revenue rise encouraged the Oil Fund to spend more money being allocated to social and infrastructure projects and programs. A staggering amount, or portion, of oil revenue disposed to SOFAZ, as well as deposited in the state budget or SOCAR is spent on different projects, relatively speaking. However, the process of tracking expenditures from the Oil Fund is extremely complicated, thus necessitating monitoring of the projects and programs funded by SOFAZ. Since recent years have observed no quality changes against excessive spending being increased year by year. Besides, wasteful and ineffective use of oil revenues is becoming evident. What is most remarkable is that the government has its long-term strategy on the oil and gas revenue management, approved by a presidential decree # 128 dated September 27, 2004. This strategy includes the following objectives:

- developing the non-oil sector, regions, SMEs;
- large-scale development of infrastructure;

- fulfillment of poverty reduction measures and the solution of other social problems;
- stimulating the improvement of the intellectual, material, and technical base of the economy;
- development of “human capital” (training (including in foreign countries) highly qualified specialists and improving the professional capacity of employees);
- consolidating the defense capabilities of the country;
- executing projects relating to reconstruction activities in liberated territories and the return of internally displaced persons to their native lands.

The objectives and priorities on implementation of the said strategy have been identified for three years. Nevertheless, lack of programs that could complete this strategy certainly results in scattered and patchy, and frequently ineffective use of oil revenues.

Another serious problem in the process in the use of oil revenues is that project assessment is exaggerated, and costs are often soared throughout the implementation period. Some projects, nothing else than, have been under implementation for years and their termination or completion still seem impossible. What is more is that the requirements for selection of contractors and for government procurement during the execution process are often violated. Some projects even have not been through tendering process, whereas according to the provisions of the Republic of Azerbaijan’s Law on Public Procurement, all public procurements of goods, works and other services worth AZN 50,000 (fifty thousand) and more, performed by public bodies (including state share in charter fund of which is 30 and more percents at the account of state funds, loans and grants obtained by state and received under state guarantee) shall be conducted by methods of open tender. Sometimes executing agencies divide the allocated funds into three parts in a year in order to avoid tender bidding process. However, the law prohibits division of the same operation into separate contracts.

In addition, projects are mostly implemented by private companies close to the higher echelon of authorized public bodies. In international practice, it is estimated that systemic corruption can add 20-25% to the costs of government procurement. The experience in Azerbaijan affords ground to higher percentage expectation.

But who exercises control over public contracting? With funding from USA-headquartered Partnership for Transparency Fund (PTF), our study on tenders announced for projects financed through the Oil Fund showed that SOFAZ as the source of financing does not have oversight mechanisms for procurement contracts. Weak sanctions, legislative gaps, and deviation from the terms of the contracts did lead to contract cost overruns, failure to complete projects within the scheduled date. And this case study is significant in terms of the use of oil money through elucidating debates towards funding of internal projects by SOFAZ and showing that the effective use of petrodollars still remains concerned.

In all fairness, it is important to fund major projects of national scale aimed at achieving social and economic progress in the country. No matter whether they are the state budget or the Oil Fund or other sources, transparency in the process would bring both to effective implementation of projects and pursuing the set task

This report that summarizes the results of our research has been prepared on the basis of information posted on the Oil Fund's website, as well as responses to questions we had submitted to project customers and SOFAZ.

## **History**

The first idea of establishing the Oil Fund came into sight after signing the ACG Production Sharing Agreement (PSA), having already become known in Azerbaijan and elsewhere as “the Contract of the Century”. Since a variety of international financial and western institutions accredited to Azerbaijan in the mid-1990s reminded that the government had to be ready for the process to accumulate and manage oil revenues in one establishment. They then substantiated that the direct flow of massive oil revenues into the state budget would, willing or not, comfort the government and the oil capital would result in negative effects (soaring budgetary expenses, the state's acting as key investor in economic sector, gradually socialized nature of the budget, erosion of control over budgetary expenses leading to inflation, etc). Investment models ranged all the way from Norway (in positive terms) to the woeful example of Nigeria. In the beginning,

the Azerbaijan government was superficial about the idea of Oil Fund, yet it became actual. Consequently, a number of agreements on joint development of onshore and offshore (in the Azerbaijan sector of the Caspian Sea) oil and gas resources were signed with foreign investors in the frame of Oil Strategy realized since 1994. The issue on effective management of revenues from implementation of these agreements was brought to agenda. SOFAZ was established in accordance with the Decree of the President of the Republic of Azerbaijan # 240 dated December 29, 1999 for the purpose of formation such mechanism. A presidential decree #433 dated 29 December 2000 created the regulations for the Oil Fund. SOFAZ started activity after the Presidential Decree on "Asset Management Rules (Guidelines) for the State Oil Fund of the Republic of Azerbaijan" # 511 dated June 19, 2001 approved a set of asset management guidelines (AMG) and specified expenditures.

The Fund is responsible to the President of the Republic of Azerbaijan. The Fund is also a legal entity and an extra-budgetary institution. The Oil Fund has opened settlement and other accounts with different banks, possessing a seal, a stamp and bank forms with the state emblem and the Fund's name on them. SOFAZ's activities are overseen by a Supervisory Board. The Fund functioning as a separate legal entity, with its own specialist management team and government supervisory hierarchy, cooperates with public bodies, physical and legal entities as well as international organizations. The Fund's operation is guided by the Constitution and laws of the Republic of Azerbaijan, Presidential Decrees and Resolutions, and the Fund's Regulations.

### **Mission statement: goals and objectives**

The cornerstone of the philosophy behind the Oil Fund is to ensure intergenerational equality of benefit with regard to the country's oil wealth and accumulate and preserve oil revenues taking into account that oil and gas are depletable resources, whilst improving the economic well-being of the population today and safeguarding economic security for future generations; finance major national scale projects to support socio-economic progress.

## **SOFAZ budget**

The President of the Republic of Azerbaijan signed Decree #68 on February 26, 2009 on approving budget of the Oil Fund for the year 2009 including 8 361 016,3 thousand manats in revenues and 5 319 534,9 thousand manats in expenditures. The revenues of the Fund were executed with 11 864 648,1 thousand manats and expenditures in the amount of 4 291 751,4 thousand manats for the year 2008. It should be noted that sources of revenues for the current year have been: 1. proceeds from sales of the Republic of Azerbaijan's share of hydrocarbons (exclusive of hydrocarbons' transportation costs, banking expenses, customs costs, independent surveyor, marketing and insurance costs, and also exclusive of the revenues from the SOCAR's share in the projects of which it is an investor, shareholder or partner); 2. dividends from realizing of oil and gas projects (from BTC); 3. revenues generated from oil and gas transit over the territory of the Republic of Azerbaijan; 4. revenues from management of SOFAZ's assets; and 5. other revenues.

Regarding directions of expenditures, the greater portion of the funds the Oil Fund accumulates is directed to finance various projects or transferred to the state budget. The amount of transfer to 2009 State Budget of the Republic of Azerbaijan alone has been 4 915 000,0 thousand manats, while financing **construction of the Oguz-Qabala-Baku water supply system** took 100 000,0 thousand manats; financing **reconstruction of the Samur-Absheron irrigation system** - 110 000,0 thousand manats; financing the Baku-Tbilisi-Kars (BTK) railroad project - 80 000,0 thousand manats; financing "State Program on education of Azerbaijan youth in foreign countries in 2007-2015" - 10 000,0 thousand manats; and financing some projects concerning solution of the social and settlement problems of the refugees and internally displaced persons - 80 000,0 thousand manats.

However, some amendments were further made to the expenditures item of the Budget of the State Oil Fund of the Republic of Azerbaijan for 2009. The Presidential Decree dated 7 October 2009 aimed at timely execution of settlement projects of the refugees and internally displaced persons, and reconstruction of the Samur-Absheron irrigation system and construction of the Oguz-Qabala-Baku water supply system. In accordance with the "Regulations on the State Oil

Fund of the Republic of Azerbaijan" and paragraphs 5.4.1. and 5.4.2. of the "Rules on the preparation and execution of the annual program of revenues and expenditures (budget) of the State Oil Fund of the Republic of Azerbaijan", as well as taking into consideration the application of the Executive director of the State Oil Fund of the Republic of Azerbaijan and the opinion of the Supervision Board. As a result, the following amendments to Decree No. 68 were made: to change the figure "80 000.0" allocated for the project of the refugees and internally displaced persons with the figure "90 000.0" to change the figure "100 000.0" allocated for the project of the reconstruction of the Samur-Absheron irrigation system with the figure "120 000.0", to change the figure "110 000.0" allocated for the project of the construction of the Oguz-Qabala-Baku water supply system with the figure "130 000.0", to change the figure "80 000.0" allocated for the project of the Baku-Tbilisi-Kars (BTK) railroad with the figure "30 000.0". The figures for projects' financing as of 1 January 2010 are as following: 1. financing of the participation of the Republic of Azerbaijan in Heydar Aliyev BTC Main Export Pipeline Project (the project's financing closed in 2006) - 297.9 million manats; 2. settlement of the problems of refugees and internally displaced persons - conflict - 612.9 million manats; 3. construction of the Oguz-Qabala-Baku water supply system - 547.4 million manats; 4. reconstruction of the Samur-Absheron irrigation system - 364.5 million manats; 5. transfers to the state budget - 10 265.0 million manats; 6. formation of the statutory capital of the State Investment Company (implemented in 2006) - 90 million manats; 7. financing "Baku-Tbilisi-Kars railroad" - 48.1 million manats; 8. financing "The state program on the education of Azerbaijan youth abroad in the years 2007-2015" - 10.2 million manats; 9. repayment of State Oil Company's share in the project on joint exploration and development of Azeri, Chirag and Guneshli oilfields - 87.6 million manats.

### **Projects' technical parameters**

Technical parameters of the projects funded by the Oil Fund are weak and unsustainable in addition to their unavailability to the public. The performance capability thought the projects' implementation process is often changed. For example, when launching the project of constructing a water pipeline from Oguz-Qabala region to Baku city, glass reinforced polyester

(GRP) pipes and pipe materials of 266 km in length had been projected to supply first, but it was further decided to substitute steel pipes for GRP pipes of 53.2 km in length on some parts of the pipeline during the implementation of the project, thus resulting in cost reduction.

The **Oguz-Qabala-Baku water pipeline**, which is the most expensive project, consists of two parts – wellfield infrastructure and Oguz-Qabala-Baku main water pipe. Glass fiber pipes and pipe materials are used for pipe-laying. These pipes are produced in Sumqayit-based Azkompozit. The project lifespan is 50 years. The project is designed to use underground water sources located in Oguz-Qabala region and to transport this water to Baku city by gravity feed at the flow rate of 5 cubic meters per second and provide people with high quality water. It is intended to build well field facility consisting of 100 wells at a depth of 150 meters and with diameter of 350 mm. The flow rate of water to be transported to Baku will reach 19 cubic meters per second and will allow for 24 hours uninterrupted water supply of Baku city. The sources where the pipe takes water are in the height of 430-530 meters in Oguz. About 120 wells are to be drilled there. It is projected to equip the line with a control system called SCADA to take an automatic control over operation of the water-containing wells.

A zone for sanitary-protection of 50 meters in both sides along the pipe has been created. The water line will run over 12 rivers and cross motorways in 8 points and 2 railroad roads.

The flow rate of water to be transported to Baku will reach 19 cubic meters per second and will allow for 24 hour uninterrupted water supply of Baku city.

Regarding the length of the pipeline, different figures are shown in both official and media reports: the pipeline is 250 km in length according to documents prepared by SOFAZ, while 300-280 km by

Azersu Open Joint Stock Company. When witnessing the groundbreaking ceremony, President Ilham Aliyev was briefed by officials, saying that “the pipeline is 248.5 km in length.” According to the information posted on the website of “Azkompozit” (its company profile will be further provided), the length of the pipeline is 265 km. That's not the half of the story. The

pipe's length is indicated 263 km in the notification on the engagement of consultations for the management and technical control on the project published in August 2006. Seemingly, these different figures were produced to weaken the competence in the bidding process and attract firms which were well-informed.

The second major project is allocating money for building housing and the improvement of socio-economic conditions of refugees and internally displaced persons who were forced to flee their native lands as a result of Armenian-Azerbaijan, Nagorno Karabag conflict. The Fund's assets were utilized for buildings and infrastructure in order to settle those in the districts of Aghdam, Fuzuli, Bilasuvar, Goranboy, Sabirabad, Aghjabadi, Beylagan and Qabala regions. In addition, housing and social facilities were constructed for refugees and IDPs in different regions of Azerbaijan, including Shamkir, Aghstafa, Ismayilli, Oghuz, Shaki, Gadabay, Nakhchivan Autonomous Republic, Baku, Sumgait, Yevlakh and also in Mehdiabad, Ramani, Pirshaghi and Fatmayi districts. Information regarding technical parameters for the housing and social facilities, project planning details are unavailable on the official websites of the State Committee on the Refugees and Internally Displaced Persons and the Oil Fund. Moreover, a variety of monitoring results illustrate that these facilities are constructed without designing. According to the information as at April 01, 2009, as much 16051 houses were constructed for refugees and IDPs. Related infrastructure, including social and cultural facilities as well as power, gas and water supply systems, 45 schools, 4 music schools, 36 kindergartens, 5 hospitals, 4 medical stations, 6 ambulance stations, 23 primary healthcare units, 32 community clubs, 9 fire-fighting centers, 40 administrative buildings, 32 communication centers, 8 veterinary stations, 31 bath houses, 1 Olympic sports complex, 182 artesian wells, 107 water ponds, 32 water pumping stations, 447 large and smaller transformers, 17 electric power stations were constructed, as well as new roads (559.1km), water pipes (497.0km), electric power lines (908.6km), gas lines (27.7km), sewerage system (25.7km), and irrigation systems (10,450 ha) were laid in the settlements constructed for them. In addition to 320 houses, the construction of which is not completed (Decree No 562) and construction of 100 houses in Nahichivan (Decree No 132), 364 houses in Ashagi Agjakend, Goranboy region, 45 houses in Ismayilli region, 126 houses in Shamkir region, 65 houses in Yevlah region, 108 houses in Mehdiabad district, 160 houses in Ramany district, 53 houses, 48-apartment building in Nahchivan, 1 house, 14-apartment building in Sumgayit city, 3 houses in

Baku, 1 house in Gedebey region, 3 houses in Oghuz region, 2 houses in Shamkir region, and 17 houses in Akstafa region were constructed.

Implementation of international project of **Baku-Tbilisi-Kars railroad line** and construction of railroad line tunnel in Bosphorus, along with providing connection of Trans-Europe and Trans-Asia railroad networks and carrying freight and passengers directly through Azerbaijan, Georgia and Turkey territories will serve increasing the transit potential of regional countries, accelerate the processes of integration in Europe, develop the cooperation within the framework of European Neighborhood policy, intensify state independence and national liberation of Azerbaijan as well as serve to expand the foreign economic relations of our country.

Implementation of this project has significant meaning from the economic efficiency, speed, time, security and reliability standpoint, according to Azerbaijan officials.

Involving the freight belonging to European and Asia countries in this railroad line in the future will increase the volume of intermodal and container transportation.

Total length of Kars-Akhalkalaki railroad line is 105 kilometer. The number of lines in both sides is one, but the number of permanent ways is two. The traction system is alternating current. The maximum speed is 120 km/h. The width of the gauge is 1435 mm. the type of sleepers is iron-concrete. The main connection line is optical. The length of the tunnel totals 2250m, the number of bridges and stations is 12 and 3 in Turkish side, whereas 1 in Georgian side. It is also planned to rehabilitate and reconstruct 160 km long existing railroad line of Akhalkalaki-Marabda section. The carrying capacity is projected to be 6 million tons of cargo per annum in the fifth service year, while 15 million tons and more in the tenth service year.

The project aimed at reconstructing the Samur-Absheron irrigation system includes: construction of Takhtakorpu water reservoir with hydroelectric power station; construction of Takhtakorpu-Ceyranbatan water canal; building of 70 houses for evacuation of the IDPs settled in Gulamli district of Devechi region and relocation of main gas and oil pipelines. It should be noted that there are no details of technical parameters for the projects of construction of Takhtakorpu water

reservoir with hydroelectric power station and construction of Takhtakorpu-Ceyranbatan water canal are unavailable on the website of the Azerbaijan Joint Stock Company of Melioration and Water Economy, sometimes called Melioration and Water Industry company, the projects are entrusted to.

According to official data, the water storage basin of the dam with the height 124m will contain 219 millionm<sup>3</sup> of payload volume (total 268 million m<sup>3</sup>). The earth dam with the central clay core and gravelly-sand prisms 1010m long on ridge designed 750m wide on bedding to the dam body will be filled with about two and a half millions of cubic meters of soil. 25 MVt hydro power station building is underway. The evacuated 720-mm main oil and 1220-mm main gas pipelines from the territory of the reservoir are, respectively, 10,000m and 96,000m in length.

The additional flow rate of water to be transported to Baku will be 15 cubic meters per second thanks to reconstruction activities, according to Azersu specialists. Of this, 2.5 – 3.0 cubic meters will flow into Azersu's distribution networks to use as drinkable water, the remainder will reach Melioration and Water Economy JSC for irrigation purpose.

### **Projects' economic parameters**

Financing of the projects funded by the Oil Fund is implemented after the executing agencies submit their fully reasonable financial documents, such as money transfer order, papers related to the procurement procedures, scope of the agreement and contractual activities, as well a copy of the evaluation sheet, contractor's invoice, scope of activities undertaken during the reported period and the summary jointly signed by the company and implementing agency. All documents are analyzed as well as guidelines on increase of efficiency in the project execution and funds utilization are provided to implementing partners before financing a project. Unless any supporting documents are properly produced, the project will not be funded by the Oil Fund, according to SOFAZ.

The **Oguz-Qabala-Baku** waterline project is completely funded by the Oil Fund. According to figures as at 1 January 2010, SOFAZ has spent 547.4 million manats on the project. This figure as of 2008 was 211,819,500 manats. Although 183,620,000 manats in expenditures were projected in 2007, it was further reduced to 173,620,000 manats. The expenditures constituted 90 million manats and 119.956 million manats, accordingly in 2006 and 2009. Some sources estimate that the entire project cost will total 900 million manats. This means that each km will consume 3.3 million manats in expenditures. In fact, this amount would be merely sufficient for construction of 1 km road.

**Financing of the project of reconstruction of the Samur-Absheron irrigation system** was approved in accordance with Presidential Decree No. 346 dated December 28, 2007. The project is fully funded by the Oil Fund. Under the contracts total amount of allocations for financing of this project from SOFAZ have been 364.5 million manats, including 130 million manats 2009, while 37 million manats in 2006, 76.9 million manats in 2007, 120.600 million manats in 2008. The project completion is expected in 2010, yet the major part of the operations has not been complete yet. So the project costs will certainly grow. It is expected that additional 150-160 million manats will be allocated from the Oil Fund over two years ahead.

**The “Baku-Tbilisi-Kars New Railroad” project** is funded by the Oil Fund pursuant to Decree #1974 of the President of the Azerbaijan Republic “On Measures for Implementation of Baku-Tbilisi-Kars New Railroad Project” dated February 21, 2007. In accordance with this Decree, “International Bank of Azerbaijan” Open Joint Stock Company has been appointed as agent bank for organization of credit and provision of bank service on behalf of the Government of the Republic of Azerbaijan.

Rehabilitation – reconstruction of 29 km –long railroad line from Kars to Akhalkalaki as well as 160 km long existing railroad line of Akhalkalaki-Marabda section is financed by the Republic of Azerbaijan in amount of 200 million USD allocated for 25 years. In accordance with bilateral Agreement, consultation body having exclusive power and monitoring the utilization of credit and for this purpose controlling its execution. Coordination Board has been established. The members of the Board from the Azerbaijan side are Ziya Memmedov, Minister of Transport,

Shahmar Movsumov, Executive Director of the State Oil Fund of the Republic of Azerbaijan, Niyazi Safarov, Deputy-Minister of Economic Development and Arif Askerov, Head of Azerbaijan Railroad Close Joint-Stock Company. It should be noted that the Oil Fund allocated 80 million manats for the project in 2009, but the amount was later reduced to 30 million manats. Total amount of allocations were 88.682 million manats in 2009. According to figures as at 1 January 2010, total amount of allocations were 297.9 million manats. By experts estimate, the project is expected to consume a total of 500 million manats.

**Financing of the improvement of the social and economic conditions of refugees and internally displaced persons.** Since 2001 SOFAZ has been allocating money for building housing and the improvement of socio-economic conditions of refugees and internally displaced persons who were forced to flee their native lands as a result of Armenian-Azerbaijan, Nagorno Karabakh conflict. The Fund has increased financial support to measures relating to refugees and IDPs since 200, averaging 612.9 million manats as of recent years. Figures as of years are as following: 43.8 million manats in 2002, 27.3 million manats in 2003, 18 million manats in 2004, 40.4 million manats in 2005, 110.3 million manats in 2006, 154.2 million manats in 2007, 145 million manats in 2008. The amount of allocations stood at 90 million manats in 2009 after amendments to the Budget of the State Oil Fund for 2009

**Financing "State Program on education of Azerbaijan youth in foreign countries in 2007-2015"** – Under a Presidential Ordinance, this program is partly financed by the State Oil Fund of the Republic of Azerbaijan. Execution of the program is realized by the Ministry of Education of the Republic of Azerbaijan. Supervision on execution of the program has been entrusted to the Commission on Education under the President of the Republic of Azerbaijan.

According to the Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan No.261 dated November 27, 2008 "Rules on payment of tuition fees of the Azerbaijan youth at foreign universities" was approved. The list of monthly expenses of persons studying abroad was approved in accordance with these Rules. According to figures as at 1 January 2010, total amount of allocations from SOFAZ were 10.2 million manats. With the purpose of financing of this program 10 206.7 thousand manats were allocated in 2008-2009, including 7 912.1 thousand

manats in 2009. This amount was allocated to the tuition fees, visa and registration, accommodation, medical insurance and travel expenditures of students studying abroad in the framework of this Program, including to the reimbursements of management and organizational expenses of international supporting organizations collaborating with Ministry of Education with the purpose of organizing of Azerbaijan youth education abroad. 4 544.4 thousand manats and 2 883.5 thousand manats respectively were allocated to reimburse the accommodation expenses and tuition fees. Although this program is titled to cover the years 2007-2015, no official information on this direction of expenditures as at 2007 is available. About 288 students' education expenditures are financed by SOFAZ in the framework of the State Program.

The expenditures allocated to the tuition fees, visa and registration, accommodation, medical insurance and travel expenditures of students studying abroad (hereafter – students) in the framework of this Program are provided by the Oil Fund as well as other legal sources. The amount of expenditures (including tuition fees, visa and registration, medical insurance, travel expenditures, etc) is determined by the Ministry of Education every year on the basis of submitted payment documents and an order is submitted to the organization funding the State Program. The list of monthly expenses of students is approved in accordance with the rules on payment of tuition fees of the Azerbaijan youth at foreign universities. The expenditures for the academic year 2008/2009 were as following: 1,050,000 EUR for education in Germany, 1,800,000 USD in the United States (New-York, Boston, Chicago, Miami, Washington), 1,400,000 USD in other U.S. cities, 1,550,000 USD in Australia, 1,150,000 EUR in Austria, 1,150,000 in Belgium, 1,750,000 in Great Britain, 1,150,000 USD in South Korea, 1,150,000 EUR in Czechia, 930,000 USD in China, 1,150,000 EUR in Finland, 1,150,000 EUR in France, 730,000 USD in India, 1,250,000 EUR in Ireland, 1,650,000 EUR in Spain, 1,125,000 EUR in Switzerland, 1,350,000 EUR in Italy, 1,400,000 USD in Canada, 930,000 USD in Malaysia, 1,250,000 EUR IN Netherlands, 1,550,000 EUR in Norway, 1,080,000 USD in Russia, 1,030,000 USD in Singapore, 930,000 USD in Turkey.

It is worth noting that the Oil Fund has been allocating funds since 2001, when allocation for this Program just totalled 720,000 manats (calculations are made in new manat – AZN only), which did not even exceed one percent of revenues. The amount rose to 8.622 million manats in 2002

(29.9 pct of revenues), while 235.2 million manats in 2003 (65 pct), 141.623 million manats in 2004 (50.3 pct), 324.859 million manats in 2005 (34.3 pct), 981,376 million manats in 2006 (99.5 pct), and over a billion manats in 2007 and 2008, i.e., 1 61.2 million manats (56.7 pct) and 7 45.4 million manats in 2008 (42.4 pct). According to figures as at January 1,2010, SOFAZ assets stood at 8 986.7 million manats (USD 11 219.2 million)

### **Monitoring of tenders announced for the Oguz-Qabala-Baku waterline project**

The project is designed to use underground water sources located in Oguz-Qabala region (286km north of Baku) and to transport this water to Baku city by gravity feed at the flow rate of 5 cubic meters per second and provide people with high quality water. The flow rate of water to be transported to Baku will reach 19 cubic meters per second and will allow for 24 hours uninterrupted water supply of Baku city. The water to gush out of the wells at a depth of 150 meters will be transported via GRP pipes (212.2km) and steel pipes (51.2km). And there will be no need to construct pumping stations. The project's technical feasibility study and project/design documents have been developed by ES Consulting Engineers, Germany. Management and executing functions of the project of have been entrusted to Azersu Open Joint Stock Company which signs all contracts on behalf of the Government.

### **Project's performance characteristics**

**1.1 Waterline's technical parameters** - Like the other projects, the technical feasibility study of the Oguz-Qabala-Baku water pipeline project is also unavailable to the public. The project consists of two parts – wellfield infrastructure and Oguz-Qabala-Baku main water pipe. Glass fiber pipes are used for construction. The pipe's lifespan is 50 years. The sources where the pipe takes water are in the height of 430-530 meters in Oguz. About 120 wells are to be drilled there. It is projected to equip the line with a control system called SCADA to take an

automatic control over the working regime of the water-containing wells. The line will be equipped with a SCADA control system to automate operation. Regarding the length of the pipeline, different figures are shown in both official and media reports: the pipeline is 250 km in length according to SOFAZ, while 300-280 km is shown by Azersu Open Joint Stock Company. When witnessing the groundbreaking ceremony, President Ilham Aliyev was briefed by officials, saying that “the pipeline is 248.5 km in length.” According to the information posted on the website of “Azkompozit” (its company profile will be further provided), the length of the pipeline is 265 km.

**1.2 Waterline’s economic parameters** - Oguz-Qabala-Baku water pipeline, which is the most expensive project the Oil Fund has ever funded, is fully financed by SOFAZ. The project cost rose 70 percent, or 325 million manats, to 805 million manats over the last 4 years, according to Turan New Agency. The project costs are soaring but there is no report when the project will be commissioned. “The refinancing was due to replacement of steel pipes for GRP pipes, as well as electricity price hike in 2008,” a SOFAZ spokesman told Turan.

### **Selection of procurement organizations and tendering processes**

In compliance with the Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan No. 42 s, dated February 24, 2006 management and executing functions of the project of "constructing a water pipeline from Oguz-Qabala region to Baku city" are entrusted to Azersu Open Joint Stock Company. According to official figures, construction of the Oguz-Qabala-Baku water pipeline has been through eight (8) procurement procedures;

**1.1 Consulting services.** In the result of open tender carried out by Azersu Open Joint Stock Company on consulting services for project management and engineering supervision the contract dated November 24, 2006 amounted to Euro 12 million was signed with CES Consulting Engineers, Germany. Amendment No.1 to the contract was signed on March 02, 2009 and the contract amount was increased and determined as Euro 19.9 million According to figures as at 1

January 2010, total allocations under this contract were 17.2 million manats, including 6.3 million manats in 2009.

