

Uganda

**Country Procurement
Assessment Report
(CPAR)**

Volume I

**MAIN FINDINGS AND
RECOMMENDATIONS**

(DRAFT)

May 2004

CURRENCY EQUIVALENTS

Currency Unit = Uganda shilling (UGX)
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FISCAL YEAR

July 1 – June 30

ABBREVIATIONS

AG	Auditor General
AO	Accounting Officer
CFAA	Country Financial Accountability Assessment
CID	Criminal Investigations Department of the Police
CIFA	Country Integrated Fiduciary Assessment
CIPS	Chartered Institute of Purchasing and Supplies
CMS	Central Medical Stores
CPAR	Country Procurement Assessment Report
CTB	Central Tender Board
DEI	Directorate of Ethics and Integrity
DPP	Director of Public Prosecution
ESW	Economic and Sector Work
GoU	Government of Uganda
GSPOA	Government's Strategy and Plan of Action to Fight Corruption and Build Ethics and Integrity
IAF	Inter-Agency Forum
IG	Inspectorate of Government
IGG	Inspector General of Government
IPR	Independent Procurement Review
LC	Local Council
LGDP-2	Local Government Development Programme II
MDG	Millennium Development Goals
MFA	Ministry of Foreign Affairs
MJCA	Ministry of Justice and Constitutional Affairs
MoD	Ministry of Defence
MoFPED	Ministry of Finance Planning and Economic Development
MoLG	Ministry of Local Government
MoLGID	Ministry of Local Government Inspection Department
MPS	Ministry of Public Service
MTTI	Ministry of Trade, Technology and Industry
NGO	Non-Governmental Organisation
NMS	National Medical Stores

OAG	Office of the Auditor-General
PA	Public Administration
PALMA	Procurement and Logistic Management Association
PDU	Procurement and Disposal Unit
PEAP	Poverty Eradication Action Plan
PER	Public Expenditure Review
PFAA	Public Finance and Accountability Act
PPDA	Public Procurement and Disposal of Public Assets Authority
PPDAA	Public Procurement and Disposal of Public Assets Act
PRSC	Poverty Reduction Support Credit
PSC	Public Service Commission
RCTB	Reformed Central Tender Board
SAI	Supreme Audit Institution
TPPA	Third Party Procurement Agents
TTL	Task Team Leader
UAFA	Uganda Association of Forwarding Agents
UCS	Uganda Computer Services
UDF	Ugandan Defence Force
UDN	Uganda Debt Network
UNBS	Uganda National Bureau of Standards
UNCITRAL	United Nations Commission on International Trade Law
UN-ITC	International Trade Centre of the UN
UPDF	Ugandan Peoples Defence Forces
URA	Uganda Revenue Authority

Table of Contents

CURRENCY EQUIVALENTS	2
ABBREVIATIONS	2
1. PREFACE	7
1.1. PREAMBLE	7
1.2. ACKNOWLEDGEMENTS.....	7
1.3. THE CPAR TEAM	7
2. INTRODUCTION	8
2.1. RELEVANT COUNTRY INFORMATION	8
2.1.1. <i>Country Background</i>	8
2.2. NATURE AND OBJECTIVES OF THE CPAR	9
2.3. BACKGROUND AND NEED FOR PROCUREMENT REFORMS	10
2.3.1. <i>Country Procurement Assessment Report (April 2001)</i>	10
2.3.2. <i>Progress on Ongoing Reforms</i>	11
2.4. THE PROPOSED CPAR	12
3. LEGISLATIVE AND REGULATORY FRAMEWORK.....	13
3.1. THE LEGAL FRAMEWORK OF UGANDA	13
3.1.1. <i>The legal framework for public procurement in Uganda – Introduction</i>	13
3.1.2. <i>The present legal framework for public procurement</i>	13
3.1.3. <i>The Public Procurement and Disposal of Public Assets Act</i>	14
3.1.4. <i>The Procurement Regulations</i>	15
3.1.5. <i>Standard Procurement Documents</i>	16
3.1.6. <i>Complaints system and access to the courts</i>	17
3.2. LEGAL, REGULATORY AND INSTITUTIONAL FRAMEWORK OF PROCUREMENT, AT THE LOCAL LEVEL	18
3.3. RECOMMENDATIONS FOR LEGAL FRAMEWORK:	20
4. CENTRAL INSTITUTIONAL CAPACITY	21
4.1. THE INSTITUTIONAL FRAMEWORK	21
4.1.1. <i>Current Institutional set-up as prescribed by the PPDA</i>	21
4.1.2. <i>The Ministry of Finance Planning and Economic Development</i>	22
4.1.3. <i>The PPDA</i>	23
4.1.4. <i>The Procuring and Disposing Entities</i>	26
4.1.5. <i>A large government procurer – the National Medical Stores</i>	28
4.2. RECOMMENDATIONS FOR THE INSTITUTIONAL FRAMEWORK.....	29
4.3. PROCUREMENT CAPACITY	30
4.3.1. <i>Introduction of the new Procurement Cadre in central Government</i>	31
4.3.2. <i>Past and present capacity building initiatives</i>	32
4.3.3. <i>The capacity of the PPDA itself</i>	34
4.3.4. <i>The PPDA Strategic Plan for Capacity Building</i>	35
4.3.5. <i>Capacity in the PDEs</i>	35
4.3.6. <i>Up-grading and Accreditation of Procurement Professionals</i>	36
4.3.7. <i>Professional Associations</i>	36
4.3.8. <i>Professional Ethics</i>	36