## **2 GRP pipes and pipe materials supply**

**2.1. GRP pipes and pipe materials supply.** In the result of open tender Azersu Open Joint Stock Company and Azkompozit signed a contract on Procurement of GRP pipes, 266 km length and pipe materials amounted to 229.4 million manats. Taking into account the changes final amount of this contract is 230.6 million manats. Total allocations under this contract were 207.3 million manats, including 10.1 million manats in 2009.

2.2. Glass fiber pipe and pipe materials supply for well fields. In accordance with the Procurement procedures on production of GRP pipes, bend and tees for wellfield facility the contract amounted to 15.8 million manats was signed with Azkompozit on August 05, 2009. Under this contract 11.4 million manats were used.

## **3. Designing, construction and steel pipe supply**

**3.1. Designing, construction and steel pipe supply.** In accordance with the Procurement procedures on Designing and construction of water pipeline the contract amounted to USD 167.7 million was signed with Turkish "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company.

**3.2. Steel pipe and pipe materials supply.** In the result of open tender carried out on steel pipes supply with the length of 28 km the contract amounted to USD 91.9 million was signed with Han. Teknolojik İmalat Montaj Taahhut San. ve Tic." Anonym Company. Under this contract that consumed 35.2 million manats in 2009, all goods were delivered to Azerbaijan and contract amount was completely used.

#### **4. Drilling and building wells.**

In the result of open tender carried out on drilling and building wells within the framework of Oguz-Qabala water pipeline project the contract amounted to USD 44.9 million was signed with "Arsan Aritma" Company. 24.3 million manats were used under this contract.

#### **5. Electricity.**

In accordance with the Procurement procedures on construction of electricity for the project the contract amounted to 22.2 million manats was signed with "Sumgayit Electro Completion" Joint-Stock Company of Open Type on July 15, 2009. Under this contract 5.6 million manats were allocated.

#### **6. Construction of wellfield infrastructure.**

In accordance with the Procurement procedures on construction of wellfield infrastructure for the project the contract amounted to 68 million manats was signed with "T.T.Sh." LLC on August 05, 2009. Under this contract 9.6 million manats were allocated.

The above-mentioned are official statements on tenders. Since the Oil Fund as the funder has placed on its website general information regarding conclusion of agreements through tender procedures, with a view to ensuring transparency. Unlike SOFAZ, "Azersu" SC, entrusted to provide management and executing functions of the project of "constructing a water pipeline from Oguz-Qabala region to Baku city (in compliance with the Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan No. 42 s, dated February 24, 2006), conceals from the public as much as possible the information about construction progress, the project's performance characteristics, selection of implementing partners. No information can be accessed at its website. Azersu executives are always prevaricating to respond questions on tender

procedures. Azersu's Communications manager Akshin Rustemov says such tenders had been held long ago.

Monitoring showed that tender procedures are complied while implementing projects financed by international organizations. Because the international organization, which allocates funds, urges to hold tender in accordance with the law. The Oil Fund fails to conduct tenders for most projects it funds. Projects are often entrusted to the same companies every year. Or pursuant to Article 29.1 ( Payment of tender participation fee and tender costs reimbursement) of the Law of the Republic of Azerbaijan on Public Procurements, total sum of tender participation fee shall be set by procurement agency provided that it does not exceed 0,5 percent of supposed price of tender subject and 1,5-times of tender costs. All costs related to conducting of tender shall be reimbursed at the account of participation fee, the article says. If tenders on SOFAZ-funded projects were conducted, there had been bank documents confirming the participation fees by at least 30 who were bidding as tenderer.

The monitoring of the Oguz-Qabala-Bakı water pipeline project showed that the procurement procedures are not always conducted as provided in legislation. Besides, no procurements had been conducted to perform some activities. It can be evident from contradicting statements issued by public bodies at different times. For example, related public agencies indicate different dates on conducting of the first tender on the project. According to previous documents produced by SOFAZ, the tender for the project was conducted in 2005. It was informed that Germany-headquartered CES Consulting Engineers won the open tender (announced in October 2005) to develop the project's feasibility study and initial assessment documents. On January 6, 2006, it inked a deal with Azersu Open Joint Stock Company valued at Euro 2.14 million and contract amount was completely used. According to latest documents, the date of the contract signed with CES Consulting Engineers is marked as January 6, 2006, yet it is not noted whether the winner has been selected through a tender.

Azersu's executives claim that the German company has developed documents regarding the project's feasibility study, selection of the pipeline route, initial project planning as well as the tender package.

By CES Consulting Engineers estimates, the cost of Oguz-Gabala-Baku Water Pipeline Project totals AZN 480 million. Under the agreement, building and assembly works for \$142.1 million should be fulfilled for 14-month period.

Analysts maintain that the mismatch in official statements on conducting of tenders is due to the fact that the decision on the project had been made behind close doors. According to the provisions of the Republic of Azerbaijan's existing Law on Public Procurement, all public procurements of goods, works and other services worth AZN 50,000 (fifty thousand) and more, performed by public bodies (including state share in charter fund of which is 30 and more percents at the account of state funds, loans and grants obtained by state and received under state guarantee) shall be conducted by methods of open tender. To that end, an official tender announcement is published in the press. However, such announcement does not imply conducting of an open and transparent tender. In Azerbaijan context, tender invitations are often formal and they are simply announced to formalize the winner which had been selected in an informal and preprogrammed manner. And the names of all tenderers bidding for the project are not publicly disclosed. Even sometimes the name of the winner is not published in the organ of press where announcement about tender had been published. Publication of tender announcement, which is one of the provisions called for the project performance has been complied in respect of Oguz-Gabala-Baku Water Pipeline Project. However, the information about the winner was not publicly disclosed in the press. Under the law, information about procurement contract entered into as a result of tender shall be published within 5 banking days in organ of press where announcement about tender was published. After a long delay the government got around to announcing the names of the implementing partners - "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, "Gence Korpü Tikinti -2" ASC.

**What companies were bidding for tender?**

In order to prove that the tender process is not formal, the names of all companies bidding in tender as tenderer must be announced. We could learn from "Azersu" SC that the tender procedure for designing and construction was conducted in two stages. The first stage was conducted to evaluate the tenderers' qualifications. As to the companies which bid in tender for construction activities for the pipeline and well field infrastructure, the SC said 12 companies had submitted their bidding packages for project planning, construction operations, wellfield infrastructure designing and qualification compliance determination procedures. Unwilling to name the 12 companies, a company spokesman only said that the tenderers represented 7 countries – 5 Turkish companies, 1 Turkish-Azerbaijan joint venture, 1 Dutch-Israeli company, 3 Chinese companies, 1 Libyan company, 1 German company, as well as legal persons. 5 companies and legal persons that met the criteria were allowed to bid for the next stage.

Azersu Open Joint Stock Company does not intentionally disclose the names of tenderers. Because in tender practice, there are firms, which only exist on papers, are allowed to bid for tender. Under Article 11 (Failure of tender and refusal for its continuation) of the Law on Public Procurement, if number of tenderers submitted tender proposal to take part at the tender is less than three, procurement agency shall refuse to continue tender and publish relevant information in organ of press where announcement about tender was published within 5 banking days. So, participation of at least three tenderers is envisaged by the law. In practice, organizing companies seek to overcolor a more favorable competitive environment by increasing the number of tenderers.

In international tender practice, those tenderers offering best quality, the lowest prices and the shortest time win the tender. The Government should have briefed the public about the general comparison of tender offers without focusing on individual tenderers (as sometimes companies regard that their offer is confidential). But as it did not happen, the tenderers' offers have remained unknown. Therefore, it is difficult to define whether the winner had been selected over the interests of a deciding official (or authorized public body). Appositely, "Azersu" SC does not disclose under which criteria "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, "Gence Korpü Tikinti -2" ASC had been announced the winners.

The most crucial timeframe in terms of ensuring transparency in the project implementation is the project's execution stage. Notably, the project was supposed to be accomplished in 14 months ( May 2008). However, construction and installation works have continued for three years. Executives at Azersu earlier stated that the pipeline would have been commissioned by the end of the second quarter of 2009. It did not happen either. According to the SC's business update on 2009 1H results, pipes along 236.9km route have been laid. Given the fact that there are no concrete figures on the pipeline's length, it is questionable how many pipe joints will be needed. The implementing partners (Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company and "Tekser İnşaat Sanayi and Ticaret" Anonym Company) not only delayed works, but also caused increased costs. The total cost of the project under three contracts was 480 million manats, including taxes, yet this figure further rose to 521.6 million manats, with plenty of activities to be undertaken. Plus additional 110 million manats in expenditures are to be directed in 2010. Consequently, the project expects to consume 612 million manats, up 30 pct against the planned expenditures. Nevertheless, volume of goods (works and services) may be increased up to 15 percents under procurement contract.

The company fails to provide information about the projects' performance characteristics along the entire route, project costs, its completion date, contractors, subcontractors, etc. All this should have been available to the public, in order to avoid questions arising out of gaps within the project. Except for those interested in this area, the people are unaware of project progress. As a result, related bodies and organizations overvalue the project as they like.

Information about spending and work progress according to schedule, the reason for delays and the names of companies found guilty of such delays, overpricing, the reason for excessive costs, etc is unavailable to the public. The public can only benefit from sources provided by a variety of non-governmental organizations. Then the process of implementing the Oguz-Qabala-Baku water pipeline project SOFAZ finances is not transparent. It is, however, impossible to detect the guilty side. By the law in effect, if the delay is due to the contractor, then penalties shall apply pursuant to the tender agreement. For example, certain percents from the project value are not

paid. If the client is a legal entity, its executives may be held responsible. The Oguz-Qabala-Baku water pipeline project has not been impacted by such negative points.

Another point that is worth centering at is the fact that while assessing the results of the tender for construction for the pipeline and wellfield facility, Tender Committee had taken little heed of penalty imposed on "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company for low quality construction activities for the Alat-Gazimammad highway. In response to our question on the matter at issue, Azersu said "there was no information available with them" regarding the penalty imposed on the three implementing partners - "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company and "Gence Korpü Tikinti -2" ASC.

### **Contract awarded to an inactive company**

The most serious problem in terms of bidding transparency was the procedure for bids to procure glass fiber pipes. It still remains unknown when "Azkompozit", a domestic pipe manufacturing company, was announced the tender winner. Since once the project's technical feasibility study and project/design documents were developed, Azersu Joint Stock Company invited bids to procure glass fiber pipes placed on the July 7, 2006 issue of the state-controlled newspaper "Azerbaijan". At the beginning of the tender invitation, it was mentioned that the pipe delivery started in September 2006 and ended in February 2008. The announcement also said all bidding packages will be unsealed 18 August. The 30, 2006 December issue of the said newspaper covers Ilham Aliyev's visit to Sumgait City. On 29 December 2006, the Azerbaijan President witnessed the inauguration of the "Azkompozit" plant to manufacture glass fiber pipes, according to the story. The plant "Azkompozit" was established in December 2006, according to the manufacturer's website. We would like to mention once again that the tender had been announced 7 July 2007, with deadline set for 18 August 2006. And the notification shoed the date for the pipe supply till September 2006. So, the contract had been awarded to an inactive company. In fact, 7 companies from 6 countries (Azerbaijan, Turkey, China, Saudi Arabia, India, etc) submitted their proposals. Although Azersu named the figure but refused to list their

names. According to the Oil Fund's website, out of the money to fund the project, 80.28 million manats were transferred in December. It then turns out that the tender was carried out on December 20. (?) And what about the first tender and its results in that case?

Beginning from the December of the year 2006 the factory has been producing pipes for Oguz-Gabala-Baku potable water pipeline project, according to the company's website. It is worth pointing up the necessity for the fact that all this – either the contract awarded by Azersu or SOFAZ transfer had occurred before the company was set up. Moreover, in order to participate in procurement procedures, consignors (contractors) qualification indices shall meet the following criteria: availability of professionalism, experience, technical and financial possibilities, workforce, competency in management, reliability in relevant field to ensure performance of procurement contract, says the Law on Public Procurement. It is unseasonable to speak about professionalism or competency in management of an inactive company.

There is one more road-block related with Azkompozit on the Oil Fund's website: without specifying the date of contract signing, a statement says that "In the result of open tender Azersu Open Joint Stock Company and Azkompozit signed a contract on Procurement of GRP pipes, 266 km length and pipe materials amounted to 229.4 million manats." In a press statement, Nizameddin Rzayev, President of Azersu, insisted that the contract with Azkompozit had been signed in December 2006. Meanwhile, in case of need to substitute steel pipes for GRP pipes on some parts of the pipeline, in the result of excluding of GRP pipes, 53.2 km length and pipe materials the cost of the contract was reduced to 188.8 million manats. Besides, in accordance with the increase of the energy prices the final amount of this contract amounted to 207.7 million manats. Total allocations under this contract were 207.7 million manats. Besides, we requested Azersu to provide us with a copy of the bidding documents and Tender Committee's protocol to procure glass fiber pipes dated 20 December 2006. But the company refused to do so, producing an argument on legislative grounds.

In response to our question regarding the date for signing of the contract on Procurement of GRP pipes between Azersu" SC and Azkompozit in the result of open tender for the Oguz-

Gabala-Baku Water Pipeline Project, as well as the date of tender notification, SOFAZ advised us to go to the related implementing partners for project-related concerns.

Contract awarding with the inactive company has led to both delays with the pipeline construction and an increase in costs. For example, although the construction operations consumed more than the half of allocations (207.3 million), over 9km pipes in length were laid out of the pipes and pipe materials of 236.9 km in total length, according to Azərsu. Regarding pipe pressure rate, the company is committed to producing the pipes with working pressure between 20-25bar under the procurement contracts, yet the rate of 10bar has been specified on the pipes.

Regarding glass fiber pipe and pipe materials supply for well fields, in accordance with the Procurement procedures on production of GRP pipes, bend and tees for wellfield facility the contract amounted to 15.8 million manats was signed with Azkompozit on August 05, 2009. Under this contract 9.5 million manats were used, according to the Oil Fund. Moreover, no information about this tender notification is available in the Archives collection on the website of the Agency on Public Procurement of the Azerbaijan Republic. Azersu had placed only one tender notification on construction and installation works in the official organ of press (the “Azerbaijan” newspaper) in 2009. In fact, the project is being implemented with funding from international institutions. So, the works to procure pipes have been assigned without the tender procedure.

What is worth mentioning is that according to the terms and conditions of the first tender, the pipe delivery (procurement) had to start in September 2006 and end in February 2008. The reason for signing a second contract Azkompozit is due to the fact that this company only existed on papers while conducting the first tender. Azkompozit commenced to produce pipes in December, thus leading to both delays with the pipeline construction and increased costs. As mentioned above, in accordance with the increase of the energy prices the final amount of this contract amounted to 207.7 million manats.

One of the questions that remain unanswered is why such company came into existence. The Government created a private company within the social project. We wonder if this plant was

created to implement alone one project, i.e., it was unprofitable to import materials from companies outside Azerbaijan or there were some interests. Does Azkompozit have plans to contribute to the country's export potential in a perspective? If is so, that is not the way to deal with. Because social projects exclude any commercial targets.

### **One more argument regarding the transparency of tender:**

In accordance with the Procurement procedures on Designing and construction of water pipeline, Azersu signed a contract valued at USD 167.7 million with Turkish "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company. Later on, due to need to substitute steel pipes for GRP pipes on some parts of the pipeline, steel pipe supply, 20.2 km length by "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company and construction of steel pipes, total length 47.7 km included to the cost of the contract and contract amount increased and determined as USD 264.9 million Besides this, in accordance with the increase of the energy carriers prices the contract amount was increased and determined as USD 291.4 million But the sides have not clarified the reason for substitution for GRP pipes, only stating that in the result of excluding of GRP pipes, the cost of the contract was down 41 million manats and the amount of the contract signed with "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company increased 97 million manats to USD 264.9 million In addition, the contract award with an inactive company has caused signing of deals with a pile of companies for pipe supply. For example, in the result of open tender carried out on steel pipes supply with the length of 28 km the contract amounted to USD 91.9 million was signed with Han. Teknolojik İmalat Montaj Taahhut San. Ve Tic." Anonym Company, according to the Oil Fund. Under this contract all goods were delivered to Azerbaijan and contract amount was completely used.

### **Tender was held, but unavailable to the public**

The date of most tender invitations is not disclosed. It is not known when Turkey-headquartered Han. Teknolojik İmalat Montaj Taahhut San. Ve Tic." Anonym Company won the tender. Similarly, consider the tender claimed for wellfield infrastructure: the procurement procedure for

the latter was conducted, but no information was available to the public. There is no official statement about the contract on construction of wellfield infrastructure signed with "T.T.Sh." LLC. If the LLC was selected through the Procurement procedures, a notification would have been published in the press. Also, interested companies would have submitted proposals.

### **Drilling and building wells**

In the result of open tender carried out on drilling and building wells within the framework of Oguz-Gabala water pipeline project the contract amounted to USD 44.9 million was signed with "Arsan Aritma" Company. As much as 50 exploration and 19 observation wells have been drilled within the project. *24.3 million manats* were used under this contract. Neither Azersu nor SOFAZ provide information about the date and provisions of Procurement procedures. However, given that the drilling activities are in progress, further allocations are certainly expected. Regarding electricity, construction of electricity for the project the contract was signed with "Sumgayit Electro Completion" Joint-Stock Company of Open Tupe on July 15, 2009. Under this contract *4.4 million manats* were allocated. As there is not notification on this procedures in the press, one can figure out that either no tender has been carried out or it has not been open tender.

Failure to conduct tenders in accordance with the Procurement procedures as provided by the law has resulted in gaps with the project implementation, including generous differences between paid (transferred) and used allocations. See the tables below:

**(As at January 1, 2009 provided by SOFAZ)**

|                       | Contract value | Allocations (paid) | Allocations used       |
|-----------------------|----------------|--------------------|------------------------|
| Pipes supply          | 207,7 million  | 197,2 (94,9 %)     | 193,8 million (93,3 %) |
| Pipeline installation | 245,2          | 153,5 million      | 138,2 (56,4 %)         |

|  |                 |                          |                          |
|--|-----------------|--------------------------|--------------------------|
|  | million         | (62,6 %)                 |                          |
| Drilling and building wells  | 38,2<br>million | 24,3 million<br>(63,6 %) | 24,9 million<br>(65,2 %) |
| consulting services for project management and engineering supervision | 13,5<br>million | 11,0 (80,8 %)            | 11,0 (80,8 %)            |
| Steel pipe supply  | 73,7<br>million | 38,9 million<br>(53,0 %) | 0                        |

**Remarks:** as at January 1,2009, pipes of 209,5 km in length (78.5 % ) were installed, with pipe supply for 235,9 km (88.3 % ) , including, in turn, 25,6 km steel pipes, 210,5 km GRP pipes.

**(As at December 1, 2008 provided by SOFAZ)**

|  | Contract value | Allocations (paid)        | Allocations used         |
|--|----------------|---------------------------|--------------------------|
| Pipes production   | 207,7 million  | 195,8 million<br>(94,3 %) | 159<br>million(76,8 %)   |
| Pipeline installation  | 224,0 million  | 136,5 million<br>(60,9 %) | 155,7 (69,5<br>%)        |
| Drilling and building wells  | 38,2 million   | 22,7 million(59,5<br>%)   | 28,2 million<br>(73,9 %) |
| consulting services for project management and engineering supervision | 13,5 million   | 9,8 million (72,5<br>%)   | 9,8 million<br>(72,5 %)  |

**Remarks:** as at December 1,2008, pipes of 203 km in length (81.2 % ) were installed, with pipe supply for 207,8 km (83.3 % ) .

**(As at May 1, 2008 provided by SOFAZ)**

|  | Contract value | Allocations (paid)    | Allocations used      |
|--|----------------|-----------------------|-----------------------|
| Pipes production   | 229 million    | 145 million(63,2 %)   | 86,8 million (37,8 %) |
| Pipeline installation  | 145 million    | 76,4 million (53,0 %) | 44,6 million (28,3 %) |
| Drilling and building wells  | 38,2 million   | 17,4 million(46,0 %)  | 10,5 million (23,3 %) |
| consulting services for project management and engineering supervision | 13,5 million   | 5,26 million (38,9 %) | 5,26 (38,9 %)         |

**Remarks:** as at May 1,2008, pipes of 162.3 km in length (64.9 % ) were installed, with pipe supply for 115,9 km (46.3 %).

**(As at December 5, 2007 provided by SOFAZ)**

|  | Contract value | Allocations (paid)     | Allocations used      |
|--|----------------|------------------------|-----------------------|
| Pipes production   | 229,4 million  | 110,5 million (48 %)   | 50,4 million (22 %)   |
| Pipeline installation                                      | 145 million    | 59,2 million (41 %)    | 25,4 million (17,5 %) |
| Drilling and building wells                                | 38,2 million   | 7,633 million (20 %)   | 0                     |
| consulting services for project management and engineering | 13,52 million  | 3,049 million(22,55 %) | (22,55%)              |

|             |  |  |  |
|-------------|--|--|--|
| supervision |  |  |  |
|-------------|--|--|--|

**Remarks:** as at December 5,2007, pipes of 86.413 km in length (34.57 % ) were installed, with pipe supply for 50,960 km (20.38 %) .

As is seen, according to SOFAZ release as at 5 December 2007, the amount of allocations paid to Azkompozit were 110.5 million manats (of the total amount of 229.4 million manats), with constructions works 48% complete). Under the contract 50.4 million manats (22%) were used then. according to SOFAZ release as at 1 May 2008, an additional 35 million , manats were allocated Azkompozit, yet constructions works were 37.8% complete, or AZN 86.8 million were used. If 24 million manats were not used from the first allocation - 110.5 million manats, then why an additional 35 million , manats were “needed”?

The situation in other items is the same. The Oil Fund’s allocations for pipeline installation were 59.2 million , manats as at December 5, 2007. Of this amount, 25.4 million , manats (17.5% ) had been used by that time, with constructions works 28.3% completed, or AZN 44.6 million used. Although 15 million manats were not used from the first allocation, the Oil Fund then was generous with money by allocating an additional \$17 million to "Turan Hazinadaroğlu".

The Oil Fund’s allocations for wells drilling and building were 7.633 million manats (20%) as at December 5, 2007, with 0% works completed.

Well drilling and building was only boosted according to the information as at May 1, 2008, when works were 23.5% competed, or 10.5 million manats were used. An additional 10 million manats were allocated to Arsan Arıtma. According to the figures provided by the Oil Fund, the allocations are not spent according to designated items.

### **Both the State Agency on Public Procurement and the Oil Fund evade obligations**

Monitoring revealed that the State-run Agency on Public Procurement of the Azerbaijan Republic does not hold responsible for failure to conduct tenders. Even the tender related item

lacks in its reports, while unofficial sources did say that the State Agency prepares an Annual Report on Procurements every year. This report is not posted on the Agency website, but is directly submitted to the Head of State. According to the annual reports consisting of a few pages placed on the web-site of the said Agency, 10-10 percent of macro-services, if one is fortunate, are purchased through procurement contracts only. Experts point to legislative gaps in this regard. Namely, organizations face light penalty for failure to conduct tender. Besides, oversight mechanisms are weak.

These two agencies – the Republic of Azerbaijan’s Chamber of Accounts and Finance Ministry – oversee the efficiency of assets allocated through tenders and their use according to items in accordance with the tender contract. The Agency on Public Procurement also play a role here. Since the Agency shall submit annual reports, as well as place all information regarding the procurements and tender conditions on its web-site. The situation with the Chamber of Accounts and the Finance Ministry is clear: they are unwilling to provide their reports to the public, while the Agency on Public Procurement conceal the bulk of procurements by posting only three- or four-page reports on its web-site.

And the Oil Fund also says it is not responsible for problems related with the Procurement procedures. The response letter to our inquiry says that selection of contractors signing of contracts, technical and technical control on the projects, acceptance of commissioned facilities are within the competence of executing agencies. As to the question “Has SOFAZ arranged auditing of projects it financed”, the answer was “Selection of qualified contracting agencies is implemented through tender procedures arranged by the executing agencies, and the process is regulated by Azerbaijan’s Law on Public Procurements, which encompasses all the required procedures. Procurement procedures are controlled by the State Agency on Pubic Procurement.”

Other responses to our questions were as follows:

Were SOFAZ-financed projects through close tender?

-There are different procurement methods (quotations, requests for proposals, tenders, etc) applied by the law.

Does the Oil Fund have oversight mechanisms for Procurement procedures?

-These mechanisms are overseen by the Agency on Public Procurement. All the projects SOFAZ funds are implemented in compliance with the provisions of the Law on Public Procurements.

It is obvious from the answers that the Oil Fund as the source of financing does not exercise control over work distribution and project performance process. And event the Oil Fund has little information in this respect.

### **Major indicators for economic efficiency**

The final amount of the contract for pipe procurement is about 230 million manats (27% of total contract amount) according to preliminary forecasts.

Expenses for the project's feasibility study development, management and consulting services, construction, well drilling, soil structure and development work have been fixed at 110 million manats. The economic classification of more than half of expected costs is not accessible. The information about salary fund, equipment purchase, travel expenses is not available to the public. By estimates, the total contract value will be increased to 730 million manats. Namely, each km will consume 2.8 million manats in expenditures (3.4 million USD ). In fact, this amount would be merely sufficient for construction of 1 km road. Mathematically, construction of 1km road must cost higher compared to that of 1km water pipeline. Let's take the length of the Oguz-Gabala-Baku water pipeline at 250 km for which the funder has specified in official documents. The total cost of the project is 480 million manats. So, 1km pipeline consumes 1.92 million manats. For comparison: the Baku-Tbilisi-Erzurum (BTE) gas pipeline is 680 km in length. The project remained \$ 1 billion within the budget. \$1.47 million have been spent on each kilometer. Plus the BTE pipeline has double coating. But Oguz-Gabala-Baku is more expensive than Baku-Tbilisi-Erzurum. Or consider another example, which would not be a good comparison at first view - the Baku-Tbilisi-Ceyhan (BTC) main export pipeline of 1,760km in length constructed between 2003 and 2005: BTC is as much as 6 times longer than the Oguz-Gabala-Baku water pipeline. 1km construction of the oil pipeline was roughly 30% cheaper than that of the water pipeline. In this comparison, one of the questions that paves the way for arguments is the implementation of the projects at different times. Construction operations for the Baku-Tbilisi-

Ceyhan (BTC) pipeline had commenced in 2003, for the Oguz-Gabala-Baku water pipeline in 2006. BTC's construction lasted for three years, while Oguz-Gabala-Baku water pipeline has been under construction for four years. By simple calculations, the cost of construction works was 40-45% up during the years 2003-2008. Given this cost increase the current value of 1km route along BTC shall constitute \$3.5 million (similar to Oguz-Gabala- Baku pipeline's current price level). When evaluating the pipeline in terms of its self-cost price, it becomes evident that the project is costly. At present tariffs, one cubic meters of water supplied to the population costs 18 qepiks. An additional 35 qepiks will cover the pipeline's cost. A total of 7.9 billion cubic meters of water will be transported to Baku throughout 50-year lifespan of the water pipeline. It means the cost price per 1 cubic meters of water will be 12 qepiks at current prices. Specialists say the cost of any project is measured according to the outcome obtained during the implementation process. It may concern both – commercial projects aimed to gain profit and social projects. Simply, it is possible to make money from the result in commercial projects. Net profit gained thanks to costs features the result. But in social projects implemented by the State and non-profit companies, it is extremely difficult and impossible to speak about the result expressed in costs.

### **Evaluation of the water pipeline's socio-economic efficiency**

By expert estimates, nearly \$250-300 million have been spent on reconstruction of Baku's water supply system over the past 13 years, excluding the Oguz-Gabala- Baku water pipeline. More than half of the funds were provided through external loans, the rest - internal sources (the state budget, allocations by Azersu). Surveys as well as analyses of official statistical data have revealed that measures aimed at reconstructing Baku's water supply system have not resulted in significant changes in drinkable water supplied to the population. It is particularly observed in interrupted water supply to the consumers. According to the annual survey covering over 8,000 households by the State Statistics Committee, 100% of households in Baku and Absheron have been provided with water lines. But this complete access does not mean interrupted water source. Currently, one of the pressing problems is that water supply to Baku and Sumgayit cities is interrupted. According Azersu Joint Stock Company, presently 40 % of the houses are provided with uninterrupted water source, 60% with interrupted water source. But the survey (covering

760 households) conducted by the Caucasus Research Resource Centers program (CRRC) with funding from Eurasia Partnership Foundation showed that 22.3 % of Baku consumers receive uninterrupted water, while 76.1% interrupted water in a day and 1.6 % several times in a week. As is evident, the capital city of Baku still faces problems of water supply. Representatives of authorized government bodies point to uninterrupted water supply to Baku City, which is the only indicator in evaluating the Oguz-Gabala- Baku water pipeline's socio-economic efficiency. However, arguments, such as the actual value of the water pipeline, inadequacy of the water volume to be transported to the capital with project costs, possibilities for alternative costs and their comparison, use of alternative materials (cast-iron, steel concrete, etc) are ruled out in their statements. For example, use of GRP pipes in the pipeline installation is explained by their cost effectiveness, especially with respect to non-corrosive, lightweight properties, integrality in construction without welds. But no concrete facts regarding alternatives to the glass fiber pipes are listed official reports accessible for the public. Everyone knows that the operating service life of cast-iron pipes is longer than that of glass fiber pipes. The lifespan of cast-iron pipes is 70-80 years, while glass fiber pipes – 50-60 years. So, the GRP pipes are cost effective with assured quality due to this factor as well as reduced transportation costs.

### **Monitoring results of tender procedures for the Oguz-Qabala-Baku water pipeline**

The monitoring of the Oguz-Qabala-Baku water pipeline project showed that the procurement procedures are not always conducted by the law. Besides, no procurements had been conducted to perform some activities. It can be evident from contradicting statements issued by public bodies at different times. For example, related public agencies indicate different dates on conducting of the first tender on the project. According to previous documents produced by SOFAZ, the tender for the project was conducted in 2005. It was informed that Germany-headquartered CES Consulting Engineers won the open tender (announced in October 2005) to develop the project's feasibility study and initial assessment documents. On January 6, 2006, it inked a deal with Azersu Open Joint Stock Company valued at Euro 2.14 million and contract amount was completely used. According to latest documents, the date of the contract signed with CES Consulting Engineers is marked as January 6, 2006, yet it is not noted whether the winner has been selected through a tender. Or publication of tender announcement, which is one of the

provisions called for the project performance has been complied in respect of Oguz-Gabala-Baku Water Pipeline Project. However, the information about the winner was not publicly disclosed in the media. Under the law, information about procurement contract entered into as a result of tender shall be published within 5 banking days in organ of press where announcement about tender was published. After a long delay the government got around to announcing the names of the implementing partners - "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, "Gence Korpü Tikinti -2" ASC. In order to prove that the tender process is not formal, the names of all companies bidding in tender as tenderer must be announced. The tender procedure for designing and construction was conducted in two stages. The first stage was conducted to evaluate the tenderers' qualifications. 12 companies from 7 developed countries had submitted their bidding packages. It is not disclosed why the consortium of "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, "Gence Korpü Tikinti -2" ASC has been selected among the 12 tendereres from developed countries. Or under the law, announcement about two-stage tender shall be published in state newspapers and internationally distributed republican mass media not later than 60 banking days, and second time – not later than 40 banking days before the day of opening of tender packages. But this provision has been excluded during construction activities for the Oguz-Qabala-Baku water pipeline. The construction works for the Oguz-Gabala-Baku water pipeline was scheduled to be complete in 14 months ( May 2008). However, construction and installation works have continued for three years. Azersu executives earlier stated that the pipeline would have been commissioned buy the end of the second quarter of 2009. It did not happen either. The implementing partners (Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company and "Tekser İnşaat Sanayi and Ticaret" Anonym Company) not only delayed works, but also caused increased costs. The total cost of the project under three contracts was 480 million manats, including taxes, yet this figure further rose to 521.6 million manats, with plenty of activities to be undertaken. Plus additional 110 million manats in expenditures are to be directed in 2010. Tender Committee had taken little heed of penalty imposed on "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company for low quality construction activities for the Alat-Gazimammad highway. No information has been provided regarding the projects' performance characteristics along the entire route, project costs, its completion date, contractors, subcontractors, etc. The contract on procurement of glass fiber pipes has been awarded to an

inactive company. The reports on the Procurement procedures for glass fiber pipes are contradicting: Azersu Joint Stock Company invited bids to procure glass fiber pipes placed on the July 7, 2006 issue of the state-controlled newspaper “Azerbaijan”. Deadline was 18 August 2006. According to the Oil Fund’s website, out of the money to fund the project, 80.28 million manats were transferred to "Azkompozit" in December. It then turns out that the tender was carried out on December 20. And what about the fist tender and its results in that case? By the way, seven companies from six countries had submitted their proposals. That is to say, it is not disclosed why Azersu has awarded the contract on procurement of glass fiber pipes to an inactive company. Government created a private company within the social project. The company was required to produce pipes with working pressure between 20-25bar under the procurement contracts, yet the rate of 10bar has been specified on the pipes. No additional tender notifications for production of glass fiber pipes, bends to be used for wellfield infrastructure have been published in the official media. No information about this notifications is available in the Archives collection on the website of the Agency on Public Procurement of the Azerbaijan Republic. Neither Azersu nor SOFAZ provide information about the date and provisions of Procurement procedures for drilling and building wells. Failure to conduct tenders in accordance with the Procurement procedures as provided by the law has resulted in gaps with the project implementation, including generous differences between paid (transferred) and used allocations.

1. Azersu Open Joint Stock Company entrusted for management and executing functions of the Oguz-Qabala-Baku water pipeline project has failed to carry out transparent tenders .

2. The decision on the Oguz-Qabala-Baku water pipeline project had been made behind close doors by officials.

3. Publication of tender announcement, which is one of the provisions called for the project performance has been complied in respect of Oguz-Gabala-Baku Water Pipeline Project. However, the information about the winner was not publicly disclosed in the press. After a long delay the government got around to announcing the names of the implementing partners - "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, “Gence Korpü Tikinti -2” ASC.

4. The tender procedure for designing and construction was conducted in two stages. The first stage was conducted to evaluate the tenderers' qualifications. It is not disclosed why the consortium of "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, "Gence Korpü Tikinti -2" ASC has been selected among the 12 companies from seven countries.

5. Under the law, announcement about two-stage tender shall be published in state newspapers and internationally distributed republican mass media not later than 60 banking days, and second time – not later than 40 banking days before the day of opening of tender packages. But this provision has been excluded during construction activities for the Oguz-Qabala-Baku water pipeline.

6. The most crucial timeframe in terms of ensuring transparency in the project implementation is the project's execution stage. The construction works for the Oguz-Gabala-Baku water pipeline was scheduled to be complete in 14 months ( May 2008). However, construction and installation works have continued for three years. Azersu executives earlier stated that the pipeline would have been commissioned by the end of the second quarter of 2009. It did not happen either.

7. The implementing partners ("Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company and "Tekser İnşaat Sanayi and Ticaret" Anonym Company) not only delayed works, but also caused increased costs. The total cost of the project under three contracts was 480 million manats, including taxes, yet this figure further rose to 521.6 million manats, with plenty of activities to be undertaken. Plus additional 110 million manats in expenditures are to be directed in 2010.

8. Tender Committee has taken little heed of penalty imposed on "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company for low quality construction activities for the Alat-Gazimammad highway

9. No information has been provided regarding the projects' performance characteristics along the entire route, project costs, its completion date, contractors, subcontractors, etc.

10 So, The contract on procurement of glass fiber pipes has been awarded to an inactive company

11. The reports on the Procurement procedures for glass fiber pipes are contradicting: Azersu Joint Stock Company invited bids to procure glass fiber pipes placed on the July 7, 2006 issue of the state-controlled newspaper "Azerbaijan". Deadline was 18 August 2006. According to the Oil Fund's website, out of the money to fund the project, 80.28 million manats were transferred to "Azkompozit" in December. It then turns out that the tender was carried out on December 20. And what about the first tender and its results in that case?

12. Government created a private company within the social project.

13. Azkompozit commenced to produce pipes for the Oguz-Gabala-Baku water pipeline in December 2006. At the beginning of the tender invitation, it was mentioned that the pipe delivery should start in September 2006 and end in February 2008.

14. Seven companies from six countries had submitted their proposals. Azersu refused to list their names.

15. The company is committed to producing the pipes with working pressure between 20-25bar under the procurement contracts, yet the rate of 10bar has been specified on the pipes.

16. No additional tender notifications for production of glass fiber pipes, bends to be used for wellfield infrastructure have been published in the official media. No information about this notifications is available in the Archives collection on the website of the Agency on Public Procurement of the Azerbaijan Republic.

17. Neither Azersu nor SOFAZ provide information about the date and provisions of Procurement procedures for drilling and building wells.

18. Failure to conduct tenders in accordance with the Procurement procedures as provided by the law has resulted in gaps with the project implementation, including generous differences between paid (transferred) and used allocations

19. The information about salary fund, equipment purchase, travel expenses is not available to the public.

20. Both the implementing partners and contractors show different figures regarding the length of the Oguz-Gabala-Baku water pipeline.

21. No information about tender procedures can be accessed on Azersu's website. Azersu executives are always prevaricating to respond questions on tender procedures.

22. The Oil Fund does not hold responsible for tender violations. It has no oversight mechanisms for tender procedures.

### **Monitoring of tenders for reconstruction of the Samur-Absheron irrigation system**

The project of reconstruction of the Samur-Absheron irrigation system is designed to create safe water source with uninterrupted water supply for Baku and Sumgayit cities. Given Baku has been facing serious infrastructure of late years and its population numbers 1.9 million people according to official data, while 3 million people according to unofficial data, the existing system has been exposed to much physical erosion due to double load of the oil infrastructure. Currently, one of the pressing problems is that water supply to Baku and Sumgayit cities is interrupted. According Azersu Joint Stock Company, presently 40 % of the houses are provided with uninterrupted water source, 60% with interrupted water source. But the survey (covering 760 households) conducted by the Caucasus Research Resource Centers program (CRRC) with funding from Eurasia Partnership Foundation showed that 22.3 % of Baku consumers receive uninterrupted water, while 76.1% interrupted water in a day and 1.6 % several times in a week. It should be noted that Azersu is responsible for all problems in fresh and technical water supply to Baku and Sumgayit cities, as well as all towns across the Absheron Peninsula. By recent

calculations, the number of water consumers of the stock company is 3 million people. The length of the water pipeline line is 4,200 km, of which 2,600 km fall to the share of inter-urban water network, 1,600 km – main lines. The supply system also includes 2 clean-up facilities, 265 pump stations and water storehouses containing 850 thousand cube meters of water. Water is transported from 5 sources. The flow rate of the 5 sources totals 23 cubic meters per second, yet only 13 cubic meters is transported from these sources. This is not sufficient for water supply provision.

Officials claim that the problem of drinkable water will be solved thanks to the two water supply projects funded by the Oil Fund. The additional flow rate of water to be transported to Baku will be 15 cubic meters per second thanks to reconstruction activities, according to Azersu specialists. Of this, 2.5 – 3.0 cubic meters will flow into Azersu's distribution networks to use as drinkable water, the remainder will reach Melioration and Water Economy JSC for irrigation purpose.

It should be noted that the project to reconstruct the Samur-Absheron irrigation system is designed to create safe water source with uninterrupted water supply for the country's northern regions, Baku and Sumgayit cities, as well as Absheron Peninsula.

The SOFAZ-funded project aimed at reconstructing the Samur-Absheron irrigation system includes: construction of Takhtakorpu water reservoir with hydroelectric power station; construction of Takhtakorpu-Ceyranbatan water canal; building of 70 houses for evacuation of the IDPs settled in Gulamly district of Devechi region and relocation of main gas and oil pipelines. In compliance with the Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan No. 42s, dated February 24, 2006 project management and executing functions of the reconstruction of the Samur-Absheron irrigation system project are entrusted to the Azerbaijan Joint Stock Company of Melioration and Water Economy. Working Group was established on purpose to ensure project management in accordance with the Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan No.411s, dated December 23, 2005. The project has been through eight tenders for procurement contracts. In this chapter, our monitoring is extended to these tenders. The tender procedure for designing and construction was conducted in two stages. The first stage was conducted to make sure that the tender was carried out in accordance

with the provisions of the Law on Public Procurement, the most effective proposal for procurement contracts submitted by the tenderers was chosen, Tender Committee duly assessed the winner's qualification compliance and tender invitation was arranged in accordance with the law. The sources of information for monitoring of tender procedures for the project to reconstruct the Samur-Absheron irrigation system have been the web-site of the Oil Fund, responses to information inquiries sent to the Azerbaijan Joint Stock Company of Melioration and Water Economy entrusted for management and executing functions of the project, reports on the Internet resources posted by the contractors, as well as media articles and stories covering the project. Studies indicated that it is rather complicated to trace tender invitations for the project "Reconstruction of the Samur-Absheron irrigation system" like the other social projects financed by the Oil Fund. Since although general information about conducting of procurements is available in official reports, the announcement of conducting of procurement, or the names of tenderers are unavailable. SOFAZ as the source of financing does not have oversight mechanisms for procurement contracts, utilization of funds. General, incomplete reports are posted on its website. When addressing the Oil Fund for procurement issues, the Fund responded that financing of the projects funded by the Oil Fund is implemented after the companies submit their fully reasonable financial documents, such as money transfer order, papers related to the procurement procedures, scope of the agreement and contractual activities, as well a copy of the evaluation sheet, contractor's invoice, scope of activities undertaken during the reported period and the summary jointly signed by the company and implementing partner. All documents are analyzed as well as guidelines on increase of efficiency in the project execution and funds utilization are provided to implementing partners before financing a project. Unless any supporting documents are properly produced, the project will not be funded by the Oil Fund, according to SOFAZ.

## **Projects' technical parameters**

**1.1** The Samur-Absheron irrigation system under reconstruction was commissioned in the fortieth of last century. Construction works for Takhtakorpu water reservoir with hydroelectric power station in Devechi region commenced in November 2007. Chairman of Melioration and Water Industry company Ahmad Ahmadzade briefed President Ilham Aliyev, who was

witnessing the groundbreaking ceremony, about the project's technical parameters ("Azerbaijan" newspaper, 2007). Since although the Oil Fund had transferred allocations in 2005, the project's technical parameters had remained "confidential" for the public. Even tender announcements published in 2005-2006 did not contain a single sentence about operations to be performed. Besides, Melioration and Water Industry company has not placed on its web-site any reports regarding construction of Takhtakorpu water reservoir with hydroelectric power station, construction of Takhtakorpu-Ceyranbatan water canal, as well as the project's technical parameters and completion period.

Ahmadzade informed that construction of the Takhtakorpu water reservoir is part of the reconstruction of the Samur-Absheron irrigation system. Samur-Absheron canal is 180km in length. Reconstruction activities encompasses update of the canal's main facility, repair of 50km section, reconstruction of Takhtakorpu water reservoir, Takhtakorpu-Ceyranbatan and Velvelechay– Takhtakorpu canals. This strategically important project is designed to build a new Takhtakorpu-Ceyranbatan water canal, with a holding capacity of 268 million cubic meters. The project will improve the drinking and technical water supply of Baku and Sumgayit by 2 times.

Ahmadzade also said the project cost would total 392 million manats, adding that construction works implemented by a Consortium of "Azersu", "Azerkorpu" və "Azerenerjitektikintiqurashdırma" consulted by Turkey-based "Temelsu" company will be completed in 2010. The project will use 26 million cubic meters of soil, over 60,000 cubic meters of concrete. It is a 142.5 meter high water reservoir with 10-15 meters in width. As much as 8.5 million cubic meters to be dredged as part of the project.

According to official data, the water storage basin of the dam with the height 124m will contain 219 million m<sup>3</sup> of payload volume (total 268 million m<sup>3</sup>). The earth dam with the central clay core and gravelly-sand prisms 1010m long on ridge designed 750m wide on bedding to the dam body will be filled with about two and a half millions of cubic meters of soil. 25 MVt hydro power station building is underway. The evacuated 720-mm main oil and 1220-mm main gas pipelines from the territory of the reservoir are, respectively, 10,000m and 96,000m in length. The Takhtakorpu water reservoir will be built outside the river-bed within the project. The major

source of the reservoir is the Samur-Absheron Canal. Part of water source from the Gusarchay, Gudyalchay, Guruchay, Akchay, Caqacuqchay and Velvelechay flows into the Velvelechay–Takhtakorpu canal and Takhtakorpu water reservoir within the Samur-Absheron irrigation system. Once Takhtakorpu water reservoir with hydroelectric power station is constructed, the would-be-built new Takhtakorpu –Ceyranbatan canal will feed self-moving water volumes to Ceyranbatan lake. The additional flow rate of water to be transported to Baku will be 15 cubic meters per second from the previous 9 cubic meters thanks to these reconstruction activities.

Melioration and Water Industry company executives maintain that the 25 MVT hydroelectric power station to be built on the dam will increase the additional energetic opportunities of the adjacent regions. And commissioning of a water pond with the hydroelectric power station will liquidate energy consumption in water transport worth 15 million manats. Since the Sitalchay and Ceyranbatan pump stations will be liquidated after project completion.

Annual the annual profit to be gained from the electric power generating capacities is forecasted to amount to AZN40-50 million a year. It means repayment of the water pond and the hydroelectric power station within seven years, according to officials.

**1.2** Financing of the Samur Absheron irrigation system reconstruction project was approved by Presidential Decree No.346 of December 28, 2005. Starting from 2005, the Oil Fund has been transferring funds to finance the project. The amounts of 0.1 million manats, 37 million manats, 76.9 million manats, 120.600 million manats and 129.999 million manats, accordingly, were transferred in 2006, 2007, 2008 and 2009 to finance the project for reconstruction of Samur Absheron irrigation system. The amount of to be transferred in 2010 is 110 million manats.

The amounts of contracts signed with the contractors have been as following:

Of the 0.4 million-manat worth contract signed between Melioration and Water Industry company and "Temelsu" company, **0.1 million manats** were allocated from the Oil Fund. The two contracts amounted to **20 million manats** were signed with "Khezerdenizneftgas" Company. This amount, including **0.8 million manats** in 2009, were completely used.

The contract amounted to **365.9 million manats** was signed with "Azerkorpu" SC, the leader of Consortium consisting of "Azerkorpu", "Azerenergytikintiqurashdirma", "Azersutikinti" SC. and "Temelsu" company. Under this contract total **215.7 million manats**, including **72.1 million manats** in 2009 were used.

The cost of the contract signed with "Technomost"- "Irrigator" Union, was **1.7 million manats** and this amount was completely used.

The contract amounted to **260 million manats** was signed with "Azerkorpu" SC, the leader of Consortium consisting of "Azerkorpu"(leader), "Chengiz Inshaat Sanayi ve Ticaret A.Sh.", and "Azersutikinti" SC. Under this contract total **101.9 million manats**, including **37.3 million manats** in the 2009 were used.

SOFAZ finances some part of construction of Velvelechay-Takhtakorpu canal from IV quarter of 2009. According to the addition to the contract, dated December 21, 2007, by the amendment dated September 28, 2009 the amount of the works financing by SOFAZ determined as **USD 100.1 million** (Including VAT). Total allocations by SOFAZ for building this object were **19.4 million manats**.

**1.3 million manats**, including **0.4 million manats** in 2009 were used for supporting of Working Group.

A total of 364.5 million manats were used for financing of the reconstruction of the Samur-Absheron irrigation system project as at January 1,2010. The project completion is scheduled for October 1,2010. But the project like some oil projects is also behind schedule, and officials say the completion date is 2011. It means an additional 150-160 million manats will be allocated for the project over two years into the future. Much noteworthy is that the project cost was reported to be 392 million manats during the groundbreaking ceremony

### **Tenders conducted by executing agencies and their monitoring**

The case study conducted with the support of Partnership for Transparency (PTF) revealed that the project “Reconstruction of the Samur-Absheron irrigation system” has been through eight tenders. The Joint Stock Company of Melioration and Water Economy has only provided superficial information: although the project has continued for 5 years, the Stock Company still fails to place on its web-site detail reports on the procurements as well as Working Group established on purpose to ensure project management, this impeding information collection about tender and monitoring. In response to inquiries, which is the only source for studies in monitoring, the Stock Company provides no detailed information by digressing from direct questions. Our letter # 02/188 of 25 November 2009 to the Joint Stock Company was responded by Working Group established on purpose to ensure the Samur-Absheron irrigation system project management in a two-page reference through letter # 11/15-607 dated 15 December the same year signed by First Deputy Chairman M.Z.Guliyev. In fact, this letter is not adequate to cover the contents of our questions. For example, in response to the question concerning the date of tender announcement for consultation services, criteria for selection of the winner, as well as tender conditions, including the number of tenderers, the very Working Group answered that the Samur-Absheron irrigation system is a large-scale, integrated economy designed to create safe water source with uninterrupted water supply for the country’s northern regions, Baku and Sumgayit cities, as well as Absheron Peninsula. About 50km in length section of this canal was built in the fortieth of last century. The canal was extended in the fiftieth, including concrete coating and building pump stations. Later (in the 1960s), the system was further extended to Absheron Peninsula. The 50-year uninterrupted operation without repairs as well as increasing demand for the drinking and technical water source by the population, industrial and agricultural facilities necessitated reconstruction of the Samur-Absheron irrigation system in order to solve the problem within an integrated conception. With the credit extended by the World Bank (WB), Japan Company "Nippon Koei" and local company "Sulako" prepared "Long Term Strategy and Feasibility Study for the Samur-Absheron Canal System" in 2004. With a view to executing instructions and tasks voiced in the meeting chaired by President of the Azerbaijan Republic, September 2005, the project to reconstruct the Samur-Absheron irrigation system launched in 2006 according to the scheme proposed in the said Long Term Strategy and Feasibility Study. Financing of the SOFAZ-funded project approved in accordance with Presidential Decree No.

346 dated December 28, 2007 aimed at reconstructing the Samur-Absheron irrigation system, including construction of Takhtakorpu water reservoir with hydroelectric power station and construction of Takhtakorpu-Ceyranbatan water canal. The project is fully funded by the Oil Fund.

Other questions were about the implementing partners selected for construction of Takhtakorpu water reservoir with hydroelectric power station and core conditions for their selection. The reply to this inquiry indicated: "Open tender for the Procurement on "Construction of Takhtakorpu water reservoir with hydroelectric power station" was carried out on September 8, 2006. Four tenderers submitted their proposals. The contract signed on October 6, 2006 was awarded was to "Azerkorpu" SC, the leader of Consortium consisting of "Azerkorpu", "Azerenergytikintiqurashdirma", "Azersutikinti" SC. and "Temelsu" company, which is committed to providing consultation services. The water pond of the dam with the height 142.5m will contain a total of 268.4 million m<sup>3</sup> in volume. The area of the basin is 8.7 km<sup>2</sup> The earth dam with the central clay core and gravelly-sand prisms 1180m long on ridge. The flow rate of the water source from the pond to Takhtakorpu-Ceyranbatan canal will be 40 cubic meters per second. Besides, three turbines to be installed here will generate 25 MWT of electricity."

The response to the question regarding open tender for the Procurement procedures on relocation main gas and oil pipelines impacted by the project and names of the tenderers participating in tender was that related contracts were signed with Socar-based Khezerdenizneftgas Trust. Regarding conditions of open tender for procurement on construction of Takhtakorpu water reservoir with hydroelectric power station within the project of Samur-Absheron irrigation system, as well as number of tenderers, Work Group wrote that open tender for the Procurement procedures on construction of Takhtakorpu-Ceyranbatan water canal was carried out On December 14, 2007. Five tenderers were bidding for tender. The contract was awarded to "Azerkorpu" SC, the leader of Consortium consisting of "Azerkorpu"(leader), "Chengiz Inshaat Sanayi ve Ticaret A.Sh." (Turkey) and "Azersutikinti" SC. This project is designed to build a new Takhtakorpu-Ceyranbatan water canal, 110.3 km long, 4 meter in bottom width, 3.8 meter in depth, with a throughput capacity of 40 cubic meters per second to be transported to Ceyranbatan water pond. It is planned to build about 300 facilities (aqueducts, pipe canals,

bridges, one tunnel, etc) on the canal. The project to construct the water pond and canal will improve the drinking water supply, as well as meet the demand for irrigation purposes.

As is seen, the Stock Company has provided superficial information. We sent inquiry to the Stock Company for the second time, but they refused to reply.

A report related with the Procurement procedure on the project posted on SOFAZ website says Japan Company "Nippon Koei" and local company "Sulako" prepared "Long Term Strategy and Feasibility Study for the Samur-Absheron Canal System" in 2004. regarding preparation of technical and tender documents, the contract amounted to 0.4 million manats was signed with Turkey-headquartered "Temelsu" company in accordance with the Procurement procedures on preparation of tender documents and technical project of Takhtakorpu water reservoir with hydroelectric power station object on October 18, 2005, according to the Fund. 0.3 million manats and 0.1 million manats were accordingly allocated from state budget and the State Oil Fund of the Republic of Azerbaijan. But the date of this contract is October 6, 2006 in the response letter we received from the Joint Stock Company. The said contract encompasses services to be provided "Temelsu" company within the Consortium. According to the company's website, it concluded one contract with Azerbaijan side dated 10/2005. The completion date is 01\2006. Under the contract, "Temelsu" company is committed to providing consultation and other services, including but not limited to, preparation of procurements on Takhtakorpu water pond with hydroelectric power station object, final projects and reports.

Monitoring results showed that companies close to relevant agencies, by profiting from gaps in the Law on Public Procurements, amid tender procedures enter into a formal consortium with qualified foreign companies, which have been tender winners in order take advantage of selection criteria. After the winner is announced, they end the consortium deal. But it ought to be remarked that the existing Law on Public Procurements extends to procurement of goods (works and services) performed in the Republic of Azerbaijan by state enterprises and organizations (administrations), enterprises and organizations, state share in charter fund of which is 30 and more percents at the account of state funds, loans and grants obtained by state and received under state guarantee (Article 1).

## **Tender announcement in organ of press and camouflaged sides in tender**

It should be noted that only one open tender for the Procurement on "Construction of Takhtakorpu water reservoir with hydroelectric power station" carried out on September 8, 2006 was published in organ of press. This announcement could have been published because it was the beginning of the project. However, such announcement does not imply conducting of an open and transparent tender. In Azerbaijan context, tender invitations are often of formal nature. The analysis of this tender for the Procurement on the construction of the Takhtakorpu water reservoir with hydroelectric power station, published in the newspaper "Azerbaijan" dated 11.08.2006 indicates the formality of tender processes. For example, priorities of the tender conditions were cost effectiveness, practice in similar works, the contracting agency's financial state, most favorable proposals on duration. The announcement noted that assessment of tender proposals shall be in compliance with the Law on Public Procurements of Azerbaijan Republic: In order to participate in procurement procedures, consignors (contractors) qualification indices shall meet the following criteria: 1. authority to enter into procurement contract; possibility of free and unlimited use of its assets as well as solvency; availability of articles of association, certificates of registration, required licenses, other documents required to determine legal status and authority to enter into procurement contract. 2. availability of professionalism, experience, technical possibilities, workforce, competency in management, reliability in relevant field to ensure performance of procurement contract; availability of similar prior experience and copies of related activities. 3. availability of professionalism, experience, technical and financial possibilities, workforce, competency in management, reliability in relevant field to ensure performance of procurement contract; availability of information about contractors, if any, (including their names, addresses, type of work and experience). 4. financial possibilities: copy of the balance sheet for the past 5 years duly approved by tax authorities; absence of tax and other mandatory payment obligations in the Republic of Azerbaijan which execution is overdue; availability of banks documents indicating financial circulation for the past 5 years. 5. consignors (contractors) shall not declared bankrupt, their property shall not seized, mortgaged or otherwise charged, they shall not persons, which commercial activity has been suspended by court decision. The announcement also requested all tenderers to prepare and submit required

documents (excluding tender proposal and guarantee of performance of procurement contract) until August 31,2006. Participation fee was 500 manats.

Above all, the tender announcement in the newspaper “Khalq” is not in compliance with the content of requirements stipulated by the law. Under this article –**Content of tender announcement (invitation)**, the following shall be indicated in announcement (invitation) about tender:

information about organizer of tender;

time and place of commencement of tender procedures;

tax and duty benefits (if provided) relating to procurement contract;

documents necessary to take part in tender;

office telephone and fax number of coordinator to get additional information;

conditions of tender proposal’s guarantee

name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided;

required terms of shipping of goods and completion of works or schedule of provision of services.

However, the announcement of open tender for the Procurement on "Construction of Takhtakorpu water reservoir with hydroelectric power station" published in the “Khalq” newspaper has not indicated these items: name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided; required terms of shipping of goods and completion of works or schedule of provision of services. Failure to compile the tender announcement in accordance with the law points to mere technicality of the process.

For comparison, consider the neighboring Georgia where these the items of name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided, as well as required terms of shipping of goods and completion of works or schedule of provision of services shall be specified in announcement in tender. Each

items of works to be performed in announcement (invitation) about tender is described in such a detailed manner that the announcement consists of 10-15 pages. Besides, tender announcement is published in both official and independent organs of press. The tender process, name of tenderers are accessible for the public.

Failure to specify the item regarding required terms of shipping of goods and completion of works or schedule of provision of services in the open tender for the Procurement on "Construction of Takhtakorpu water reservoir with hydroelectric power station" has led to delays with completion. Since the project completion is scheduled for October 1,2010. But executives at the Joint Stock Company of Melioration and Water Economy say the completion date is 2011. They don't disclose the reason for delays and the name of company found guilty of such delays. Generally, neither executing nor contracting agencies provide information about progress in the performance of works. All works within this project are not based on publicity.

"Azerkorpu" SC, the leader of Consortium, specifies commencement of works as 2007, completion of works – 4 years. Unlike the Joint Stock Company of Melioration and Water Economy, the leader of Consortium has posted reports on works performed under the project. According to its website, the SC is involved in construction work Velvelechay-Takhtakorpu canal for Takhtakorpu water reservoir with hydroelectric power station object, according to the orders of Azerbaijan Joint Stock Company of Melioration and Water Economy. Consultation services are provided by Dar Al Handasah Consultant ( Shair & Partners) company.

Construction started in 2007. Term of completion is 4 years. The project is self-flowing and an alternative for Samur – Absheron Canal (SAC), where different water stations provide the water to Ceyranbatan water storage basin. The main Canal Velvelechay – Takhtakorpu transports the water through the main structure into the Ceyranbatan Takhtakorpu water reservoir starting from Samur-Absheron Canal. The max water discharge of canal is  $Q_{max} 75m^3/sec$ . The project includes the construction of 31,2km (km0+000-km31+200) canal, 2 no. 3500 m long tunnels, 31 no. gullies under canal, 5 no. gullies above canal, 10 no. bridges crossings, 5 no. pipe canals. The project is financed by the State Oil Fund of Azerbaijan Republic, Saudi Development Fund, Islamic Bank of Development and OPEC Fund.

We would like to give additional explanation here: SOFAZ finances some part of construction of Velvelechay-Takhtakorpu canal from IV quarter of 2009, reports the Oil Fund. In accordance with the Procurement procedure carried out on June 18, 2007 the contract amount accepted as USD 125.1 million (without VAT). One part of construction of this project is being financed within the framework of Credit Agreement amounted USD 42.6 million signed between Azerbaijan government and Islamic Development Bank, Saudi Fund For Development and OPEC Fund for International Development. Besides that, according to the addition to the contract, dated December 21, 2007, by the amendment dated September 28, 2009 the amount of the works financing by SOFAZ determined as USD 100.1 million (Including VAT). Total allocations by SOFAZ for building this object were 19.4 million manats.

"Azerkorpu" SC, is the leader of Consortium for the project to construct Takhtakorpu-Ceyranbatan Canal. The project is financed by the State Oil Fund of Azerbaijan Republic.

Construction started in 2007. Term of completion is 4 years. The project is a self-moving and an alternative for Samur – Absheron Canal (SAC), where different water stations provide the water to Ceyranbatan water storage basin. This canal is 110 km long (km 0+000 – 110+000). The project also includes the construction of one 1340 m long tunnel, 4 no watersheds of 14 km in total length, 150 no. gullies under canal, 50 no. gullies above canal, 57 no. bridges crossings, 12 no. pipe canals and 2 no aqueducts. The max water discharge of canal is  $Q_{max} 40m^3/sec$ . The storage basin of water-engineering system is placed on 32 km of new Velvelechay-Ceyranbatan Canal on the territory of two regions – Devechi and Siyazan, at the end part of Big Caucasus south-eastern ridge. The elevation mark is varied between 50 and 250 meters. The water-engineering system section lines in five kilometers to the west of Devechi-Siyazan highway. The earth dam with the central clay core and gravelly-sand prisms 1180m long on ridge designed 750m wide on bedding to the dam body will be filled with about two and a half millions of cubic meters of soil. The water storage basin of the dam with the height 135.5m will contain 218.9 mln.m<sup>3</sup> of payload volume (total 268 mln. m<sup>3</sup>). The basic structures of the water-engineering system include earth fill dam, energy tract and emergency spillway. The lined 500 m long tunnel 4m on diameter with the 40 cub/sec water discharge is over at hydro power station building on 25

MVt with three aggregates. The construction of emergency spillway with the 0.01% provision for discharge of 84 cub/sec with the length 1000 m and damper at the end is also provided.

As is seen, information about performance of works is unavailable in the Archives collection on the website of "Azerkorpü.

Tender proposal with lowest price was considered the key criteria as winning one. But uncertainty in completion term has led to increased costs in the project. Reportedly, a total of 364.5 million manats allocated from SOFAZ were used for financing of the reconstruction of the Samur-Absheron irrigation system project as at January 1,2010. Plus additional 110 million manats are to be allocated from the state budget 2010. Further allocations will continue in 2011 as well. Consequently, the project will not have been considered under the criteria of the lowest price, as mentioned in the tender proposal.

Nevertheless, monitoring results showed that two years ago, Melioration and Water Industry company indicated the contract value for the project "Construction of Takhtakorpu water reservoir with hydroelectric power station" at a lower level. Since according to the responses to the information survey sent to SOFAZ and Azersu Joint Stock Company by the Baku-headquartered Committee for Protection of Oil Workers' Rights within the project "Monitoring on use of oil revenues and public discussions", implemented in 2007, the amount of works for the project "Construction of Takhtakorpu water reservoir with hydroelectric power station" totaled 277 million manats (including VAT). However, the contract signed with "Azerkorpu" SC is specified to amount to 365.9 million manats on the Oil Fund's website. So, the amount of works has been provided in different figures at different times due to gaps in the procurement procedures, as well as lack of oversight mechanisms. Chairman of Melioration and Water Industry company Ahmad Ahmadzade also named a different figure in his speech during the groundbreaking ceremony of the project. Ahmadzade also said the project cost would total 392 million manats. So, three different figures are provided for one project.

One of the main requirements for assessment of proposals specified in the Procurement procedure on construction of Takhtakorpu water reservoir with hydroelectric power station is the

item “experience”. True, not only experience, but even names of tenderers are not disclosed. Moreover, monitoring results revealed that the winner - “Azerkorpu”, which was established in 1968 in Baku under the Ministry of Transport Construction of USSR and started its activity as “Mostootryad-100”, has got great experience in the sphere of construction of various Projects either in Azerbaijan or abroad. JSC “Azerkorpu” is the only multi-sectored company in Azerbaijan.

The extensive experience “Azerkorpu” has gained first starts within the project to reconstruct Samur-Absheron irrigation system. During 2004 and 2006, SC was involved in domestic irrigation network rehabilitation and construction of a sedimentation basin for Samur – Apsheron channel catchment. During 2003 and 2006 the project “Khanarkh channel construction” was implemented. The primary objective of the project was to facilitate the irrigation of the agricultural lands in the districts of Khachmas, Davechi and Gusar amounting to a combined total area of 62,547 ha. The works also served to provide an escape canal during SAC repairs.

In responses to information surveys tenderers’ names are not disclosed, yet monitoring revealed that 4 tenderers had submitted proposals for procurement held September 8, 2006. They were: Consortium led by “Azerkorpu” SC, “KISKA Tech” SC, Turkey-based “Turan Hazinadaroglu” and “Korpu-Bina-Tikinti” MMC. The contract was signed on October 6, 2006 with “Azerkorpu” SC, the leader of Consortium consisting of “Azerkorpu”, “Azerenergytikintiqurashdirma”, “Azersutikinti” SC. and “Temelsu” company, the winner of open tender for the Procurement on “Construction of Takhtakorpu water reservoir with hydroelectric power station”

Now back to participation of the 4 tenderers: In tender practice, there are companies, which only exist on papers, are allowed to bid for tender. Under Article 11 (Failure of tender and refusal for its continuation) of the Law on Public Procurement, if number of tenderers submitted tender proposal to take part at the tender is less than three, procurement agency shall refuse to continue tender and publish relevant information in organ of press where announcement about tender was published within 5 banking days. So, participation of at least three tenderers is envisaged in legislation. In practice, interested companies seek to overcolor a more favorable competitive environment by increasing the number of tenderers. There is no information about “KISKA

Tech" SC in Internet resources, while "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company had been fined for low quality construction activities for the Alat-Gazimammad highway on the eve of tender procedures. Therefore, its participation as tenderer contradicted legislations.

For preparation of technical and tender documents, "Technomost"- "Irrigator" Union was announced the winner of the open tender carried out on May 22, 2006 committed to prepare the project-estimate documents for the construction of Takhtakorpu-Ceyranbatan canal. The contract cost of this component was 1.7 million manats and this amount was completely used. Procurement on construction of Takhtakorpu-Ceyranbatan water canal was carried out on December 27, 2007. The winner was again declared "Azerkorpu" SC, the leader of the above mentioned Consortium consisting of "Azerkorpu"(leader), "Chengiz Inshaat Sanayi ve Ticaret A.Sh.", and "Azersutikinti" SC. It is not disclosed why tender commission had favored "Azerkorpu" SC. No information about the other tenderers is provided. Because "Azerkorpu" SC has greater experience in bridges and highway construction than water dam construction.

Interestingly, no tender for procurement of goods to be used for construction and installation works was carried out. The names of procuring agencies are unknown. According to Field Chief of Takhtakorpu water Vasif Qasimov, who tried to avoid details, said 4 million cubic meters of alum earth, 18 million cubic meters of ballast stone, 1.7 million cubic meters of filters, 600,000 cubic meters of stone have been used, with 5.5 million cubic meters of land filled (5.5 million cubic meters of land to be filled in total).

In accordance with the Procurement procedure on building 70 houses for evacuation of the IDPs settled in Gulamli district of Devechi region the contract amounted to 1.6 million manats was signed with "Azəri-Servis" LTD on January 12, 2006. 0.1 million manats and 1.5 million manats were accordingly allocated from state budget and the State Oil Fund of the Republic of Azerbaijan, according to official reports. Notably, "Azəri-Servis" LTD is one of the key contractors for projects of building housing and improving socio-economic conditions of refugees and internally displaced persons (IDPs) funded by the Oil Fund.

According to the open tender on construction of access roads within the framework of the project the contract amounted to 2.8 million manats was signed with "Azerkorpu" SC on January 12, 2006. Under this contract 0.5 million manats were used.

Within the framework of the Procurement procedures on "relocation main gas and oil pipelines" two contracts amounted to 20 million manats were signed with "Khezerdenizneftgas" Company in 2006. This amount was completely used. According to SOFAZ, "Khezerdenizneftgas" Company was announced the winner, while in response to our information survey by Work Group, such procurement remains out of focus.

Monitoring of the Samur Absheron irrigation system reconstruction project revealed that the winners are otherwise related to related government bodies. For example, "Khezerdenizneftgas" Company is linked with the State Oil Company (SOCAR), "Azəri-Servis" LTD, the winner of the Pprocedure on building 70 houses for evacuation of the IDPs settled in Gulamli district of Devechi region, with Ayaz Orucov, Director of Social Development Fund for IDPs (SDFIDP), "Azerkorpu" SC, leader of major works, with the Transport Minister.

"Azersutikinti" SC is 100%- government owned, "Azerenerjitikintiqurashdırma" 66%- f government owned enterprises. Generally, the same certain companies are always participating in procurement procedures on SOFAZ-funded projects and become the winners. It implies lack of transparency and announcement of the winner before tender packages are unsealed. All this must force tender commission to increase transparency in the selection process. Or by the law, the tender is the competition held to select the most efficient procurement contract performance proposals submitted by tenderers in writing. But results of works performed by the tender winners within the reconstruction of the Samur-Absheron irrigation system project do cast doubt on selection on the basis of transparent environment.

Or, another matter at issue is the structure of tender commission. The public is unaware of this commission. For example, according to the Azerbaijan Joint Stock Company of Melioration and Water Economy, the open tender carried out on September 2006 was carried out in presence of representatives from the Economy Development Ministry, the Finance Ministry, as well as the

public. Moreover, it is unknown which organizations represented the tender commissions for other tenders within the project. And the process of selecting public representatives is unknown except for executing agency.

Part of funds allocated under the project "Reconstruction of the Samur-Absheron irrigation system" have been misused like the other social projects financed by SOFAZ. For example, under the contracts total amount of allocations for financing of this project from SOFAZ have been 37 million manats in 2006, 76.9 million manats in 2007. The roads in the area, had been constructed by October 2006. The allocations were used for preparation of tender documents and technical project of Takhtakorpu water reservoir with hydroelectric power station, relocation of main gas and oil pipelines, evacuation of the people (IDPs) settled in construction area, etc, preparation of the project-estimate documents for the construction of Takhtakorpu-Ceyranbatan canal, supporting of Working Group. The amount of \$150,000 allocated in 2006 had covered wage fund, as well as expenses for communication, travel, transport and equipment purchase,

We would like to give additional explanation here: preparation of tender documents, conducting of tender are held thanks to participation fees. Namely, tender documents cannot be prepared at the expense of allocations transferred within the project. SC claims that they have used to this end from the amount allocated in 2006. Or according to "Temelsu" company's official web-site, services under the contract signed in October 2005 also includes preparation of tender documents.

The contracts for evacuation of 720-mm main oil and 1220-mm main gas pipelines from the territory of the pond as part of the project to construct Takhtakorpu water reservoir with hydroelectric power station amounted to, accordingly, 8,024,743,87 manats and 11,998.072 manats. Both contracts were implemented by OOCAR-owned "Khezerdenizneftgas". If we divide the amount allocated by length of the oil and gas pipelines, the cost of relocation of oil pipeline is 802 manats per meter, whereas that of gas pipeline is 1,250 manats per meter. This is certainly beyond cost effectiveness.

According to Melioration and Water Economy, the amount of compensation paid to landowners for their loss and damage and allocation of lands for building of Takhtakorpu water reservoir was 711 071,44 manats. But monitoring results revealed that there has been maladjustment of amounts calculated and paid. Since the response by Work Group indicated that 393,3 555,2 and 569,032,37 manats (962,387,57 manats in total) had been paid to landowners, accordingly, in 2006 and 2007. SC has indicated the amount of compensations at 1966 manats. In 2006, about 19903 manats were paid to landowners as shown in the references approved by Work Group. Based on the SC's report, a small portion of compensations was paid to landowners.

Another problem is associated with relocation of houses: The project envisages relocation of 26 houses in Uzumlu və 31 houses in Qarabaglılar villages of Devechi. According to Work Group, the project valued to build 70 houses for evacuation of the IDPs settled in Gulamli district of Devechi region was 1,643,847,99 manats. By this calculation price of each house averages 23,783 manats. In fact, the houses with auxiliary buildings, orchards, land lot in Uzumlu were valued max 12,000 manats.

The region was built by "Azeriservis" LTD. There are 70 houses and one administrative building in the region. 35 of the houses are two-room, 29 three-room, 6 four-room. The houses are made of ordinary construction materials: the roof is slated, the floor is made of low-density wood chipboard, windows and doors of wood. Water source and toilets are available. No bathrooms and stables are designed for the houses. Sanitary facilities are in the form of drainage installation. Fences are made of iron bars. Streets in the region are asphalted. 0.12 ha have been allotted for each household. The cost of one house averaged 23,783 manats (plus asphalt coating of 3km road drainage installation), But according to Work Group, this amount is 11,000 manats. Comparing the prices as of late 2006, the project appears to be rather expensive. In fact, land areas have been allotted free of charge. Besides, 70 houses have been built, yet there were 31 families in Garabaglılar. The amount of allocations for this purpose was 1 million 64,847 manats: an average 23,000 manats per house. As to residents in Uzumlu, compensations at amount 4,000-12,000 instead of their houses, orchards, land lots were paid to them. The exclusion is the house built for the district's municipality chief. Since although all houses were in the same size, style, made of the same building materials, the house built for the municipality chief is valued at

20,000 manats. Meanwhile, the property assessment in Uzumlu is carried out by State Register based on normative acts produced by the Cabinet [of Ministers]. But under Azerbaijan law, land lots and other real estates required for government needs shall be purchased with consent of landowners and through paying compensation at market price.

Out of the amount of 37 million manats allocated from SOFAZ in 2006, "Azerkorpu" SC in addition to advance payments, relocation of oil and gas pipelines from the reservoir area, building of houses for refugees and IDPs, has spent 115,041 manats on to preparation of the project-estimate documents for the construction of Takhtakorpu-Ceyranbatan, 151,000 manats on supporting of Work Group. Although 324.27 million manats were not used by the end of 2006, the amount had not been paid back to the State Treasury, but were used in early 2007. But this contradicts the Law on Budget. Besides, according to SC's report submitted to the Oil Fund, the allocation amount was completely used.

Baku-based analyst Rovshen Agayev says the root of the problem of transparency in allocations comes from procurement procedures conducted by the State Agency for Public Procurements due to lack of accurate mechanisms and conditions related with an increase in costs. Even limits have been defined to that end in the United States, European countries and developing nations. And transparency is not ensured during procurement procedures. In some cases, contract is awarded to the winner without any experience and required equipment, or having insignificant statutory capital. The fact that the very companies are announced the winner speaks of shady business. Sometimes, equipment is purchased with the money allocated from the state budget.

We would like to give additional explanation here: Once the project implementation has commenced, "Azerkorpu" SC imported 59 Mercedes- Man self-dumping trucks, 9 excavators, 8 bulldozers for construction. It is planned to buy an additional 50 Mercedes- Man self-dumping trucks. It turns out that "Azerkorpu" SC had lacked sufficient equipment before it became the winner. In fact, the technical possibility is one of the criteria consignors (contractors) qualification indices shall meet in order to participate in procurement procedures.

In international practice, contract signed with the winner shall accurately list undertaken obligations, including implementation and completion terms in particular. Experts say penalties shall apply because of delays, including through the company's fault, except for instances of force majeure. In Azerbaijan reality, if procurement procedures were transparent and the winner selected on the basis of fair competition, then additional costs would be avoided. Promoting involvement of NGOs in procurement procedures and creating conditions for them to launch monitoring is a “must” in terms of ensuring transparency. Existing legislative gaps pave the way for close tender. This is why, tender results are not publicly debated.

According to Mr. Agayev, at least 50% of amount allocated for projects implemented through procurement procedures are misappropriated. Those companies, having close links with organizer of tender, are allowed to bid for tender. Others are excluded from the process for a variety of reasons. Even the latter act as tenderers at the expense of hardship, the tenderer close to organizer is declared the winner.

Regarding the points causing dissatisfaction during procurement procedures, the State Public Procurement Agency says tender announcement is published in official organ of press, while information about contracts awarded can be obtained from organizer of tender, as tender commission, sometimes called Tender Committee, is a temporary workgroup set up by the Agency and performing tender procedures on its behalf. By the law, the Agency shall determine main criteria under which results are assessed. Any tenderer shall be entitled to lodge a complaint as provided in legislation. The Agency shall investigate all complaints.

Interestingly, the Agency has not cancelled any tender results so far. For example, according to annual report 2008 produced by the procurement agency, about 20 tenderers have lodged complaint to the Agency during the reported period. No violation of human rights has been found in the letters of complaint. The report further says: “complaints lodged to the Agency related with organization and conducting of procurement procedures have been investigated in accordance with the provisions of Chapter VIII of the Law of the Republic of Azerbaijan "On public procurements", relevant recommendations have been given and methodical assistance provided to procurement agencies in order to carry out competitions on the basis of fair

competence and avoid breach of law in the future. All complainants have been briefed on investigation results.

### **Monitoring results**

The project of reconstruction of the Samur-Absheron irrigation system has been through eight tenders. Although the project has continued for 5 years, the Joint Stock Company of Melioration and Water Economy still fails to place related reports on its web-site. Moreover, the Joint Stock Company is ready to answer the questions asked about tender procedures. Our letter # 02/188 of 25 November 2009 to the Joint Stock Company was responded by Working Group established on purpose to ensure project management through letter # 11/15-607 dated 15 December the same year. Like the Oguz-Qabala-Baku water pipeline project funded by the Oil Fund the figures for the date of this project in the contracts signed the executing agencies are different as well. For example, regarding preparation of technical and tender documents, old archives show that in accordance with the Procurement procedures on preparation of tender documents and technical project of Takhtakorpu water reservoir with hydroelectric power station object the contract amounted to 0.4 million manats was signed with Turkey-headquartered "Temelsu" company on October 18, 2005. 0.3 million manats and 0.1 million manats were accordingly allocated from state budget and the State Oil Fund of the Republic of Azerbaijan. But the date of this contract is October 6, 2006 in the response letter we received from the Joint Stock Company. The said contract encompasses services to be provided "Temelsu" company within the Consortium. According to the company's website, it concluded one contract with Azerbaijan side dated 10/2005. The completion date is 01\2006. Under the contract, "Temelsu" company is committed to providing consultation and other services.

In practice, companies close to relevant agencies, by profiting from gaps in the Law on Public Procurements, amid tender procedures enter into a formal consortium with qualified foreign companies, which have been tender winners in order take advantage of selection criteria. After

the winner is announced, they end the consortium deal. Open tender notification for the project was published in the media on September 8, 2006. However, such announcement does not imply conducting of an open and transparent tender. The tender announcement published in the newspaper "Azerbaijan" does not comply with the requirements of the Law on Public Procurements. According to the relevant article of this Law, regarding the content of tender announcement (invitation), information about organizer of tender, time and place of commencement of tender procedures tax and duty benefits (if provided) relating to procurement contract, documents necessary to take part in tender, conditions of tender proposal's guarantee, as well as name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided, etc shall be indicated in announcement (invitation) about tender. None of these items have been indicated in the said announcement. Nevertheless, the Azerbaijan Joint Stock Company of Melioration and Water Economy is the only agency implementing the project funded by the Oil Fund that its first Procurement procedure was carried out in presence of representatives from the Economy Development Ministry, the Finance Ministry, the Agency on Public Procurement as well as the public. Moreover, it is unknown which organizations represented the tender commissions for other tenders within the project. It is not disclosed why Azerkorpu" SC, the leader of Consortium consisting of "Azerkorpu", "Azerenergytikintiqurashdirma", "Azersutikinti" SC. and "Temelsu" company were announced the winner while selecting contractors among tenderers. In practice, foreign companies are favored for the project's feasibility study development, management and consulting services. Not the date of procurements, but the date of contracts is disclosed only. No tender procedures for goods supply have been carried out within the project to reconstruct the Samur-Absheron irrigation system. It is not disclosed which companies have supplied materials for construction and installation works. The names of tenderers are not disclosed. In order to prove that the tender process is not formal, the names of all companies bidding in tender as tenderer must be publicly announced. No information on tender results is provided to the public. By the law, the tender is the competition held to select the most efficient procurement contract performance proposals submitted by tenderers in writing. But the tender winners within the reconstruction of the Samur-Absheron irrigation system project have performed works at higher costs than those indicated in their initial tender proposals. According to the open tender for procurement to construct Takhtakorpu water reservoir with hydroelectric power station, Tender

Committee favored "Azerkorpu" SC taking into consideration its practice in similar works, as well as financial state and proposals. Nevertheless, the project completion scheduled for 2010 remains behind schedule and officials say the completion date is 2011. The most crucial timeframe in terms of ensuring transparency in the project implementation is the project's execution stage.

**1.** The Azerbaijan Joint Stock Company of Melioration and Water Economy is the only agency implementing the project funded by the Oil Fund that its first Procurement procedure was carried out in presence of representatives from the Economy Development Ministry, the Finance Ministry, the Agency on Public Procurement as well as the public.

**2.** Moreover, it is unknown which organizations represented the tender commissions for other tenders within the project.

**3.** The tenders held within the project have been unavailable to the public. It in turn impedes monitoring.

**4.** During the selection of contractors it is not substantiated why the Azerkorpu-led Consortiums had favored the Melioration and Water Economy.

**3.** In practice, foreign companies are favored for the project's feasibility study development, management and consulting services. Not the date of procurements, but the date of contracts is disclosed only.

**5** No tender procedures for goods supply have been carried out within the project to reconstruct the Samur-Absheron irrigation system. It is not disclosed which companies have supplied materials for construction and installation works.

**6.** The names of tenderers are not disclosed. In order to prove that the tender process is not formal, the names of all companies bidding in tender as tenderer must be publicly announced.

**7.** No information on tender results is provided to the public

**8.** Those companies whose names are unknown to the public and that are inexperienced are allowed to bid for tender: consider "KISKA Tech" SC

**9.** Although the Azerbaijan Joint Stock Company of Melioration and Water Economy answers all questions in information surveys sent, it shies off from details of its tenders.

**10.** Tender notifications are of formal character and are not complied in accordance with the law.

**11.** By the law, the tender is the competition held to select the most efficient procurement contract performance proposals submitted by tenderers in writing. But the tender winners within the reconstruction of the Samur-Absheron irrigation system project have performed works at higher costs than those indicated in their initial tender proposals.

**12.** The executing agencies themselves are not accessible to the public. Even the work distribution chart between the companies involved in the construction activities cannot be accessed.

**13.** It is not disclosed under which criteria the winners within the SOFAZ-financed projects are selected.

**14.** According to the open tender for procurement to construct Takhtakorpu water reservoir with hydroelectric power station, Tender Committee favored "Azerkorpu" SC taking into consideration its practice in similar works, as well as financial state and proposals. Nevertheless, the project completion scheduled for 2010 remains behind schedule and officials say the completion date is 2011. The most crucial timeframe in terms of ensuring transparency in the project implementation is the project's execution stage.

**15.** Both the Oil Fund and the Joint Stock Company of Melioration and Water Economy show different date for contracts signed with the executing agencies. For example, according to

"Temelsu" company's website, it concluded the contract with Azerbaijan side on 10/2005, with the completion date 01\2006. But the date of this contract in statements by both the Oil Fund and the Joint Stock Company of Melioration and Water Economy is October 6,2006.

**Monitoring of tenders conducted for settlement of the problems of refugees and internally displaced persons who were forced to flee their native lands as a result of Armenian-Azerbaijan, Nagorno Karabakh conflict**

SOFAZ has been allocating money of late years for building housing and the improvement of socio-economic conditions of refugees and internally displaced persons who were forced to flee their native lands as a result of Armenian-Azerbaijan, Nagorno Karabakh conflict. According to the information as at 01.10. 2009 provided by the Oil Fund, 16,051 were built for Refugees and Internally Displaced Persons. The Fund's assets were utilized for buildings and infrastructure in order to settle those in the districts of Aghdam, Fuzuli, Bilasuvar, Goranboy, Sabirabad, Aghjabadi, Beylagan and Gabala regions. In addition, housing and social facilities were constructed for refugees and IDPs in different regions of Azerbaijan, including Shamkir, Aghstafa, Ismayilli, Oghuz, Shaki, Gadabay, Nakhchivan Autonomous Republic, Baku, Sumgait, Yevlakh and also in Mehdiabad, Ramani, Pirshaghi and Fatmayi districts.

Information as at October 01, 2009 about the houses, infrastructure, including social and cultural facilities constructed as per the Presidential Decrees No.562 dated 22.08.01, Decree No.577 dated 07.09.01, Decree No.700 dated 13.05.02, Decree No.132 dated 01.10.04, Decree No. 346 dated 28.12.05, Decree No.505 dated 28.12.06, Decree No. 687 dated 26.12.07, Decree No.68 dated 26.02.09 and Decree No. 204 dated 25.12.09 & Directive No.80 dated 04.02.04, Directive No.298 dated 01.07.04, Directive No.2475 dated 31.10.07

| <b>Legal documents</b>    | <b>Unit</b> | <b>No<br/>562,700</b> | <b>No<br/>577,700</b> | <b>No 80</b>  | <b>No 298</b> | <b>No.2475</b> | <b>No 687</b> | <b>No 303</b> | <b>Total</b> |
|---------------------------|-------------|-----------------------|-----------------------|---------------|---------------|----------------|---------------|---------------|--------------|
| <b>Executing Agencies</b> |             | <b>ARRLA</b>          | <b>SDFIDP</b>         | <b>SDFIDP</b> | <b>SDFIDP</b> | <b>SDFIDP</b>  | <b>SDFIDP</b> | <b>SDFIDP</b> |              |
| Districts                 | Piece       | 10                    | 14                    | 13            | 13            | 6              | 1             |               | <b>57</b>    |

|                                |       |      |      |      |      |      |     |    |               |
|--------------------------------|-------|------|------|------|------|------|-----|----|---------------|
| Buildings                      | Piece | 1    |      |      |      |      |     | 6  | <b>7</b>      |
| Houses                         | Piece | 2231 | 3860 | 3860 | 4179 | 1596 | 490 | 41 | <b>16677*</b> |
| Schools                        | Piece | 6    | 12   | 15   | 7    | 6    | 1   |    | <b>47</b>     |
| Music schools                  | Piece | 0    | 0    | 3    |      |      | 1   |    | <b>4</b>      |
| Kindergarden                   | Piece | 6    | 12   | 5    | 11   | 3    |     |    | <b>37</b>     |
| Hospitals                      | Piece | 1    | 1    | 1    | 1    | 1    |     |    | <b>5</b>      |
| Primary healthcare units       | Piece | 0    | 0    | 4    |      |      |     |    | <b>4</b>      |
| Ambulance stations             | Piece | 0    | 0    | 1    | 4    | 1    | 1   |    | <b>7</b>      |
| Medical stations               | Piece | 5    | 11   | 4    | 2    | 1    |     |    | <b>23</b>     |
| Community clubs                | Piece | 0    | 10   | 8    | 11   | 3    | 1   |    | <b>33</b>     |
| Fire-fighting centers          | Piece | 1    | 3    | 1    | 2    | 3    |     |    | <b>10</b>     |
| Administrative buildings       | Piece | 4    | 10   | 10   | 11   | 6    | 1   |    | <b>42</b>     |
| Communication centers          | Piece | 1    | 10   | 7    | 11   | 3    | 1   |    | <b>33</b>     |
| Veterinary stations            | Piece | 0    | 0    | 3    | 3    | 2    |     |    | <b>8</b>      |
| Bath houses                    | Piece | 3    | 14   | 12   | 2    |      |     |    | <b>31</b>     |
| Sports complex                 | Piece | 0    | 0    |      | 1    |      |     |    | <b>1</b>      |
| Artesian wells                 | Piece | 3    | 37   | 124  | 12   | 14   |     |    | <b>192</b>    |
| Water ponds                    | Piece | 31   | 38   | 4    | 18   | 16   | 4   | 8  | <b>119</b>    |
| Water pumping stations         | Piece | 6    | 6    | 2    | 13   | 1    | 5   | 2  | <b>35</b>     |
| Large and smaller transformers | Piece | 41   | 87   | 164  | 115  | 56   | 11  | 3  | <b>477</b>    |
| Electric power stations        | Piece | 1    | 5    | 5    | 3    | 2    | 1   | 1  | <b>18</b>     |

|                      |    |     |     |     |       |       |    |     |              |
|----------------------|----|-----|-----|-----|-------|-------|----|-----|--------------|
| Roads                | Km | 66  | 136 | 132 | 150.8 | 74.5  | 17 | 2.3 | <b>578.6</b> |
| Water pipes          | Km | 63  | 100 | 131 | 111.7 | 96    | 24 | 7.2 | <b>532.9</b> |
| Electric power lines | Km | 141 | 213 | 212 | 227.7 | 115.2 | 20 | 4.3 | <b>933.1</b> |
| Gas lines            | Km |     |     |     |       | 43.1  | 27 | 1.3 | <b>71.4</b>  |

\*Including **320** houses, the construction of which is not completed (Decree No 562) and construction of **100** houses in Nahchivan (Decree No 132).

|  |                                  |
|--|----------------------------------|
| <b>Under the Decree No.562 dated 22.08.01 by the President of the Republic of Azerbaijan</b>   |                                  |
| Ashagi Agjakend, Goranboy region   | 364 houses                       |
| Ismayilli region   | 45 houses                        |
| Shamkir region   | 126 houses                       |
| Yevlakh region   | 65 houses                        |
| Mehdiabad district   | 108 houses                       |
| Ramani district  | 160 houses                       |
| Nakhchievan  | 53 houses, 48-apartment building |
| Sungayit city  | 1 house, 14-apartment building   |
| Baku   | 3 houses                         |
| Gedebey region   | 1 house                          |
| Oghuz region   | 3 houses                         |
| Shaki region   | 2 houses                         |
| Aghstafa region  | 17 houses                        |
| <p>Related infrastructure, including social and cultural facilities as well as power, gas and water supply systems, 3 schools, 3 medical stations and one administrative building were constructed in these regions.</p> |                                  |
| <b>Under the Decree No.132 dated 01.10.04 by the President of the Republic of Azerbaijan 100 houses were built in Nahchivan Autonomous Republic.</b>   |                                  |

**Under the Decree No.577 dated 07.09.01 by the President of the Republic of Azerbaijan**

4 districts, 500 houses were built in Aghdam region including Quzanlı (100 houses), Ergi (150 houses), Ayag-Garvand (150 houses), Xındırstan (100 houses). 4 districts, 800 houses were built in Fizuli region. Related infrastructure, including social and cultural facilities as well as power, gas and water supply systems, 6 schools, 6 kindergartens, 6 medical stations, 4 community clubs, 4 post offices, 8 bath houses, 4 administrative buildings, 1 fire-fighting center were constructed in this region.

**Under the Decree No.700 dated 13.05.02 by the President of the Republic of Azerbaijan**

3 districts, 1221 houses were built in Harami, Fizuli. Related infrastructure, including social and cultural facilities as well as power, gas and water supply systems, 3 schools, 6 kindergartens, 1 hospital, 1 post office, 2 medical stations, 3 bath houses, 3 administrative buildings, 1 fire-fighting center were constructed in this region.

6 districts, 2560 houses were built in Bilasuvar region. Related infrastructure, including social and cultural facilities as well as power, gas and water supply systems, 6 schools, 6 kindergartens, 1 hospital, 6 post offices, 5 medical stations, 6 community clubs, 6 bath houses, 6 administrative buildings, 2 fire-fighting centers were constructed in this region.

| <b>Under the Directive No.80 dated 04.02.04 by the President of the Republic of Azerbaijan</b> |   |
|--|---|
| In 11 districts of Aghdam region:  |   |
| Dordyol-1 and Dördyol-2  | 1321 houses, 4 schools, 1 music school, 2 kindergartens, 2 administrative buildings, 1 post office, 1 hospital, 1 medical stations, 2 bath houses, 2 community clubs, 1 veterinary station. |
| Tazakend   | 340 houses, 1 school, 1 kindergartens, 1 administrative building, 1 medical station, 1 bath house, 1 community club   |

|                            |  |
|----------------------------|--|
| İmamqulubeyli              | 165 houses, 1 school, 1 administrative building, 1 bath house, 1 community club  |
| Quzanlı-1                  | 165 houses, 1 school, 1 music school, 1 administrative building, 1 post office, 1 medical station, 1 bath house, 1 community center, 1 veterinary center, 1 fire-fighting center     |
| Qasımbəyli                 | 165 houses, 1 school, 1 administrative building, 1 bath house, 1 community club  |
| Banovshalar& Banovshalar-1 | 460 houses, 1 school, 1 kindergarten, 1 administrative building, 1 post office, 1 medical-center, 1 bath house, 1 community club   |
| Baharli                    | 836 houses, 2 schools, 1 music school, 1 kindergarten, 1 administrative building, 1 post office, 1 ambulatory of village doctor, 1 bath house, 1 community club, 1 veterinary center |
| Alıbeyli-1& Alıbeyli-2     | 214 houses, 2 schools, 1 administrative house, 1 post office, 1 ambulatory station, 1 medical station, 2 bath houses   |
| Safarli                    | 157 houses, 1 school, 1 administrative building, 1 post office, 1 medical station, 1 bath house  |
| Agjabedi region            | 37 houses, 1 school, 1 post office, 1 medical station, 1 bath house  |
|                            |  |

Related infrastructure, including social and cultural facilities as well as power, gas and water supply systems were built in these districts.

Under the Decree No. 346 dated 28.12.05, Decree No.505 dated 28.12.06 and Decree No. 687 dated 26.12.07 by the President of the Republic of Azerbaijan 40 houses were built in Pirshagi district of Baku and 450 houses, 1 community club, 1 music school, 1 school for 360 pupils, 1 ambulatory station, 1 administrative house, 1 communications center were built in Ramani district. Related infrastructure, including, power, gas, sewerage, drainage and water supply systems, and roads were constructed in this region.

| <b>Under the Directive No.298 dated 01.07.04 by the President of the Republic of Azerbaijan</b> |   |
|---|---|
| Sabirabad region - 1 district   | 161 houses, 1 school, 1 kindergarten, 1 medical station, 1 community club, 1 administrative building, 1 bath house, 1 post office and infrastructure objects                          |
| Aghdam region - 1 district  | 35 houses and infrastructure objects (as well as power, water supply systems, roads, social improvements)   |
| Bilasuvar region - 5 districts  | 1858 houses, 5 kindergartens, 5 community clubs, 5 administrative buildings, 5 post offices, 1 veterinary station, 1 fire-fighting center and infrastructure objects                  |
| Fuzuli region - 5 districts   | 2104 houses, 5 school, 5 kindergarten, 5 community club, 5 administrative building, 5 post office, 4 ambulance station, 1 hospital, 1 fire-fighting center and infrastructure objects |
| Aghjabadi region - 1 district   | 21 houses, 1 school. 1 medical station, 1 bath house, 1 veterinary station and infrastructure objects   |

**Under the paragraphs 1.4 and 1.5 of Presidential Decree No. 2475 dated 31.10.07**

Beylagan region - 1 district 500 houses, 1 kindergarten, 1 community club, 1 administrative building, 1 post office, 1 hospital, 1 veterinary station, 1 fire-fighting center and infrastructure objects (roads, gas lines, sewerage system, water line and electric power lines.)

Goranboy region - 3 districts 380 houses, 3 schools, 1 kindergarten, 1 community club, 3 administrative buildings, 1 post office, 1 medical station, 1 veterinary station, 1 fire-fighting center and infrastructure objects (roads, sewerage system, water line and electric power lines.)

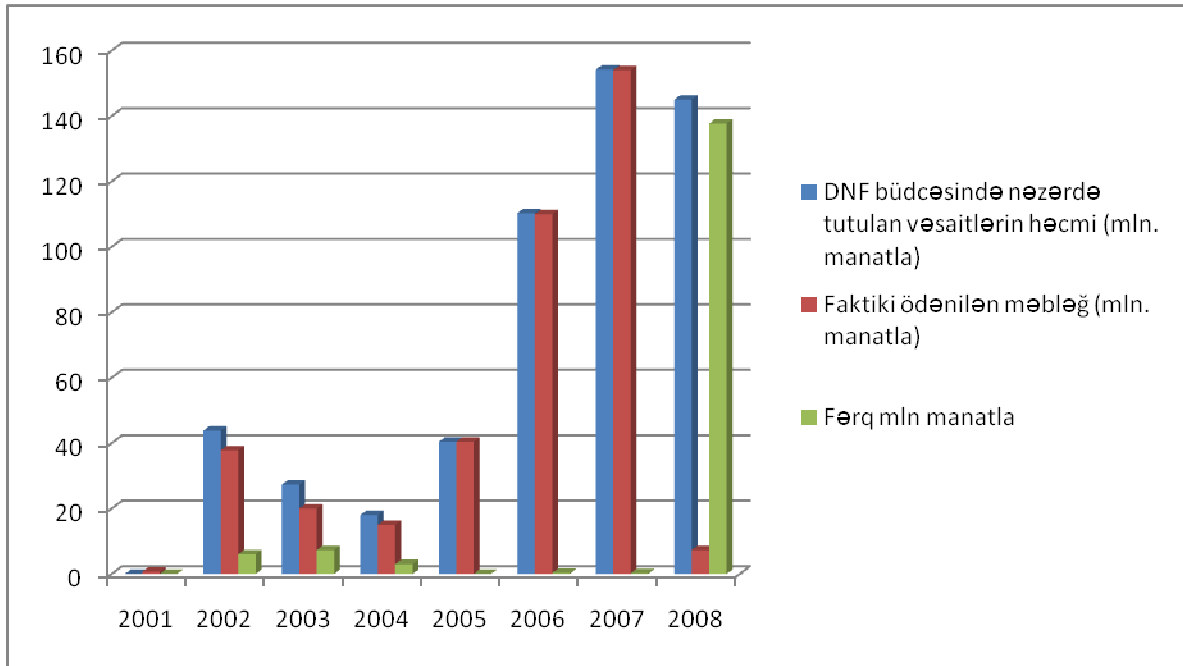
Goranboy region (near the village of Veyisli) - 1 district 116 houses.

**Under the Directive of the Cabinet of Ministers** No.303s dated 31.10.07 at the region of Fatmayi municipality - estate consisting of 15 houses, roads, gas lines, sewerage system, water line and electric power lines were built.

### **Project's economic parameters**

Since 2001 SOFAZ has been allocating money for building housing and the improvement of socio-economic conditions of refugees and internally displaced persons forced to flee their native lands as a result of Armenian-Azerbaijan-Nagorno Karabakh conflict. The amount of allocations from the Fund has increased since 2006. The Fund's yearly allocations have averaged 592.6 million over late years. Allocations from the Fund were 43.8 million manats in 2002; 43.8 million manats in 2002; 27.3 million manats in 2003; 18 million manats in 2004; 40.4 million manats in 2005; 110.3 million manats in 2006; 154.2 million manats in 2007; 145 million manats in 2008. Once amendments were further made to the expenditures item of the Budget of the State Oil Fund of the Republic of Azerbaijan for 2009, the expenditures in the amount of 90 million manats were directed to financing of improvement of social condition of refugees and internally displaced persons. The Oil Fund has allocated 80 million manats for the project in 2009. Expenditures for this item constituted 11.21% (in the second row) of Fund's total expenditures in 2006, while 14.5 % (in the second row) in 2007 and 3.4% (in the second row) in 2008.

| Years   | 2001 | 2002 | 2003 | 2004 | 2005 | 2006  | 2007  | 2008  |
|---|------|------|------|------|------|-------|-------|-------|
| Fund's expenditures envisaged by its budget (in mln manats) | 0    | 43,8 | 27,3 | 18   | 40,4 | 110,3 | 154,2 | 145   |
| Allocations transferred (in mln manats)                     | 0,7  | 37,8 | 20   | 15   | 40,4 | 110   | 154   | 7,3   |
| Difference (in mln manats)                                  | 0    | 6    | 7,3  | 3    | 0    | 0,3   | 0,2   | 137,7 |



### Three executing agencies for one project

The Social Development Fund for Internally Displaced Persons (SDFIDP) has been entrusted as the main implementing agency to implement the project of the improvement of social condition of refugees and internally displaced persons since 2007. The major source of financing was first the preferential credit at the amount of \$10 million, allocated by the World Bank. Later on, SDFIDP extended the scope of activities, including sources of financing. At present, SDFIDP receives allocations from the State Oil Fund and SOCAR, state budget, as well as credits from the World Bank, Islamic Development Bank, Japanese Social Development Bank, and other donors. At the same time, SDFIDP's activity is mainly focused on state programs the Oil Fund finances. Since 2001 SDFIDP has been building houses for IDPs living in tent camps and temporary accommodation. as per Presidential Decrees. SDFIDP has doubled the range of these works of late years. Amendments to the Decree №298 "State Program on the Improvement of Living Conditions of Refugees and Internally Displaced Persons and Employment Promotion" of the President of the Republic of Azerbaijan on 1 July 2004 were approved by the Presidential Decree dated 31 October 2007. SDFIDP is an implementing agency for projects associated with

resolution of settling problems of internally displaced persons and refugees under the Order approved by the Cabinet of Ministers. In 2006, resources allocated for the above mentioned project were transferred by the State Oil Fund to the state treasury accounts of the State Committee for Refugees and Internally Displaced Persons, as well as the Social Development Fund for Internally Displaced Persons based on their written, substantiated requests and subsequently disbursed to the contractors by the implementing agencies. The Social Development Fund for Internally Displaced Persons under the Cabinet of Ministers of the Republic of Azerbaijan and Agency for Rehabilitation and Reconstruction of Liberated Areas are the executing agencies. The executing agencies are responsible for overall supervision of project implementation, carrying out bidding processes and other relevant proceedings, organization and coordination of works through site offices.

Monitoring results showed that SDFIDP does not organize procurements on the projects. It remains unknown who builds regions for IDPs, whether contractors are selected through tender or not, what are tender conditions, what are mechanisms for disbursement of expenditures. In general, the most serious problem with transparency in procurements is related with projects financed through the State Program. 16051 houses have been constructed for refugees and IDPs so far.

#### **“IDPs Committee” and SDFIDP protect tender-related information as state secret**

As projects associated with resolution of settling problems of internally displaced persons and refugees are executed by several partners, it is difficult ask questions about procurement procedures and implementing partners. They dodging the responsibility shift it to the other agencies.

In response to the questions “Which contractors have built the regions for the past two years?”, “Have you signed contracts with them on the basis of procurement procedures?”, “When were procurement procedures carried out?”, etc, the press service for the State Committee for Refugees and Internally Displaced Persons replied briefly, saying “It is SDFIDP that deals with construction of regions.”

In compliance with the Law on Information Acquisition of the Azerbaijan Republic, Center for Economic and Social Development (CESD) sent a questionnaire to SDFIDP Director Ayaz Orucov after on November 25. The information survey contained the following questions;

1. How many procurement procedures on financing of the improvement of the social and economic conditions of refugees and internally displaced persons have been carried out so far?
2. Were tender announcements and results published in official organ of press?
3. What were major tender conditions and the names of winners?
4. How much are the prices of one-, two-, three- and four-room houses? How much was spent on construction of one region in total?
5. Are there any differences in the prices of houses to areas in the projects?
6. What works are to be performed within the projects?

Although questions shall be answered within 7 days in accordance with Article 24.1 of the Law on Information Acquisition of the Azerbaijan Republic, our information survey remained unanswered. We then had to send the following questions to SDFIDP Director Ayaz Orucov through letter 10/005 dated January, 7, 2010;

- A. How many procurement procedures on the projects on the improvement of the social and economic conditions of refugees and internally displaced persons and employment promotion were conducted ?
- B. Please provide details of information about procurement procedures on construction of regions, including the houses, infrastructure, including social and cultural facilities constructed as per the Presidential Decrees No.562 dated 22.08.01, Decree No.577 dated 07.09.01, Decree No.700 dated 13.05.02, Decree No.132 dated 01.10.04, Decree No. 346 dated 28.12.05, Decree No.505 dated 28.12.06, Decree No. 687 dated 26.12.07, Decree No.68 dated 26.02.09 and Decree No. 204 dated 25.12.09 & Directive No.80 dated 04.02.04, Directive No.298 dated 01.07.04, Directive No.2475 dated 31.10.07.

- C. Were procurements carried out in the years 2008 and 2009 as per the decrees above? Who were the winners? On the basis of which criteria qualification indices of the winners were assessed? Composition of tender commissions? Were close tenders conducted? Since when procurements have been conducted? Are tender audits arranged?

### **Procurement agency**

The Public Procurement agency conceals from the public as much as possible information about procurement procedures. Questions in letter 02/190 on 25 November 2009 regarding the improvement of the social and economic conditions of refugees and internally displaced persons and employment promotion were responded by Head of the State Agency Alakbar Guliyev through letter 388 on 21 December the same year: “With reference to your letter 02/190 of November 25,2009, the State Procurement Agency is pleased to advise that the Annual Report for 2009 is under development and it will be able to access it [www.tender.gov.az](http://www.tender.gov.az) to be posted in January 2010. As to tender documents, you can get them from the procurement agency” As see, the Agency is unwilling to answer questions related with procurements. In fact, respective executive authority on public procurements has been established to carry out state policy in the field of procurement of goods (works and services) at the account of state funds by means of Presidential Decree 583 dated 16 May 1997 and perform its functions in accordance with Article 4 of the Law on Public Procurements by means of Presidential Decree #855 dated 20 February 2003. The regulation charges respective executive authority on public procurements to take part in creation and improvement of legal base governing public procurements in the Republic of Azerbaijan, work out rules, instructions, other documents on public procurements; supervise over legality of procurement of goods (works and services) on competitive basis at the account of state funds and performance of contracts; set up specialists’ professional level improvement courses, etc.

All public procurements in volume of 250 (two hundred and fifty) million manats and more shall be carried out through tender and if supposed price for goods (works and services) is less than this amount, procurement agency shall use any procurement method. If supposed price of tender subject exceeds 5 billion manats, and in organizations funded from the budget - 1,5 billion manats or equivalent sum in convertible currency, representatives of respective executive authority shall under its proxy be included to tender commission. Powers of "respective executive authorities" provided for in this provision above shall be carried out by Ministry of Finances of the Republic of Azerbaijan, Ministry of Economic Development of the Republic of Azerbaijan and respective central executive authorities relating to subject of tender. With regard to procurement procedures on projects funded by the Oil Fund, tender was carried out for the Samur-Absheron irrigation system project out in presence of representatives from the Economy Development Ministry, the Finance Ministry, as well as the public.

.....

Moreover, in accordance with the regulation to approve sample of final protocol of tender commission approved by the Cabinet of Ministers of Azerbaijan Republic, copy of final protocol shall be submitted to respective executive authority within 3 banking days after its execution. But monitoring showed that no copy is submitted.

Alongside with that, executive authority on public procurements shall supervise over legality of procurement of goods (works and services) on competitive basis at the account of state funds and performance of contracts, consider disputes, suspend procurement procedures for up to 7 banking days in case of discovery of breach of law and if necessary raise the matter of cancellation of tender results to procurement agency; set rules of production of reports on public procurements, ensure that regulations, documents and information governing public procurements are brought to public's attention. Monitoring results showed that all these items comply with the law. Because the Agency seems to have no idea about tenders according to the responses to the information survey.

According to Report 2008 posted on the Public Procurement Agency's website, 19 tenders with total contract value of 565,66 thousand manats financed from all source were organized. Since

SDFIDP conducted 14 procurements worth 198,3 thousand min manats. the Agency on territory restoration and reconstruction of Azerbaijan Republic conducted 10 procurement procedures with the total contract worth 10748,68 manats. There is no information whether any of them has been funded from SOFAZ. In fact, the report must contain projects, figures about projects executed by the State Agency for Refugees and IDPs and financed by international financial institutions.

It can be clear whether tenders included in statistics have been conducted on SOFAZ-funded projects by calculating total amount of contracts signed with the three agencies (209614,34 manats). Since last year (2008) SOFAZ allocated 145 million manats for the projects to improve living conditions of refugees and internally displaced persons.

In accordance with Article 29 (Payment of tender participation fee and tender costs reimbursement) of the Law on Public Procurements, total sum of tender participation fee shall be set by procurement agency provided that it does not exceed 0,5 percent of supposed price of tender subject and 1,5-times of tender costs. All costs related to conducting of tender including costs on announcement, advertisement, lease of rooms for conducting of tender, funding tender of commission, preparation and delivery of tender documents to tenderers as well as all other costs directly associated with conducting of tender, shall be reimbursed at the account of participation fee. If tenders were conducted, there would be fee participation documents paid to procurement agency by at least 30 interested organizations. For example, tenders for WB-funded projects collect proposals from more than 30 tenderers. Amount of most contract is valued at around 2,5 million manats. If 100 procurement procedures on SOFAZ-funded projects were organized by of SDFIDP in 2007 and 2008 (in fact, this is a true figure given the volume of work), participation fees paid by tenderers would exceed millions.

The Oil Fund has no oversight mechanisms for projects it funds. In response to the questions “How many procurement procedures on financing of the improvement of the social and economic conditions of refugees and internally displaced persons had been carried out in 2007-2008?” and “What amount was the value of contracts signed?”, the Fund answered with two sentences, saying that “the Fund analyses documents submitted by procurement agencies and

then it is decided finance the project. Regarding the contract value, you may appeal to relevant procurement agencies who could feed this information."

Financing of the projects funded by the Oil Fund is implemented after the executing agencies submit their fully reasonable financial documents, such as money transfer order, papers related to the procurement procedures, scope of the agreement and contractual activities, as well a copy of the evaluation sheet, contractor's invoice, scope of activities undertaken during the reported period and the summary jointly signed by the company and implementing agency. All documents are analyzed as well as guidelines on increase of efficiency in the project execution and funds utilization are provided to implementing partners before financing a project. Unless any supporting documents are properly produced, the project will not be funded by the Oil Fund. Record system is regularly updated, according to SOFAZ. Nevertheless, SOFAZ is unwilling to answer survey questions. And 145 million manats in 2008 and 150 million manats in 2007 were transferred without tender procedures. In fact, tender packages of other tenderers shall also be analyzed by the Oil Fund.

SOFAZ annual reports contain general information about procurements on other projects it funds, except for the projects to improve living conditions of refugees and internally displaced persons.

Works are contracted to the same companies every year beyond procurement procedures. Fikret Topchubashov, former executive director of SDFIDP, had once mentioned this fact in an interview. Although he said the issue had been agreed with President, such agreement is not reflected in documents. Repeated contract awards are explained by their professionalism. However, each contractor has permanent engineering-technical staff comprised of 10-12 persons and this is not sufficient for large-scale construction operations.

### **Who wee tender winners?**

As SDFIDP has failed to respond our information survey, we could get unofficial information about companies involved in districts in 2007. The Fund's assets were utilized for buildings and

infrastructure in order to settle those in the districts of Aghdam, Fuzuli, Bilasuvar, Goranboy, Sabirabad and Aghjabadi regions. In addition, housing and social facilities were constructed for refugees and IDPs in different regions of Azerbaijan, including Ramana and Pirshaghi districts.

Under the Decree No.577, 23 contractors for 105 contracts, under the Decree No.700, 28 contractors for 117 large-scale contracts, Under the Decree No.577, 23 contractors for 105 contracts, under the paragraph 1.1 of the Directive No.298, 30 contractors for 94 works, were awarded. There is no information about term of these contracts. Tender announcements in official organ of press were published differently: the contracts have been awarded to 20-30 contractors. Namely, 4 enterprises - "Fuzuli" ATF, "Barda" ATF, "Ağcabedi" ATF, "Gence" Road Construction Firm owned by SC "Azərbayqartikinti", involved in works performed in districts, "Azəri Servis" LTD, "Şəms-95", "Alıbəyli", "İnşaatçı", "MIH" LTD, "İmişli" Road Construction, "Azəri sətəhizattikinti" SC, "Şəki-62", "Bakı elektrikşəbəkətikinti" ASC, "Azəri kəndtikinti" ASC, "Elnur-2" MMC, «Meliorator Tikinti və Qurashdırma» MMC, ARTIM MMC, as well as Turkish-Azerbaijan joint venture "İMAY".

Unlike SDFIDP, some contractors have placed information on works performed on their websites. Also some focused on tender, they have not clarified selection through tender. For example, according to the website placed by «Meliorator Tikinti və Qurashdırma» MMC, it signed contract #298 with SDFIDP on May 15, 2007 under the project to construct houses for IDPs in Fizuli. Under contract conditions, MMC as contractor is committed to constructing 84 houses in district #4 in Fizuli. The contract is valued at 2.288.374 manats (including VAT). As seen information about tender is common. Tender conditions and indices are not mentioned.

Although ARTIM MMC said it had signed a contract with SDFIDP, it did not detail procurement procedures. Since MMC has so far constructed 22 houses and one kindergarten in district #4 in Fizuli.

launch activities a few days prior to the tender notification. Since interested persons establish limited companies, carry out procurements and close them after the project implementation. However, qualification indices and experience are required in legal contemplation.

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### **Tender results are known before announcement**

In Azerbaijan, it is difficult what is going inside tender process. Because tenderers are close to relevant executing agencies. Tender results are known before announcement. Like all other things imitated, tender procedures are also imitated in Azerbaijan. When selecting the winners for the projects to improve living conditions of refugees and internally displaced persons, preference is given to those companies close to organizer.

Constructions of houses, infrastructure and facilities in the regions in Fuzuli were divided between companies after Ayaz Orucov came. But Bilasuvar had been distributed when Topchubashov was in office. So, it is Orucov who distributed works among companies having direct related, custodial relationships. Supply of regions constructed in Fuzuli and Bilasuvar with irrigation water source, installation of irrigation facilities and transformer sub-stations was entrusted to “Hydromashservis” CJSC owned by Ayaz Orucov. At present, chairman of Supervisory Board of “Hydromashservis” is his brother Akif Orucov. Under Article 13 of the Law on State Procurement (conflict of interests at public procurements), participation of consignors (contractors) being in legal, financial or organizational dependence on procurement agency in procurement procedures held by such agency shall not be allowed. At conducting of procurement procedures the following persons cannot be representative, consultant of procurement agency or executor of other obligations relating to procurement: persons who have direct related, custodial, trustee relationships or relationships connected with adoption, constitution and dependence with representative or official of tenderer participating in procurement procedures; persons who during three years preceding to procurement procedures were employee or official of tenderer, taking part at procurement procedures; persons who are

employees of consignor (contractor), head administration, which it subordinates to, or its branch (representative office), cannot be involved in preparation of documents on procurement procedures.

"Gidromaşservis" engaged in purchase and sale, sells building materials, equipment to contractors at prices higher than market prices. Contractors cannot refuse from this company because Ayaz Orucov is the executing agency. For example, for that reporting period (2007) stoves sold at 120-130 manats in the market was delivered at the price of 145 manats by that company. Even at 250-300 manats on papers documented on the name of another entity.

The transformer installed in the settlements by "Gidromashservis" is more expensive than the real value. At present, the price of 110/35-10 kW transformer is AZN 660 thousand in market (last year it was cheaper). Taking into account that 2 transformers cost AZN 1.3 million, with profit to the contractor, the works were performed at max. AZN 280 thousand for installation and other equipment. AZN 400 thousand that is 20 percent of the allocated AZN 2 mil. 27 thousand manats was not expended as planned. It is just the estimate calculated for 2008. The value of furniture purchased for the social facilities is also exaggerated more.

What is most remarkable for procurement procedures is that over 70 percent or even 100 percent of works are charged to subcontractors by the tender winners. The latter just perform oversight functions. In fact, the executing agency is responsible for this mechanism. But according to the Law on Public Procurements, the contractors, which have won in tender shall be entitled with consent of procurement agency and provided that it is provided by collection of basic tender conditions, to enter into agreement with subcontractors for implementation of works. In all other cases performance of the contract cannot be charged to subcontracting agencies without written authorization of procurement agency. As mentioned above, this provision is violated, because tender results are obvious from the beginning and LLCs close to the procurement agencies or ones established by these agencies, are announced the tender winners.

According to documents available, most procurement works fall to the share of SC "Azeraqartikinti

- its share is 29% in house construction, 42% in infrastructure construction implemented through its subcontractor. SC has tasked works as subcontractor. In fact, if enterprises belong to the company, they should not have worked as subcontractors. In addition to "Azeraqartikinti", "Azeri Servis" also has subcontractor. "Elnur-2" firm has built a school in Zobucuk for the company. Performance of work by 4-5 subcontractors needs additional administrative costs. Therefore, the item of administrative costs under this project takes more funds, i.e., materials, wage fund, social insurance, amortization, taxes and other unforeseen expenses constitute at least 50% of overall costs. Here, if we speak about effective use of money, then the matter is subject to government control.

### **How have the staff comprised of 40 workers constructed 22 houses in district?**

Monitoring showed that technical indices of contractors do not meet collection of basic tender conditions. Since each contractor has permanent engineering-technical staff comprised of 10-12 persons and this is not sufficient for large-scale construction operations. In accordance with Article 44 (Assessment and comparison of service offers) of the Public Procurement Law, proposal with optimal aggregate price, qualitative and technical aspects and price indicated herein taken as a basis. However, according to survey, contractors worked at higher prices, with work staff consisting of 10-15 persons. For example, one of the companies working in regions = LLC "ARTIM" constructed 22 private houses and one kindergarten in district No. 4 in Fizuli in 2007. The number of staff was 40, including 2 team leaders, 38 workers.

### **Companies displeased with procurements**

Tenderers also point out that procurement procedures are not in compliance with legislation. For example, "FaxOR", "Sakit", "Lachyn-M", "Rovshen-İnsaat", "Lachyn", "Mais-S" and "İlhan" LLC claim that Ayaz Orucov, Director of SDFIDP, does not organize tender as provided in legislation. ("Halq cebhesi" newspaper, 2007). According to them, heads of 6 companies are

IDPs. They are engaged in business, construction and repair work, installation work. Their performance has always been praised for indices of high quality and completeness.

Complainant say earlier they used to participate in tender and congratulate the winner having respect for tender results. But after Ayaz Orucov was appointed Director of SDFIDP, competitions had not been in compliance with law, but had been regulated under conditions fabricated by the Ayaz Orucov. The “winner” is the person giving more money. Subject of “tender” is sold in the proper sense of the word. They also say tender is announced for districts inhabited by 11-15 families: “Ayaz Orucov does not organize tender for facilities, but he does it for tender itself”, they are certain. Since the person who gives more money in advance, he is announced the winner. Ayaz Orucov is not only Director of SDFIDP, but also a notable contractor thanks to firms registered under the names of the people around him. The principle he adheres to is to implement electricity supply projects in areas where the source of electricity is available, or to implement road projects where roads have been constructed, etc: he aims to overvalue costs and misappropriate the money. The companies above say that only 30-40% of allocations are spent on construction and repair works undertaken to improve living conditions of refugees and internally displaced persons the remainder are misappropriated. As a result, construction of bath houses, internal roads is postponed.

It should be noted that tender commission is also liable for breach of law during preparation and conducting of tender. Under the law, if during performance of obligations set by the Public Procurement Law, tender commission shows partiality and supports any tenderer, any of tenderers may apply to respective executive authority or the court. If commitment of breach of law during preparation and conducting of tender is confirmed by such agencies, tender results shall be cancelled and procurement agency shall conduct new tender on this subject. In such case chairman and other commission members cannot within 3 years be chairman or members of any tender commission, except commission members, who provided specific opinion, differing from decision taken. Regretfully, no tender has been cancelled or chairman and other commission members have been excluded from tender commission within 3 years in Azerbaijan context.

## **"Percent standards"**

Tenderers which complain of failure to conduct tender on the basis of competitive environment say that only 30-40% of allocations are spent on construction and repair works undertaken to improve living conditions of refugees and internally displaced persons the remainder are misappropriated. For contractor and subcontractor "percent standards" are different. For contractor the organizer is easy to deal with: the bribery level is 10+2 percent in the first stage, while 6+3 percent in the next stage. The situation with subcontractor is rather difficult. Chief Contractor withdraws 35 percent of assets from them. Only 4% of total amount reaches subcontractor. So, subcontractor loses 39 percent of amount before starting work plus the above mentioned 6+3 percent. This is 48% amount not invested in construction. And subcontractor performs works undertaken. Now you can calculate the amount. Bribery percents are easily seen in ordinary calculations. Prices are overvalued to meet unforeseen expenses.

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Representatives of contracting agency regard not 20-25 percent even 15 percent share of contractor in total allocations would be sufficient, provided that tender is conducted on the basis of competitive environment and bribery and the so-called "standards" do not exist. For example, construction of 100 houses means 3,300 manats in profit. If this amount remained in the contractor's pocket, it would be sufficient.

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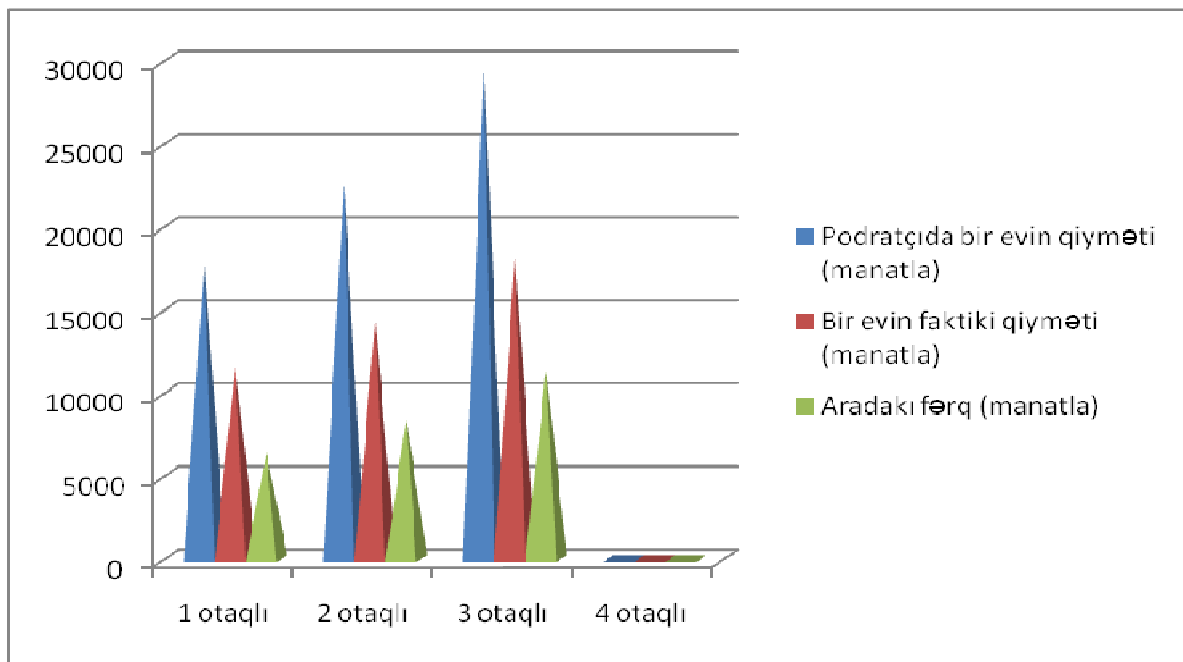
## **Failure to conduct tender transparently has resulted in overvaluing the project**

Monitoring revealed that greater portion of funds that had been ineffectively spent was misused. It is due to lack of transparent procurement procedures. Corruption elements practiced in public procurements have not been reduced during the past period, yet the amount of allocations for these purposes had been increased. According to documents available, The project spent 18089 manats on a one-room house (32,02 square meters), 22 620 manats on a two-room house (46,74 square meters), and 29 437 manats on a three-room house (63,03 square meters), constructed in Fizuli in 2007, it should be noted that although price of houses constructed under other lots, we will make comparisons according to figures available. And we conducted analysis on three-room house for usual majority of two and three room houses. According to the expert estimations, with

20-25 percent income to contractor, the price of three-room house is 18139 manats (63,03 square meters) against 29 437 manats paid by the government.

**Table of price comparison**

| Houses   | One-room | Two-room | Three-room | Four-room |
|--|----------|----------|------------|-----------|
| Price for one house under contract (in manats) | 18089    | 22620    | 29437      | None      |
| Actual price for one house (in manats)         | 11694    | 14251    | 18139      | None      |
| Difference (in manats)                         | 6395     | 8369     | 11298      | None      |



So, each house is 9,000 manats higher than actual price. One-, two- and three- room houses are constructed for 505 manats per square meter on average. However, in expert estimations, the average price is 319 manats. The difference of 186 manats per sq. m could be regarded as “useless expenditures”. The average difference for 3 houses is 36.6 percent. Contractor says they could construct houses in regions for 288 manats per sq. m, provided that no bribe and commission will be asked.

### **How are petrodollars misused?**

Amount of construction works implemented in new IDP regions is doubled by executing agencies. Actual higher prices are related to exaggeration of value of works and materials. For example, while the real price of land works of a three-room house in the expert estimations is 104 manats, this figure is actually 250 manats in monitoring documents in spite of the same work scopes, that is 2.3 times more expensive. The fundamentals had to be completed for 2.871 manats in total. However, the contractor has performed these works for 4.566 AZN (1.695 manats more). There is a difference of 1.611 manats in wall works. The price in the monitoring table is 4.833 manats, in the expert estimations 3.222 manats. Hydro isolation of walls with cement is 10 times higher – 128 manats instead of 13 manats. Also placing of ceiling and roof cover is deferent at 1.700 manats. Though costs of placing of floor is noted 1.051 manats, the contractor fulfilled this work per house 227 mantas more expensive – 824 manats. The sale price of wooden materials is 220-240 manats. This price changes between 300-380 manats in constructions. Placing of door and windows is 746 AZN as for expert, but it is 1.381 manats, that is 653 manats more expensive for the contractor for unknown reasons. In some cases, the real prices are simply multiplied by 2. Verandah and stairs are for 313 manats, but 185 manats in expert. There is 1.200 manats difference in completion works – 3.519 manats was expended instead of 2.314 manats. Plastering of walls rose from 1.252 manats up to 1.565 manats. The cost of preparation of concrete pavement in 1 m width along the perimeter of building is 236 manats. The contractor multiplied this figure by two. Interior electric works, construction of WC, preparation and painting of metal door and gate and yard are accordingly 400 manats, 900 manats and 1.900 manats in the contractor. Respectively, these costs were 100, 700 and 1.000 manats in the expert estimations.

All these works cost 3.550 manats according to the contractor, but 2.040 manats according to the expert. As saying of the contractor, he offered real prices, however being multiplied the said figures by 2, the monitoring table was returned to him.

The price of stove placed by the contractor to kitchen is mentioned 250-300 manats in the bidding documents. The sale price of stove was 120-125 manats last year. Adding the transportation costs of the company to it, the occurred difference is 529.560 manats – more than half million only for the settlements where we conducted research. Note that the contractor does nothing for this work. The stoves were able to be received and placed to house also by the Committee of Refugees or customer. And instead, he could construct 45 1-room or 37 2-room houses for refugees at the cost of that resource.

### **Exaggerated Profit**

By expert estimates, the share of contractor in total allocations is 20-25 percent. For example, price of 26 pieces of stones (0.54 manats each) used during masonry of 1 square meter walls was 14.4 manats, while that of 0.07 cubic meter sand - 0.8 manats, water- 0.1 manats, bricklayer's wage – 17.46 manats. The profit of contractor as per m<sup>2</sup> was calculated at 4.6 manats – 26%. Price of wooden flooring per m<sup>2</sup> was 7.5 manats, while price of placing of wooden beams/logs (1.83 p/m) was 3.34 manats, carpenter's wage – 1.20 manats. The profit of contractor was calculated at 3.25 manats – 27%. For plastering of outer walls and inside walls as per 50 m<sup>2</sup> within final stage of works, price of sand was 12 manats, water – 0.2 manats, concrete - 24 manats, plasterer's wage - 70 manats: total – 106.2 manats. Price of 1 m<sup>2</sup> out of the 50 m<sup>2</sup> is - 2.12 manats. The profit of contractor was calculated at 1.86 manats – 88%. For emulsion painting of m<sup>2</sup> inside walls, price of 1 kg filler was 0.3 manats, emulsion 0.15 manats, dyer's wage – 1.20 manats. The profit of contractor was calculated at 1.33 manats – 81%. Price of installation of metallic door and gates, fencing of courtyard area and doubly painting of steel structures/ under project was 718 manats as per house. Price of delivery and installation of gates was 63 manats, while door (hatch) - 36 manats (2 pcs), with installation at 6 manats. Price of wire netting of 50 meter in length was 40 manats, with wage payment 25 gepiks per meter totaling 12.5 manats. Price of 130 m wire used was 7 manats, 2 m<sup>3</sup> concrete - 102 manats, installer's

wage - 55 manats. Price of 68 meter pipe was 36 manats, worker’s wage 20 manats. Price of 12 metallic frames (together with netting) was 228 manats, with installation - 12 manats. So, the profit of contractor was calculated at 280 manats – 39%.

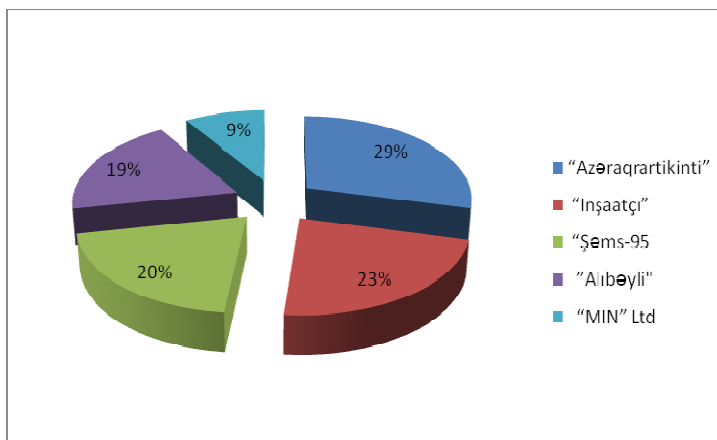
**1 m<sup>2</sup> of houses constructed in regions for IDPs consumed 500 manats versus 187 manats built in Baku**

In 2007 construction of new private houses in Baku was cheaper than that designed for IDPs. For example, construction of a two-storied private house, covering 198 m<sup>2</sup> in area with a cellar of 60-80 sm in height in Baku’s Binegedi District built by a private company has been recently completed and its cost has been calculated at 42,000 manats. At current market prices, 1 m<sup>2</sup> of the house has consumed 212 manats. The construction company has gained 6,000 in profit, which constitutes 19% of total assets spent. The price of such house with medium repair is assessed at 37,000 manats, or 187 manats per square meter. Regarding the houses in the regions, prices are not adequate. According to the information we received, the houses built in new regions for IDPs costs about 700-800 manats per square meter - 3-4 times higher than houses built in urban areas.

**38-40 pct of allocations misappropriated**

Under the contractual prices in the State Admission Commission Act on commissioning of the object construction, we carried out survey of the works performed by 3 subcontractors which signed contracts with “Azeraqartikinti” and 5 companies working in these regions – “Shams-95”, “Alibeyli”, “Inshaatchi”, “MIN” Ltd and “Azeragartikinti” Joint Stock Company. The 1.017 houses impacted by our analyses is 23 percent of 4.413 houses under construction in 11 new regions – about one fourth. And this gives ground to say opinion about the performed works.

**Total contract amount**



**(in manats)**

|                    |         |
|--------------------|---------|
| “Azeraqrartikinti” | 7396120 |
| “İnşaatçı”         | 5754565 |
| “Shams-95          | 5163385 |
| ”Alibeyli”         | 4921544 |
| “MIN” Ltd          | 2268255 |

In documents available with us, allocations on the contract for the houses constructed in Fuzuli region are distributed as follows: 29 % to “Azeragrartikinti” (298 houses), 23 % to “Inshaatchi” (210 houses), 20 % to “Shams-95” (208 houses), 19 % to “Alibeyli” (202 houses), and 9 % to “MIN” Ltd (99 houses). The company constructed 375 houses in Fuzuli region and 364 houses in Bilasuvar region in 2007 – 739 houses last year. Considering that the average price per sq. m of house is 505 manats in contract, there is 186 AZN more expenditure per sq. m. Total area on the work of 5 companies is 53582.35 sq. m and extravagance is 10 million manats. And it constitutes 38 percent of total assets allocated for these purpose. 20.5 million manats were extravagated in total area of 110215.72 sq. m in 5 regions – again 38 percent. To implement analogical comparison on Bilasuvar and Raman containing 2.309 houses totally referring the gained figures, that will do to multiply the figures by 2. So, as a result of the investigations on the three districts impacted by monitoring, we come to the conclusion that only in construction of houses, there is about 40 million manats in extravagation. Our accurate estimations show that 38-40 percent of the allocations are misused. “Wastefulness” in utilization of resources may be applied to the social spheres.

For example, schools constructed in the regions are 3-5-fold higher compared to those built by companies. During the years 2005-2006, about 2.34 million manats were allocated for construction of 15 schools for IDPs. Construction of two schools alone consumed about 1.7 million manats. According to information available, major part of the resources on social infrastructure fields is also allocated to “Azeragrartikinti” JSC (42 percent). This is about half of the works. “Azeriservis”, “Gidromashservis”, “Inshaatchi” and “IMAY” companies, accordingly, took 21, 14, 12 and 11 percent of the works. It has been impossible to access the volume of assets

disbursed for construction of kindergartens in the regions. In other words, details of expenditures for construction of these regions are protected as “state secret”.

### **Less work, higher prices**

Administrative building (including warehouses), post office, public club center, medical station, kindergarten with 50 places, school with 15 classrooms (including boiling room) from the social facilities were constructed in each district. “Inshaatchi” Firm has constructed 6 social facility costing AZN 1.7 million totally (around) in Zobujug settlement, Fuzuli region. The price of furniture placed in social facilities and buildings totally AZN 200 thousand. The value of administrative building is AZN 101 thousand, post office AZN 60 thousand, the cost for construction of the club is AZN 184 thousand in the State Commission Act. The kindergarten was constructed for AZN 387 thousand and the school for AZN 842,3 thousand. Out-patient’s clinic completed for AZN 150 thousand. The work scopes and costs are the same in “IMAY” company. The contractual value of the construction works carried out by the company is AZN 1.7 mil., and the price of furniture placed in the facilities is AZN 173 thousand. Total cost of the main road of 14.94 km and the most of 24.1 km that were constructed by “Azeragartikinti” JSC is AZN 6.3 mil., - AZN 423 thousand per km. Extending of Shukurbeyli Transformer Sub-station constructed in Fuzuli region by “Gidromashservis” CJSC and construction of Zobujug Transformer Sub-station completed in AZN 2 mln. 27 thousand. “Azerservis” LTD company constructed inner roads in 23.52 km length and AZN 3.2 mil., in the 1st and 2nd settlements. 21.049 km of the roads are covered with gravel and 2.471 km with asphalt.

The value of the works carried out in social fields is quite different than the reality. The two-storied school building for 250 students (with 15 classrooms) with the total construction area of 1152 sq. m constructed by “IMAY” company in Zobucuk costs AZN 846 thousand. It is about AZN 56.4 thousand per classroom and AZN 3.1 thousand per student. There were constructed 5 such schools in “Gayidish”. The value of the schhol constructed by “Inshaatchi” Firm in Zobujug is about the same – AZN 842.3 thousand. During the years 2005-2006, about 2.34 million manats were allocated for construction of 15 schools for IDPs. Construction of two schools alone consumed about 1.7 million manats. For comparison, let’s look at Rovshen Agayev’s

survey: ‘The US Embassy to Azerbaijan has built a 20-room school in Baku’s Azizbeyov district within the project worth AZN 255,000. The cost per room was AZN 12,700, with the cost per student averaging AZN 638. This is three times cheaper than the school built by the State Committee on the Refugees and Internally Displaced Persons at the expense of petrodollars (or five times cheaper than the per student cost.). At the same time, the school constructed by the embassy is equipped better. The project for construction of a school for 840 students in Khudat Town built by the Ministry of Education was valued at AZN 779, with per student cost averaging AZN 927. AZN 19,000 were spent on each out of 4 additional rooms in school No. 147 in Baku’s Hatai District. This is merely three times cheaper than those built in IDP settlements

Experts say the transformer installed in the settlements by “Gidromashservis” is more expensive than the real value. At present, the price of 110/35-10 kW transformer is AZN 660 thousand in market (last year it was cheaper). Taking into account that 2 transformers cost AZN 1.3 million, with profit to the contractor, the works were performed at max. AZN 280 thousand for installation and other equipment. AZN 400 thousand that is 20 percent of the allocated AZN 2 mil. 27 thousand manats was not expended as planned. It is just the estimate calculated for 2008. The value of furniture purchased for the social facilities is also exaggerated more. The logistics of the administrative representative in Ramana included chairs and tables that only produced in local shops and naturally their value was not a thousand AZN at all. Considering that under furniture there were chairs and tables, cupboard, TV set and at the best, air-conditioner in the administrative representative office, max. AZN 5 thousand was expended for such furniture. And here “extravagation” exceeds 50 percent.

### **State Program is incompletely performed**

The State Program not only encompasses the improvement of living conditions of refugees and internally displaced persons, but also employment promotion, in order to reduce unemployment through taking concrete measures, creating jobs. But the State Committee mostly dealt with construction due to misappropriation of funds allocated. No significant measures were taken to promote employment and today, the majority of IDPs are jobless. According to the Committee’s

website, 18913 persons received the status of refugees and IDPs, including 126 persons refugees, 18787 persons IDPs. Between 2003 and 2008, about 11263 refugees and IDPs were employed, while 392 persons received the status of unemployed. 401 persons were provided with allowance. According to information for 2001-2007, as much as 27814 jobs had been created in new settlements for IDPs.

### **Low quality constructions consume petrodollars**

In districts, there is a 150-seat school for 314 houses with 4-5 family members each. There is a bath-house for 357 houses on average in most settlements. But no bath-houses were constructed in Fuzuli. The situation in the primary healthcare unit that services 518 houses is more sorrowful than the ratio of these figures. There is no road infrastructure in some settlements. There is no source of water for daily use and irrigation purposes in new settlements in Aghdam. Houses here were built in low quality and without taking into account the landscape and natural opportunities of the territory. Electric lines of 566 kilometres in length are reported to be laid in new districts. This is a real long distance that would meet both ends of the country's area, the source of electricity has not been sufficient. Refugees and IDP families are dissatisfied with the executing agencies as a result of misuse of funds. Doors in houses are not according to standards. Since as they narrow, they have been framed with wood strips. Doors of some houses are DVP, although they should be wood under the project. As turning joints were fixed deeply, doors are broken at opening and closing. These doors are sold to contracting agencies by "Gidromaşservis". the quality of masonry is low as well. They have forgotten to install power distributing boxes on the walls in some houses. The ceiling of the house must be made of pasteboard, but they have uses DVP material. DVP is 50% cheaper than pasteboard in the market. Dividing walls are incomplete. Such fact is observed in most houses. So, 8-10 square laying has been economised in each house. Contractors have earned additional 300 manats in profits from each house by this way. Profit from 1000 houses implies corruption to the extent of 300,000 manats in total. Water distribution pipes have remained uncovered. As pipes hang about on land, they impede normal traffic. Houses are humid in winter: most houses drip in rain, snow in winter.

Power supply is interrupted. People use radiators and homemade stoves. It means volume of works is reduced against increasing allocations from the Oil Fund. Roads in two districts constructed by “Azeriservis” are low quality as well. Most central roads are just graveled. The project/design is not correct in general sense.

### **Financial violations investigated**

Nonconformity of constructions built for IDPs to the quality standards and serious financial violations attract the attention of the force structures, even investigation started. However as they were NF resources, the issue was closed for the reason of the country’s international image. And the financial and law-enforcement bodies that are authorized to conduct investigation in companies misuse the situation. When such facts are found, “price” is measured in AZN 100 thousands and goes beyond contractor. Even some ministries have definite “tariffs”. To evade from value added tax (VAT) contractors receive invoice just from “companies” specially established for this purpose. In this case, they pay not 18 percent, but 6 percent. Naturally, financial bodies know these machinations well and in such case, 3 percent of total resource is “optimal” for both parties. Because one party expended 6+3 percent instead of 18 percent and other party did not pay 3 percent to the public budget, but put into its own pocket. Since this year 18 percent VAT is transferred to the centralized fund of the Ministry of Taxes and the resource already goes to the public budget not to pocket of a group. However this does not mean that bribe reduced in utilization of oil revenues.

### **Monitoring results of tender procedures for the improvement of the social and economic conditions of refugees and internally displaced persons.**

One of the most serious problem in terms of bidding transparency was the procedure for bids to improve the social and economic conditions of refugees and internally displaced persons. Monitoring showed that no procurements are carried out to perform works. In some cases 10—15 procurements are carried out on 100 works. The fact that there are several executing agencies for

the project (the State Committee on the Refugees and Internally Displaced Persons, Social Development Fund for IDPs – SDFIDP, the Agency on territory restoration and reconstruction of Azerbaijan Republic) has brought to lack of accountability and transparency in procurements. The executing agencies are not open to questions on tenders. For example, although information surveys were sent Ayaz Orucov, Director of SDFIDP, on 25 November 2009 and 7 January 2010, he did not respond to the questions. In other words, details on procurements are protected as “state secret”. They have no legal documents tailored for tender parameters.

Monitoring of the project to finance the improvement of the social and economic conditions of refugees and internally displaced persons showed that each contractor has permanent engineering-technical staff comprised of 10-12 persons and this is not sufficient for large-scale construction operations. What is most remarkable for procurement procedures is that over 70 percent or even 100 percent of works are charged to subcontractors by the tender winners. The latter just perform oversight functions. In fact, the executing agency is responsible for this mechanism. Performance of work by 4-5 subcontractors needs additional administrative costs. Therefore, the item of administrative costs under this project takes more funds, i.e., materials, wage fund, social insurance, amortization, taxes and other unforeseen expenses constitute at least 50% of overall costs. Most tenderers lodge complaints due to failure to conduct procurement as provided in legislation. Interestingly, the Public Procurement Agency has not cancelled any tender results so far. Its annual reports provide no detailed information on procurements, projects financed by international organizations. In fact, annual reports must contain concrete information, figures about projects executed by the State Agency for Refugees and IDPs and financed by international financial institutions.

1. One of the most serious problem in terms of bidding transparency was the procedure for bids to improve the social and economic conditions of refugees and internally displaced persons. No procurements are carried out to perform works
2. In compliance with the Law on Information Acquisition of the Azerbaijan Republic, CESD sent information surveys to Ayaz Orucov, Director of SDFIDP, on 25 November 2009 and 7 January 2010, he did not respond to the questions. .

3. The executing agencies for the project - the State Committee on the Refugees and Internally Displaced Persons, Social Development Fund for IDPs – SDFIDP, the Agency on territory restoration and reconstruction of Azerbaijan Republic are not open to questions on tenders. Details on procurements are protected as “state secret”. They have no legal documents tailored for tender parameters.
4. The fact, that there are several executing agencies for the project, has brought to lack of accountability and transparency in procurements.
5. 10—15 procurements are carried out on 100 works.
6. Participation fee documents paid by tenderers are available.
7. As the project is implemented by several executing agencies, they dodge the responsibility shifting it to the other agencies.
8. Contractor has permanent engineering-technical staff comprised of 10-12 persons and this is not sufficient for large-scale construction operations.
9. Companies close to executing agencies are awarded for implementation of the projects to improve the social and economic conditions of refugees and internally displaced persons.
10. About 70 percent or even 100 percent of works are charged to subcontractors by the tender winners. The latter just perform oversight functions.
11. Performance of work by 4-5 subcontractors needs additional administrative costs. Therefore, the item of administrative costs under this project takes more funds, i.e., materials, wage fund, social insurance, amortization, taxes and other unforeseen expenses constitute at least 50% of overall costs.

12. Most tenderers lodge complaints due to failure to conduct procurement as provided in legislation.
13. Failure to conduct tender transparently, distribution of works to the same companies every year lead to misappropriation of funds, corruption, as well as low-quality performance.
14. Annual reports by the Public Procurement provide no detailed information on procurements. projects financed by international organizations. In fact, annual reports must contain concrete information, figures about projects executed by the State Agency for Refugees and IDPs and financed by international financial institutions.

## **Monitoring tenders announced for the Baku-Tbilisi-Kars (BTK) railroad project**

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### **Introduction**

The Baku-Tbilisi-Kars (BTK) railway line is a regional railway link that will directly connect Baku in Turkey, Tbilisi in Georgia and Kars in Azerbaijan. The construction of the BTK railway line was inaugurated by the presidents of the three regions at Marabda, South Georgia on 21 November 2007. The final paper between Azerbaijan, Georgia and Turkey on the construction of the BTK railway was signed in Tbilisi in February 2007. Trilateral regional Summit with participation of presidents of Georgia and Azerbaijan and Prime-Minister of Turkey was held on February 7, 2007, in Tbilisi. The total estimated cost of the project is to top \$400 million.

It is hoped that the railway line will improve the trade and economic relations between Central Asia, Azerbaijan, Georgia and Iran connecting with Europe. Implementation of this international project on the Baku-Tbilisi-Kars railway line and construction of a tunnel in the Bosphorus strait, combining of the Trans-European and the Trans-Asian Railway networks, in addition to the output of goods and passengers in Europe and Asia directly through Azerbaijan, Georgia and Turkey will contribute to increasing region's transit capacity, accelerate the process of European integration, greater cooperation within the European Neighborhood Policy, strengthening of state independence and sovereignty of Azerbaijan and expansion of external economic relations.

Implementation of the project is of great importance from economic efficiency, speed and timeliness, security and reliability. Involvement of goods of European and Asian countries to the railway will increase both volumes and intermodal container transport. The project is expected to be completed by the end of 2009. Experts forecast that the BTK railway line will transport 1.5 million passengers and 3 million tons of cargo in its initial stage after beginning operations in 2011. By 2034, this railway line would carry an estimated 16.5 million tons of cargo and 3.5 million passengers.

### **Projects' technical parameters**

Rehabilitation – reconstruction of 29 km –long railroad line from Kars to Akhalkalaki, an ST-2 wheelbase in the border of Turkey and Georgia, and modernizing old railway, as well as 160 km long existing railroad line of Akhalkalaki-Marabda section is financed by the Republic of Azerbaijan in amount of 200 million USD allocated for 25 years.

Total length of Kars-Akhalkalaki railroad line is 105 kilometer. The number of lines in both sides is one, but the number of permanent ways is two. The traction system is alternating current. The maximum speed is 120 km/h. The width of the gauge is 1435 mm. the type of sleepers is iron-concrete. The main connection line is optical. The length of the tunnel totals 2250m, the number of bridges and stations is 12 and 3 in Turkish side, whereas 1 in Georgian side. It is also planned to rehabilitate and reconstruct 160 km long existing railroad line of Akhalkalaki-Marabda

section. The carrying capacity is projected to be 6 million tons of cargo per annum in the fifth service year, while 15 million tons and more in the tenth service year.

The construction of the Georgian part of BTK was inaugurated on 21 November 2007. The project is expected to be completed by the end of 2009. Experts forecast that the BTK railway line will transport 1.5 million passengers and 3 million tons of cargo in its initial stage after beginning operations in 2011. By 2034, this railway line would carry an estimated 16.5 million tons of cargo and 3.5 million passengers. Like other projects funded from SOFAZ, the completion term of this project is delayed too. In 2009 no works were performed under this project. Project's technical parameters, performance process are not accessible in Azerbaijan. Information on the project is provided when trilateral meetings are held or Georgian side releases statements. Bidzina Bregadze, Director of Georgia's Marabda-Kartsahi Railway Company recently said that "despite some delays, the Baku-Tbilisi-Kars railway, which was slated to be operational by 2010, will be completed by 2012."

Evidently, The Baku-Kars Railway Project Coordination Council met for the 8th meeting in Tbilisi in late January this year. The Azerbaijan delegation was headed by Transport Minister Ziya Memmedov, Georgian delegation by Economic Development Minister of Zurab Pololikashvili. The meeting heard reports on work carried out in 2009 and approved the budget for 2010. After that, the parties signed a protocol on all the issues discussed.

Zurab Pololikashvili said that there was no delay in the Baku-Akhalkalaki-Kars project. "The project is 25-30% complete. The railway will be put into service in mid-2012," he added.

Minister Ziya Memmedov said the parties exchanged views on the acquiring of land through which the section of rail corridor is passing. He also said the project cost was expected to increase, adding that it will depend on the scope of rehabilitation works.

### **Projects' economic parameters**

As seen, the BTK railway project started in 2007, yet its budget remains unknown. The project is funded by the Oil Fund pursuant to Decree #1974 of the President of the Azerbaijan Republic “On Measures for Implementation of Baku-Tbilisi-Kars New Railroad Project” dated February 21, 2007. In accordance with this Decree, “International Bank of Azerbaijan” Open Joint Stock Company has been appointed as agent bank for organization of credit and provision of bank service on behalf of the Government of the Republic of Azerbaijan.

Rehabilitation – reconstruction of 29 km –long railroad line from Kars to Akhalkalaki as well as 160 km long existing railroad line of Akhalkalaki-Marabda section is financed by the Republic of Azerbaijan in amount of 200 million USD allocated for 25 years. In accordance with bilateral Agreement, consultation body having exclusive power and monitoring the utilization of credit and for this purpose controlling its execution. Coordination Board has been established. The members of the Board from the Azerbaijan side are Ziya Memmedov, Minister of Transport, Shahmar Movsumov, Executive Director of the State Oil Fund of the Republic of Azerbaijan, Niyazi Safarov, Deputy-Minister of Economic Development and Arif Askerov, Head of Azerbaijan Railroad Close Joint-Stock Company. It should be noted that the Oil Fund allocated 80 million manats for the project in 2009, but the amount was later reduced to 30 million manats. Total amount of allocations were 88.682 million manats in 2009. Amount of allocations was 30 million manats for the project in 2007, but 20 712,5 manats were used only. The project performance was 69% complete. The amount allocated in 2007 constituted 2% of SOFAZ’s total allocations, whereas 0.1% in 2008. The Oil Fund has allocated a total of 58.5 million manats to the transport ministry as of 31.12.2009. Like the other projects funded from SOFAZ, the expenditure item of this project is unavailable to the public.

### ***Procurements and their monitoring***

The engineering design of Kars-Tbilisi Railway was carried out by Turkey-based Yuksel Domanic Engineering Limited, according to Oil Fund’s annual reports. Azerinsaatservis is responsible for construction of the Akhalkalaki-Kartsakhi segment of the railway. It should be noted that tender conducted in Georgia awarded the 29km segment of the railway to Azerinsaatservis and the winner for 76km segment in Turkey is “Özgün Yapı Çelikler” company.

The amount of contract signed with Azerinsaatservis is \$79 million. Then the total estimated project cost was \$422 million, but \$600 million with relevant infrastructure then. The project has remained behind schedule for several times due to delay with allocations. Since out of the \$420 million, only \$334 million have been allocated.

### **Responses to information survey**

The response to information survey 10/ 004 of January 7.2010 sent to the Transport Ministry of Azerbaijan Republic regarding procurements for the BTK project came on March 4 the same year through letter A12/07-554. In response to the question if any procurement procedures were carried out on the project or not, Head of Finance and Credit Department Faik Amirov says, under the agreement signed between the governments of Azerbaijan and Georgia, Marabda-Kartsahi Railway Company was established and it is responsible for the project on behalf of Georgia, stressing that as this Company is the executing agency all procurement procedures on reconstruction of Marabda-Akhalkalaki segment, construction of Akhalkalaki- Karsaki, design of Akhalkalaki station as well as rehabilitation and reconstruction of Marabda-Tetriskaro segment were conducted in Georgia as provided by Georgian law.

Contracts were awarded to “Kiyevgipotrans” Design Institute, “Azerinsaatservis”MMC, “Kontur” Project Group and “Georgian Engineering Group” LTD.

By the way, the Ministry did not answer the questions regarding conducting of tender, its stages, number of tenderers, tender conditions, structure of tender commission, tender announcement. Instead, the Ministry official advised us to appeal to Marabda-Kartsahi Railway Company as procurements were held in Georgia.

Marabda-Kartsahi Railway Company gives more information on international tenders. Since it published tender announcement on construction of Akhalkalaki station as provided in legislation. Deadline was October 22, 2007.

According to tender conditions, all interested parties have the right to bid for tender. According to Georgian media on 13.11.2007, the contract to construct the Akhalkalaki-Karsakhi segment of

30km in length was awarded to Azerbaijan-headquartered “Azerinsaatservis”. According to sources in the neighboring country, parameters of “Azerinsaatservis” had partly met tender criteria. It turns out that the rest tenderers did not completely satisfy tender commission. At that time Azerbaijani media outlets wrote that although “Azerinsaatservis” did not meet tender criteria of the huge BTK project, it was announced the winner because Azerbaijan financed Georgia’s share in the project.

In addition to “Azerinsaatservis”, two more tenderers from Turkey and Georgia had submitted their proposals. Simply, the proposal by Azerbaijan company was partly in compliance with collection of basic tender conditions. Expected completion is October 1, 2009. The project remained within the budget at \$422 million, according to Georgian media. 2-stage international tender was announced on design of working project of Marabda-Akhalkalaki railway section reconstruction. Performance and completion term is 2008-2010. Deadline was 30 August 2007. There is such impression that Georgia’s relevant agencies seem to be more experienced and transparent unlike their Azerbaijani friends. For example, Marabda-Kartsahi Railway Company, the authorized body for the Georgian government has organized all procurements on the project, including on services for financial, accounting operations, as well as legal consultations.

According to Georgian media, new international tender for the project was conducted without amending or changing tender conditions. Works to be performed were again associated with Marabda-Akhalkalaki and Akhalkalaki-Karsakhi railway segments.

Under tender conditions, the 160km section of Akhalkalaki-Tbilisi railway line will be modernized, improving its carrying capacity to 5 million tons in the first stage and 15 million tons of cargo per annum in a perspective. Tender was announced on October 19, 2009, deadline – October 20-22, 2009. Availability of experience and competency in relevant field and proposed price were key provisions in assessment of qualification indices. Tender per one lot has been announced. One winner will be selected.

The notification reminded that 4 tenderers had submitted packages in previous tender conducted October 2008 – two Georgian companies “Geoengineering” and “GT Trade” as well as 1

German and 1 Ukrainian companies. "KievQİPROtrans" were allowed for the second stage. But its indices did not satisfy tender commission.

International tender for technical management of Marabda-Tetriskaro section as well as rehabilitation and reconstruction was carried out in 2010. Submission of tender documents started on February 8. Tender packages will be unsealed on March 4 .

## **Summary**

Tenders for the Baku-Tbilisi-Kars project were conducted in Georgian and Turkish sections only.

The contract for the Akhalkalaki- Kartsakhi section in Georgia territory was awarded to LLC "Azerinsaatservis". Azerinsaatservis is responsible for construction of the Akhalkalaki-Kartsakhi segment of the railway and the winner for 76km segment in Turkey is "Özgün Yapı Çelikler". Although tender is organized in foreign countries, the Transport Ministry as one of the implementing partners, as well as co-chair of Coordination Council, which is oversight body with exclusive right to control credit provided to Georgia within the project has not held responsible for the project. There is no information on the project at the Ministry's website. BTK is the only project financed by the Oil Fund where its tender announcement reflects schedule of provision of services, as well as Project's performance characteristic. The notification consists of more than 10 pages. And Marabda-Kartsahi Railway Company, the authorized body for the Georgian government has organized all procurements on the project. Georgia's Marabda-Kartsahi Railway Company gives statements on conducting of tender. Mechanisms for allocation are not open. For example, amount of allocations was 30 million manats for the project in 2007, while 88,682,0 manats in 2008 and 50 million manats in 2009. The amount allocated in 2007 constituted 2% of SOFAZ's total allocations, whereas 0.1% in 2008. The Oil Fund has allocated a total of 58.5 million manats to the transport ministry as of 31.12.2009. Like the other projects funded from SOFAZ, the expenditure item of this project is unavailable to the public. The Oil Fund allocated 80 million manats for the project

in 2009, but the amount was later reduced to 30 million manats. The reason of reduction is not disclosed by the Transport Ministry and SOFAZ. The project has remained behind schedule for several times due to delay with allocations. Since out of the \$420 million, only \$334 million have been allocated, according to Georgian press. Azerbaijan side does not comment on the cost reduction. The project is fully unavailable to the Azerbaijan public. Both the Transport Ministry and the Oil Fund do not hold responsible for the project. Georgia's Marabda-Kartsahi Railway Company informs the public through statements released on regular basis, yet Azerbaijan's Transport Ministry releases statements after trilateral meetings only. Finally, the concrete project budget is unknown;

- 1 Tenders for the Baku-Tbilisi-Kars project were conducted in Georgian and Turkish sections only.
- 2 Azerinsaatservis is responsible for construction of the Akhalkalaki-Kartsakhi segment of the railway and the winner for 76km segment in Turkey is Özgün Yapı Çelikler”.
- 3 Although tender is organized in foreign countries, the Transport Ministry as one of the implementing partners, as well as co-chair of Coordination Council, which is oversight body with exclusive right to control credit provided to Georgia within the project has not held responsible for the project. There is no information on the project at the Ministry's website.
- 4 BTK is the only project financed by the Oil Fund where its tender announcement reflects schedule of provision of services , as well as Project's performance characteristic. The notification consists of more than 10 pages. And Marabda-Kartsahi Railway Company, the authorized body for the Georgian government has organized all procurements on the project.
- 5 Georgia's Marabda-Kartsahi Railway Company gives statements on conducting of tender.
- 6 Mechanisms for allocation are not open. For example, amount of allocations was 30 million manats for the project in 2007, while 88,682,0 manats in 2008 and 50 million

manats in 2009. The amount allocated in 2007 constituted 2% of SOFAZ's total allocations, whereas 0.1% in 2008. The Oil Fund has allocated a total of 58.5 million manats to the transport ministry as of 31.12.2009. Like the other projects funded from SOFAZ, the expenditure item of this project is unavailable to the public. The Oil Fund allocated 80 million manats for the project in 2009, but the amount was later reduced to 30 million manats. The reason of reduction is not disclosed by the Transport Ministry and SOFAZ. The project has remained behind schedule for several times due to delay with allocations. Since out of the \$420 million, only \$334 million have been allocated, according to Georgian press. Azerbaijan side does not comment on the cost reduction.

- 7 The concrete project budget is unknown.
- 8 The project is fully unavailable to the Azerbaijan public.
- 9 Both the Transport Ministry and the Oil Fund do not hold responsible for the project. Georgia's Marabda-Kartsahi Railway Company informs the public through statements released on regular basis, yet Azerbaijan's Transport Ministry releases statements after trilateral meetings only.

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## **Monitoring of tenders announced for the State Program on education of Azerbaijan youth in foreign countries in 2007-2015**

### **Introduction**

**Financing of the "State Program on education of Azerbaijan youth abroad in the years 2007-2015"** - According to the second paragraph of the Presidential Ordinance No. 1746 dated October 19, 2006 on approval of the "State Program on education of Azerbaijan youth abroad in the years 2007-2015" this program will be partly financed by the State Oil Fund of the Republic of Azerbaijan, as well as by other legal sources (President's Reserves Fund, for example). Execution of the program is realized by the Ministry of Education of the Republic of Azerbaijan. Supervision on execution of the program has been entrusted to the Commission on Education under the President of the Republic of Azerbaijan. "Selection rules of the Azerbaijan youth which will study in foreign countries" has been approved by the Resolution No. 128 of the Cabinet of

Ministers of the Republic of Azerbaijan dated June 03, 2008. About 288 students' education expenditures are financed by SOFAZ in the framework of the State Program. About 5,000 students will receive bachelor's and master's degrees through this Program in the United States, Europe and Asia between 2007 and 2015.

The Program aims to meet the need for specialists meeting international standards, as well as to create conditions for education of Azerbaijan youth on the global values. Most of the students studying abroad within the State Program study in economics, medical science, information and communication technologies and industry. With a view to implementing the Program efficiently, the Ministry of Education has been tasked to collaborate with partner organizations from different countries or directly with higher education establishments. What is most interesting is return of these students to Azerbaijan after education abroad. In Kazakhstan, for example, the students studying abroad within the State Program are committed to returning to return to Homeland and working at least one year. This commitment is included in the contract signed between each student and the government. Similar contract in Azerbaijan context excludes such provision.

### **Project's economic parameters**

SOFAZ allocated 10.2 million manats as of January 1, 2010. Although this program is titled to cover the years 2007-2015, no official information on this direction of expenditures as at 2007 is available. For the purposes of financing the State Program, SOFAZ allocated 10 206.7 thousand manats during 2008 and 2009, including 7 912.1 thousand manats during 2009. This amount has been allocated to cover living expenditures, tuition fees, travel costs, health insurance, visa and registration fees of students under this Program, including to the reimbursements of the management and organizational expenses of partner organizations collaborating with the Ministry of Education. Greater portion of funds was spent to cover living expenditures (4 544.4 thousand manats) and tuition fees (2 883.5 thousand manats). According to the Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan No.261 dated November 27, 2008 "Rules on payment of tuition fees of the Azerbaijan youth at foreign universities" was approved. The list of monthly expenses of persons studying abroad was approved in accordance with these Rules. The

Ministry of Education is responsible for payment of all expenditures on the tuition fees, visa and registration, accommodation, medical insurance and travel, etc expenditures of students studying abroad in the framework of this Program ( hereinafter – students). The amount of expenditures (including tuition fees, visa and registration, medical insurance, travel expenditures, etc) is determined by the Ministry of Education every year on the basis of submitted payment documents and an order is submitted to the organization funding the State Program. The list of monthly expenses of students is approved in accordance with the rules on payment of tuition fees of the Azerbaijan youth at foreign universities. The expenditures for the academic year 2008/2009 were as following: 1,050,000 EUR for education in Germany, 1,800,000 USD in the United States (New-York, Boston, Chicago, Miami, Washington), 1,400,000 USD in other U.S. cities, 1,550,000 USD in Australia, 1,150,000 EUR in Austria, 1,150,000 in Belgium, 1,750,000 in Great Britain, 1,150,000 USD in South Korea, 1,150,000 EUR in Czechia, 930,000 USD in China, 1,150,000 EUR in Finland, 1,150,000 EUR in France, 730,000 USD in India, 1,250,000 EUR in Ireland, 1,650,000 EUR in Spain, 1,1250,000 EUR in Switzerland, 1,350,000 EUR in Italy, 1,400,000 USD in Canada, 930,000 USD in Malaysia, 1,250,000 EUR IN Netherlands, 1,550,000 EUR in Norway, 1,080,000 USD in Russia, 1,030,000 USD in Singapore, 930,000 USD in Turkey.

The Azerbaijani Cabinet of Ministers updated the sheet of monthly expenses on education of young people in foreign countries on three more countries. The resolution that based on the "State Program on education of the Azerbaijani youth abroad in 2007-2015" in the sheet on payment of the Azerbaijani youth of tuition fees in universities abroad are also given monthly cost to study in Ukraine, Hungary and Bulgaria. Based on the decree, monthly fee to receive education in Ukraine set at \$ 960 (\$350 for accommodation expenses, \$100 – other, \$30 – manuals, \$480 – meals), Hungary - 990 Euro (350 Euro for accommodation expenses, 100 Euro – other, 40 Euro – manuals, 500 Euro – meals), and Bulgaria - 890 Euro (350 Euro for accommodation expenses, 100 Euro – other, 40 Euro – manuals, 400 Euro – meals).

Approx. the government spends AZN 25,000 average on each student according to calculations. It should be noted that students studying abroad have faced problems with funds delivery. Even parents of a group of students had staged protests in front of the Parliament in 2008 because of

delays in fees payment. The Ministry of Education at that time responded that the delay was due to failure to approve normative documents on living costs by the Cabinet of Ministers, which in turn stated that the process needed longer time. But the students claimed that the reason of delay and bureaucracy was due to lack of continuity and experience of executing agencies. They also maintained that mechanisms to implement the Program were weak and developed by nonprofessionals. Reviewers maintain that these universities are not leading institutions in terms of rating and authority. Since the fees paid to these universities are cheaper compared to influential universities.

### **Procurements on the project**

As mentioned above, **execution** of the program is realized by the Ministry of Education of the Republic of Azerbaijan. The amount of expenditures (including tuition fees, visa and registration, medical insurance, travel expenditures, etc) is determined by the Ministry of Education every year on the basis of submitted payment documents and an order is submitted to the organization funding the State Program. No tender is carried out on this Program. The Ministry of education is the sole executing agency. Nevertheless, the Ministry of Education has not responded to related questions submitted by us. The questions in the information survey addressed to Education Minister Misir Mardanov were as the following: “Were procurements on financing "State Program on education of Azerbaijan youth in foreign countries in 2007-2015" carried out?”, “Could you provide details of mechanisms for the project implementation?”

### **Summary**

It should be noted that the Ministry of Education does not conduct tender for the State Program. Nevertheless, the Ministry is not open to questions on the issue. Execution of the program is realized by the Ministry of Education of the Republic of Azerbaijan. The Ministry does not hold responsible for expenditures under the program. Even students have been complaining of delays with fee payment. The Ministry has never prioritized the global image of universities during the selection process. Namely, the universities selected are not popular in the world. So, the criteria

adhered by the Ministry of Education are not definite. The students claim that mechanisms to implement the Program were weak and developed by nonprofessionals.

1. The Ministry of education is the sole executing agency.
2. NGOs have no access to the process
3. Use of funds under this Program is not transparent like the other social projects financed by SOFAZ
4. The criteria adhered by the Ministry of Education are not definite.

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## **Conclusions and Recommendations**

Monitoring revealed that when conducting tenders for the projects funded by the Oil Fund provisions of the Law on Public Procurement are ignored. Even if no tender is announced for some projects. But it ought to be remarked that the existing Law on Public Procurements extends to procurement of goods (works and services) performed in the Republic of Azerbaijan by state enterprises and organizations (administrations), enterprises and organizations, state share in charter fund of which is 30 and more percents at the account of state funds, loans and grants obtained by state and received under state guarantee. Given SOFAZ-financed projects are valued at millions, procurements should have been conducted. Sometimes executing agencies divide the allocated funds into three parts in a year in order to avoid tender bidding process. However, the law prohibits division of the same operation into separate contracts.

In addition, projects are mostly implemented by private companies close to the higher echelon of authorized public bodies. In international practice, it is estimated that systemic corruption can add 20-25% to the costs of government procurement. The experience in Azerbaijan affords ground to higher percentage expectation. SOFAZ as the source of financing does not have oversight mechanisms for procurement contracts. In addition, executing agencies involved in the project do not hold accountability before the public. They are unwilling not to disclose

information on procurements. Weak sanctions, legislative gaps, and deviation from the terms of the contracts did lead to contract cost overruns, failure to complete projects within the scheduled date.

It should be noted that when conducting tenders for the projects funded by the Oil Fund separate provisions of the Law on Public Procurement were violated. There is no concrete date on the contracts signed with the winners. Consider the tender announced for the **Oguz-Qabala-Baku water pipeline project**, which has been progressing for years, and is expensive enough: related public agencies indicate different dates on conducting of the first tender on the project. According to previous documents produced by SOFAZ, the tender for the project was conducted in 2005. According to latest documents, the date of the contract signed with CES Consulting Engineers is marked as January 6, 2006, yet it is not noted whether the winner has been selected through a tender. However, according to previous reports, the winner was selected according to the tender. Another example: publication of tender announcement, which is one of the provisions called for the project performance has been complied in respect of Oguz-Gabala-Baku Water Pipeline Project. However, the information about the winner was not publicly disclosed in the press. Under the law, information about procurement contract entered into as a result of tender shall be published within 5 banking days in organ of press where announcement about tender was published. After a long delay the government got around to announcing the names of the implementing partners - "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, "Gence Korpü Tikinti -2" ASC. In order to prove that the tender process is not formal, the names of all companies bidding in tender as tenderer must be announced. Out of the 8 tenders in total announced within the project, "Azersu" SC discloses information about participants for 2 tenders only. But the information is not full. For example, although "Azersu" SC said 12 companies had submitted their bidding packages for project planning, construction works, wellfield infrastructure designing and qualification compliance determination procedures, their names are not disclosed. In tender practice in Azerbaijan, there are firms, which only exist on papers, are allowed to bid for tender. Under Article 11 (Failure of tender and refusal for its continuation) of the Law on Public Procurement, if number of tenderers submitted tender proposal to take part at the tender is less than three, procurement agency shall refuse to continue tender and publish relevant information in organ of

press where announcement about tender was published within 5 banking days. So, participation of at least three tenderers is envisaged by the law. In practice, organizing companies seek to overcolor a more favorable competitive environment by increasing the number of tenderers.

In international tender practice, those tenderers offering best quality, the lowest prices and the shortest time win the tender. "Azersu" SC does not disclose under which criteria "Turan Hazinadaroglu Inshaat and Ticaret" Anonym Company, "Tekser İnşaat Sanayi and Ticaret" Anonym Company, "Gence Korpü Tikinti -2" ASC had been announced the winners. But as it did not happen, the tenderers' offers have remained unknown. In that case, it is difficult to define whether the winner had been selected due to the interests of a deciding official (or authorized public body). In accordance with the Law on Public Procurements the tenderer offering the shortest time and lower costs is announced the winner. Notably, the Oguz-Gabala-Baku water pipeline project was supposed to be accomplished in 14 months ( May 2008). However, construction and installation works have continued for three years. And the total cost of the project under three contracts was 480 million manats, including taxes, yet this figure further rose to 521.6 million manats, with plenty of activities to be undertaken. Plus additional 100 million manats in expenditures are to be directed in 2010. Consequently, the project expects to consume 621 million manats, up 30 pct against the planned expenditures. Nevertheless, volume of goods (works and services) may be increased up to 15 percents under procurement contract. No information is provided about the projects' performance characteristics along the entire route, project costs, its completion date, contractors, subcontractors, etc. All this should have been available to the public, in order to avoid questions arising out of gaps within the project. Except for those interested in this area, the people are unaware of project progress. As a result, related bodies and organizations overvalue the project as they like.

The most serious problem in terms of bidding transparency was the procedure for bids to procure glass fiber pipes. It still remains unknown when Azkompozit was announced the tender winner. Since once the project's technical feasibility study and project/design documents were developed, Azersu Joint Stock Company invited bids to procure glass fiber pipes placed on the July 7, 2006 issue of the state-controlled newspaper "Azerbaijan". At the beginning of the tender invitation, it was mentioned that the pipe delivery started in September 2006 and ended in February 2008.

The announcement also said all bidding packages will be unsealed 18 August. The 30, 2006 December issue of the "Azerbaijan" newspaper covers Ilham Aliyev's visit to Sumgait City. On 29 December 2006, the Azerbaijan President witnessed the inauguration of the "Azkompozit" plant to manufacture glass fiber pipes, according to the story. The plant "Azkompozit" was established in December 2006, according to the manufacturer's website. We would like to mention once again that the tender had been announced 7 July 2007, with deadline set for 18 August 2006. And the notification showed the date for the pipe supply till September 2006. So, the contract had been awarded to an inactive company. In fact, 7 companies from 6 countries (Azerbaijan, Turkey, China, Saudi Arabia, India, etc) submitted their proposals. Although Azersu named the figure but refused to list their names. Contract awarding with the inactive company has led to both delays with the pipeline construction and an increase in costs. For example, although the construction operations consumed more than the half of allocations (207.3 million), over 9km pipes in length were laid out of the pipes and pipe materials of 236.9 km in total length, according to Azersu. Regarding pipe pressure rate, the company is committed to producing the pipes with working pressure between 20-25bar under the procurement contracts, yet the rate of 10bar has been specified on the pipes.

The date of most procurements on the pipeline construction is not disclosed. It is unknown the date of procurement under which Turkey-based "Han Teknolojik İmalat Montaj Taahhüt San ve TİC." anonym company was announced the winner. Also, consider tender for construction activities for the pipeline and well field infrastructure. Although procurement on the latter had been conducted last year, no official information is available on the signing of contract with "T.T.Ş." MMC. If this MMC was selected the winner through tender, it would have been published in official organ of press as well as interested organizations would have prepared for tender.

**The project of reconstruction of the Samur-Absheron irrigation system** project is designed to create safe water source with uninterrupted water supply for Baku and Sumgayit cities. The procurement contracts within the project are reported to have been through eight tenders.

Like the other social projects financed by the Oil Fund, it is also complicated to trace tender invitations for the project "Reconstruction of the Samur-Absheron irrigation system" to make sure that related procurements are conducted on formalities. Although the project has continued for 5 years, the Stock Company still fails to place on its web-site detail reports on the procurements as well as Working Group established on purpose to ensure project management, this impeding information collection about tender and monitoring. The term of contracts is different in statements or reports provided by both executing and implementing partners. Since old archives show that the contract in accordance with the Procurement procedures on preparation of tender documents and technical project was signed with Turkey-headquartered "Temelsu" company on October 18, 2005. The said contract encompasses services to be provided "Temelsu" company within the Consortium. According to the company's website, it concluded one contract with Azerbaijan side dated 10/2005. The completion date is 01\2006. Under the contract, "Temelsu" company is committed to providing consultation and other services, including but not limited to, preparation of procurements on Takhtakorpu water pond with hydroelectric power station object, final projects and reports. Experts point to legislative gaps in this regard. Monitoring results showed that companies close to relevant agencies, by profiting from gaps in the Law on Public Procurements, amid tender procedures enter into a formal consortium with qualified foreign companies, which have been tender winners in order take advantage of selection criteria. After the winner is announced, they end the consortium deal. But it ought to be remarked that the existing Law on Public Procurements extends to procurement of goods (works and services) performed in the Republic of Azerbaijan by state enterprises and organizations (administrations), enterprises and organizations, state share in charter fund of which is 30 and more percents at the account of state funds, loans and grants obtained by state and received under state guarantee (Article 1). Tender notifications are of formal character and are not complied in accordance with the law. It has been possible to make comparison as open tender announcement on construction of Takhtakorpu water reservoir with hydroelectric power station was published in the newspaper "Khalq" on 11.08.2006. Under the provisions "Content of tender announcement (invitation)" as provided in the public procurement law, the following shall be indicated in announcement (invitation) about tender: information about organizer of tender; time and place of commencement of tender procedures; tax and duty benefits (if provided) relating to procurement contract;

documents necessary to take part in tender; office telephone and fax number of coordinator to get additional information; conditions of tender proposal's guarantee; name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided;

required terms of shipping of goods and completion of works or schedule of provision of services.

However, the announcement of open tender for the Procurement on "Construction of Takhtakorpu water reservoir with hydroelectric power station" published in the "Khalq" newspaper has not indicated these items: name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided; required terms of shipping of goods and completion of works or schedule of provision of services. Failure to compile the tender announcement in accordance with the law points to mere technicality of the process.

For comparison, consider the neighboring Georgia where these the items of name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided, as well as required terms of shipping of goods and completion of works or schedule of provision of services shall be specified in announcement in tender. Each items of works to be performed in announcement (invitation) about tender is described in such a detailed manner that the announcement consists of 10-15 pages. Besides, tender announcement is published in both official and independent organs of press. The tender process, name of tenderers are accessible for the public. In international practice, contract signed with the winner contains concrete liabilities, including terms and completion of works performed in particular. Failure to specify these items in the open tender for the Procurement on "Construction of Takhtakorpu water reservoir with hydroelectric power station" has led to delays with completion. So, illegality starts with tender announcements. The winner's qualification compliance is not observed during the selection process. Azerkorpu SC has been declared the winner of the tender for Procurement on construction of Takhtakorpu-Ceyranbatan water canal as part of the project to reconstruct the Samur-Absheron irrigation system dated 24 December 2007. Much noteworthy is that Azerkorpu has greater experience in bridges and highway construction that

water dam construction. In some cases, contract is awarded to the winner without any experience and required equipment, or having insignificant statutory capital. The fact that the very companies are announced the winner speaks of shady business. Sometimes, equipment is purchased with the money allocated from the state budget.

Monitoring revealed that once the project implementation has commenced, “Azerkorpu” SC bought 59 Mercedes- Man self-dumping trucks, 9 excavators, 8 bulldozers for construction. It is planned to buy an additional 50 Mercedes- Man self-dumping trucks. Or tender proposal with lowest price was considered the key criteria as winning one. Nevertheless, monitoring results showed that two years ago, Melioration and Water Industry company indicated the contract value for the project “Construction of Takhtakorpu water reservoir with hydroelectric power station” at a lower level. But uncertainty in completion term has led to increased costs in the project. The root of the problem of transparency in allocations comes from procurement procedures conducted by the State Agency for Public Procurements due to lack of accurate mechanisms and conditions related with an increase in costs. Even limits have been defined to that end in the United States, European countries and developing nations.

The sharpest edge of a razor in tender is observed in the project aimed at **improving the social and economic conditions of refugees and internally displaced persons**. Works are contracted to the same companies every year beyond procurement procedures. Formal tender announcements are published in organ of press though. Respective executive authority on public procurements shall supervise over performance of contracts and carry out state policy in the field of procurement of goods (works and services) subject to normative acts. Monitoring showed executive authority’s non-compliance with this provision. It remains unknown who builds regions for IDPs, whether contractors are selected through tender or not, what are tender conditions, what are mechanisms for disbursement of expenditures. All public procurements in volume of 250 (two hundred and fifty) million manats and more shall be carried out through tender and if supposed price for goods (works and services) is less than this amount, procurement agency shall use any procurement method. If supposed price of tender subject exceeds 5 billion manats, and in organizations funded from the budget - 1,5 billion manats or equivalent sum in

convertible currency, representatives of respective executive authority shall under its proxy be included to tender commission. Powers of "respective executive authorities" provided for in this provision above shall be carried out by Ministry of Finances of the Republic of Azerbaijan, Ministry of Economic Development of the Republic of Azerbaijan and respective central executive authorities relating to subject of tender; With regard to procurement procedures on projects funded by the Oil Fund, tender was carried out for the Samur-Absheron irrigation system project out in presence of representatives from the Economy Development Ministry, the Finance Ministry, as well as the public. Moreover, it is unknown which organizations represented the tender commissions for other tenders within the project. And the process of selecting public representatives is unknown except for executing agency. For example, the open tender for procurement procedure on Samur-Absheron irrigation system was carried out in presence of representatives from the Economy Development Ministry, the Finance Ministry, as well as the public. Moreover, in accordance with the regulation to approve sample of final protocol of tender commission approved by the Cabinet of Ministers of Azerbaijan Republic, copy of final protocol shall be submitted to respective executive authority within 3 banking days after its execution. But monitoring showed that no copy is submitted. Since the State Public Procurement Agency says information about contracts awarded can be obtained from organizer of tender, as tender commission is a temporary workgroup set up by the Agency and performing tender procedures on its behalf. Nevertheless, respective executive authority on public procurements shall carry out state policy in the field of procurement of goods (works and services) at the account of state funds by means of Presidential Decree 583 dated 16 May 1997 and perform its functions in accordance with Article 4 of the Law on Public Procurements by means of Presidential Decree #855 dated 20 February 2003. The regulation charges respective executive authority on public procurements to take part in creation and improvement of legal base governing public procurements in the Republic of Azerbaijan, work out rules, instructions, other documents on public procurements; supervise over legality of procurement of goods (works and services) on competitive basis at the account of state funds and performance of contracts; set up specialists' professional level improvement courses, etc. the Agency has failed to perform these purposes for years. The Agency lacks development and fall behind neighbouring countries.

Alongside with that, executive authority on public procurements shall supervise over legality of procurement of goods (works and services) on competitive basis at the account of state funds and performance of contracts, consider disputes, suspend procurement procedures for up to 7 banking days in case of discovery of breach of law and if necessary raise the matter of cancellation of tender results to procurement agency; set rules of production of reports on public procurements, ensure that regulations, documents and information governing public procurements are brought to public's attention. Monitoring results showed that all these items comply with the law.

Monitoring of the project to finance the improvement of the social and economic conditions of refugees and internally displaced persons showed that each contractor has permanent engineering-technical staff comprised of 10-12 persons and this is not sufficient for large-scale construction operations. And some executing agencies launch activities a few days prior to the tender notification. Since interested persons establish limited companies, carry out procurements and close them after the project implementation. However, qualification indices and experience are required in legal contemplation.

Another point regarding this project is the violation of Article 13 (Conflict of interests at public procurements) of the Law on Public Procurement. This Article says that participation of consignors (contractors) being in legal, financial or organizational dependence on procurement agency in procurement procedures held by such agency shall not be allowed. At conducting of procurement procedures the following persons cannot be representative, consultant of procurement agency or executor of other obligations relating to procurement: persons who have direct related, custodial, trustee relationships or relationships connected with adoption, constitution and dependence with representative or official of tenderer participating in procurement procedures; persons who during three years preceding to procurement procedures were employee or official of tenderer, taking part at procurement procedures; persons who are employees of consignor (contractor), head administration, which it subordinates to, or its branch (representative office), cannot be involved in preparation of documents on procurement procedures. Some claim that A.Orucov charge performance of the works to companies that have direct related, custodial, trustee relationships.

Performance of construction of houses, infrastructure and facilities in the districts of Fuzuli was charged to companies by Ayaz Orucov after he was appointed SDFIDP Director. The tenderers could have not exercised equal rights.

What is most remarkable for procurement procedures is that over 70 percent or even 100 percent of works are charged to subcontractors by the tender winners. The latter just perform oversight functions. In fact, the executing agency is responsible for this mechanism. But according to the Law on Public Procurements, the contractors, which have won in tender shall be entitled with consent of procurement agency and provided that it is provided by collection of basic tender conditions, to enter into agreement with subcontractors for implementation of works. In all other cases performance of the contract cannot be charged to subcontracting agencies without written authorization of procurement agency. As mentioned above, this provision is violated, because tender results are obvious from the beginning and LLCs close to the procurement agencies or ones established by these agencies, are announced the tender winners.

**Baku-Tbilisi-Kars (BTK)** railroad project is the only project the Oil Fund finances, where tender procedures have been partly implemented. First, the tenders have been conducted in Georgia. LTD Marabda-Krtsanisi railroad project management group, which is an authorized body for the project implementation on behalf of Georgia, brief the press of the tenders. Tender announcements there consisted of more than 15 pages, but not of one sentence which is practiced in Azerbaijan. All interested parties were invited to submit offers in accordance with bidding conditions. The tender announcement reflected the operating schedule, completion date, equipment to be procured, delivery date of goods, etc. *Marabda-Krtsanisi railroad project management group conducted separate tenders for each service. The group arranged accounting and financial operations, as well as procurements on legal services, which are not practiced in Azerbaijan.*

No tender has been conducted for the execution of the "State Program on education of Azerbaijan youth in foreign countries in 2007-2015" project. The Program is fully implemented by the Ministry for Education. Non-governmental organizations are not allowed to have access to the process.

Monitoring revealed that the State Agency on Public Procurement does not hold responsible for Procurement procedures. According to its annual reports consisting of a few pages placed on the website of the said Agency, 10-10 percent of expenses, if one is fortunate, are implemented through procurement contracts with a view to purchasing macro-services. Experts point to legislative gaps in this regard. Namely, organizations face light penalty for failure to conduct tender. Besides, oversight mechanisms are weak. Among other things, no auditing is arranged for open tenders for Procurement procedures on the projects the Oil Fund finances.

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**Following suggestions were prepared and presented as a result of held researches and discussions with other NGOs.**

1. It is important to improve state procurements and strengthen transparency and accountability in this field in order to increase efficiency of spendings from State Oil Fund and strengthen anti-corruption fight. A new mechanism for improvement of state procurements has to be created.
2. The main requirement in allocating resources for projects, carried out at the expense of state, must be holding of tenders in compliance to the legislation.
3. Annual reports of State Procurement Agency placed on their website, shows that only 10-15% of expenses on bought macro services are implemented by procurement. As a result of looseness in legislation, sanctions to those organizations, that do not hold tenders, are not so strict. At the same control mechanism is very poor. Sanctions have to be strengthened.
4. Signing of contract, by the winner of the contest, with conditions that don't correspond to the main requirements of tender, should not be allowed.
5. Guarantees on decreasing of state risks and implementing of state orders in required time and quality, must be required during execution of contracts, signed with contest winners,

on procurement of goods, works and services at the expense of state. During tenders the same attitude has to be showed to the both sides.

6. Adding changes to the “Law on Public Procurements” in order to organize electronic tenders, is very important. Holding of electronic tenders will allow to minimize intervention of those who are responsible for organization of tenders, into the process.
7. Creating of “hot-line” communication will allow to clarify both electronic and other questions and misunderstandings, concerning tenders, in time and directly. There is no even direct electronic connection on the website of State Agency on Procurements.
8. Creating of on-line application forms will give participants opportunity of direct connection with organizers before the contest, and will help them to save time.
9. Increasing of role of Civil Society Organizations in state procurements will have a positive impact on transparency of tenders and strengthening of anti-corruption fight. At present, tenders are held closed and there is no chance to monitoring them.
10. It is important to use a new mechanism for state procurements, in order to help winners of tender to achieve undertaken liabilities in time and by means, suggested by them. Researches show that execution of most of investment projects take much more time than was expected, so, new resources are being allocated for them, but new tenders are not being held. The using of new mechanism can eliminate this kind of problems.
11. Creating of special committee at the Cabinet of Ministers, in order to investigate discontents about tenders seems to be expedient. According to the reports of State agency on Procurements, there has not been any violation of the law in any of held tenders till today. This is quite suspicious. Special committee can make any decisions only after investigating the complaints. In order to provide transparency of committee’s activity, it would be better to choose members not only from state structures but also from civil society organizations.
12. The using of new mechanism is also important for preventing the artificial division of activity, which is a subject of tender, into several small activities. Researches show that in some cases, state structures, in order not to be a subject of tender, groups their activity into small ones, and avoid tenders this way. These criteria will allow preventing division of purchased goods (works or services) into separate parts.

13. In order to prevent conflict of interests in state procurements, some additions to the law have to be made and special legislative act has to be accepted. Researches show that in practice it is not prevented.
14. Some additions, concerning the increasing of organizers' accountability, have to be made, and some criteria have to be developed.
15. Though participation of companies, who have broken rules during holding of tender, in future tenders is not allowed, implementation mechanisms of this have to be developed in practice.
16. Some organizations, in order to gain advantages by total selection criteria, benefits from shortages in "Law on Public Procurements" and organize formal Consortiums for experienced foreign companies, which has been winners of tenders concerning projects' services' procurement. Some provisions for preventing such kind of situations should be considered in the legislation.
17. According to the 25.1 paragraph of 25<sup>th</sup> item of the law on tender suggestions' attracting, the announcement about holding the open tender has to be placed in local state newspapers and international Media, at least 30 bank days before the day, when tender's envelope is opened, first time, and 20 bank days second time. In practice, customer organizations avoid giving tender announcements. In order to provide transparency, information about holding of tenders has to be supplied to the public in time. Law requirements concerning it have to be made stricter.
18. According to the 5.3 paragraph of 5<sup>th</sup> item of law on **"Contract coming into force and informing the public about it"**, the information about procurement contract has to be published in the same newspaper that published tender announcement, within 5 days. however, in facts, customer organizations do not comply with this procedure. Public opinion is not informed about the the name of the winner. The law should be more restrictive on this aspect.
19. Sometimes the announcements do not take place within the terms of law. There is no mention about the name, volume and delivery place of goods, characteristics and placement of works that would be done, the descripton of the services required nor the terms of delivery, the completion of work and the schedule of services. That is why the date of project's completion constantly neglected. In order to prevent mismanagement

and to make technical parameters of the project open to the public, requirements of law have to be made stricter.

20. Agency on State Procurements must determine clear mechanisms of control and parameters in order to prevent the uncontrolled increase of expenses.
21. The liability of the Agency on State Procurements, as structure deputed to the control of expenses and effectiveness of the services, must be increased. It must provide annual reports and place all information about procurements, conditions of tender contracts and the winners of tenders on its website.
22. The audits of tenders have to be held in order to provide their accordance with legislation.
23. In order to carry out state procurements in electronic way, the Azeri system has to take the Turkish and the Kazakh models as examples. For example, in Kazakhstan goods, works and services that would be procured during the year are planned and placed on the portal in the beginning of the year. Entering the website at the section “Annual plan of state procurements” we can see the schedule where the number of sub-associations, the number of procurement plans and total cost of procurements. Agency on State Procurements in Azerbaijan has to follow the same path.
24. According to the legislation, in case of abuse of power by a specialist in tender commission it would be suspended from the work and be subject of administrative sanction. In order to prevent suspension, the sum of fine should be increased.
25. In order to prove the informality of tender process, the names of all participants must be announced. The separate item concerning it has to be considered in the legislation.
26. Agency on State Procurements does not place tender announcements concerning projects financed by State Oil Fund, on its website. The agency has to place all announcements on its website without any conditions including the singular reports into the annual report.
27. Companies that carry out works with cheaper costs, in shorter terms and providing higher quality win of tenders. In Azerbaijan everything is on the contrary. Requirements on evaluation of tenders have to be made stricter. Costs suggested by competitors must be open for the public. Agency on State Procurements must cooperate with Media on the eve of the tender and place all suggestions on its website.
28. According to the Law on State Procurements, if supposed cost is more than 5 billion AZN and in organizations financed from budget more than 1.5 billion AZN, the Ministry of

Finance of Azerbaijan Republic, the Ministry of Economic Development and the representatives of appropriate executive power have to be included in the tender commission. In order to strengthen the control of tenders, sum intended for organizations financed from budget must be decreased till 500 million AZN. The participation of Ministry of Finance of Azerbaijan Republic and Ministry of Economic Development in tenders has to be provided.

29. In order to increase the level of qualification of the specialists, trainings about ‘state procurements’ have to be held for specialists from ministries, committees, companies and organizations, educational, cultural and health departments of cities and regions of Azerbaijan republic. According to the 6.2th item of the law concerning qualification requirements of contractors, in order to participate in procurement processes contractors must conform to the following criteria: professionalism in appropriate field, experience, technical and financial opportunities, workforce, managing competence and reliability. Exact and digital information about technical and financial capabilities of contractors has to be given to the tender commission. Information about professionalism in appropriate field, experience, technical and financial opportunities, workforce, managing competence and reliability of contractors has to be included into announcement about the results of a tender.

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## **Abbreviation**

ARSTAP- Republic of Azerbaijan State Agency On Procurement

ARCM - Azerbaijan Republic Cabinet of Ministers

AMST ASC - Azerbaijan Melioration & Water Industry Company OJSC

ACHG- Azeri-Chirag-Guneshli oil field

AR- Autonomic Republic

BTC- The Baku–Tbilisi–Ceyhan pipeline

CJC- Closed joint-stock company

MKSF- Republic of Azerbaijan Social Fund for development of IDPs

MVT – Megawatt

LLC – Limited Liability Company

Former USSR– Former The Union of Soviet Socialist Republics ( The Soviet Union )

OJSC- Open Joint Stock Company

SOCAR- State Oil Company of Azerbaijan Republic

SOFAZ- State Oil Fund of the Republic of Azerbaijan

SES - Hydroelectricity Power station

SAC – Samur Absheron canal ( irrigation system)

State Committee Of The Republic Of Azerbaijan On Deals Of Refugees And Internally Displaced Persons

SCADA- SCADA stands for supervisory control and data acquisition. It generally refers to an industrial control system: a computer system monitoring and controlling a process. The process can be industrial, infrastructure or facility-based:

VAT – Value Added Tax

WG – Work Group

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**ISBN 978-9952-8131-6-6**