4.3.9. Procurement Educational and Training Institutions	37
4.3.10. Capacity Building at local government level	38
4.4. RECOMMENDATIONS FOR PROCUREMENT CAPACITY	39
5. PROCUREMENT OPERATIONS AND MARKET PLACE	41
5.1. PROCUREMENT OPERATIONS AND PRACTICES.....	41
5.1.1. The Procurement Cycle.....	41
5.1.2. Budgeting and procurement planning.....	42
5.1.3. Selection of procurement method.....	43
5.1.4. Publication of tenders	44
5.1.5. Eligibility of bidders – application of qualification lists	45
5.1.6. Use of Standard bidding documents	47
5.1.7. Bid submission, opening, and evaluation.....	48
5.1.8. Negotiations and award	48
5.1.9. Records and Filing.....	49
5.1.10. Payments and Contract Management	50
5.1.11. Enforcing procurement rules	50
5.1.12. Information Management.....	51
5.1.13. Procurement practices at local government level.....	52
5.2. RECOMMENDATIONS FOR PROCUREMENT OPERATIONS	52
5.3. THE MARKET PLACE.....	53
5.3.1. The Market Place and Procurement - Introduction.....	53
5.3.2. Issues addressed since the 2001 CPAR.....	54
5.3.3. General Trade Policies and Conditions.....	54
5.3.4. Trade Practices, Customs, Imports and Exports	54
5.3.5. The clearing and forwarding profession.....	56
5.3.6. Practices concerning government taxation of imports	57
5.3.7. Commercial Practices and Framework for the Private Sector.....	57
5.3.8. Private sector capacity for participating in public procurement.....	61
5.3.9. Business ethics	61
5.3.10. Standardisation and quality control.....	62
5.3.11. Access to capital.....	62
5.4. RECOMMENDATIONS FOR THE MARKET PLACE.....	63
6. INTEGRITY OF THE PUBLIC PROCUREMENT SYSTEM	65
6.1. AUDIT	65
6.1.1. Organisations involved in audit and review of procurement.....	65
6.1.2. Financial and value for money audits by the Auditor-General	65
6.1.3. Procurement Audits by the PPDA.....	66
6.1.4. Follow-up/enforcement mechanisms.....	67
6.2. ANTI-CORRUPTION MEASURES	68
6.2.1. Corruption in Procurement.....	68
6.2.2. Legal and Judicial Framework.....	69
6.2.3. Institutional Set-up for Fighting Corruption in Procurement.....	72
6.2.4. Strategic Framework.....	74
6.2.5. Monitoring and Controlling Corruption in Public Procurement	75
6.2.6. Right of Access to information	75
6.2.7. Involvement of civil society and the media	77
6.3. RECOMMENDATIONS FOR THE INTEGRITY OF THE PROCUREMENT SYSTEM.....	77

7. E-PROCUREMENT	79
7.1. E-PROCUREMENT IN UGANDA	79
7.1.1. <i>Access to information – utilisation of government websites</i>	79
7.1.2. <i>E-procurement focus areas</i>	80
7.1.3. <i>Governance</i>	81
7.1.4. <i>Human Resources</i>	81
7.1.5. <i>Institutions</i>	81
7.1.6. <i>Technology</i>	81
7.2. RECOMMENDATIONS FOR E-PROCUREMENT	82
8. PROCUREMENT PERFORMANCE INDICATORS	83
9. RECOMMENDED ACTION PLAN FOR KEY RECOMMENDATIONS	87
10. ANNEX 1 - LIST OF TASK FORCE MEMBERS	92
UGANDA NATIONAL ASSOCIATION OF BUILDING,	92
11. ANNEX 2: MONITORING AND CONTROLLING PUBLIC PROCUREMENT	93
12. ANNEX 3: STATUS ON RECOMMENDATIONS FROM UGANDA CPAR 2001... 96	
13. ANNEX 4: LIST OF PEOPLE MET DURING MAIN MISSIONS	102
14. ANNEX 5 - CHECKLIST COMPARING NATIONAL COMPETITIVE BIDDING PROCEDURES AND WORLD BANK POLICY	106
15. ANNEX 6 - QUESTIONNAIRE ON PUBLIC PROCUREMENT SYSTEM.....	109

1. PREFACE

1.1. Preamble

1. The Uganda Country Procurement Assessment Report is a joint undertaking between the Uganda Government and the development partners, led by the World Bank to analyze the country procurement system and recommend appropriate actions to improve the efficiency, economy and transparency of the system.

2. This report is based on two main missions to Uganda carried out in January and March 2004 as well as subsequent work to collect and assimilate relevant information regarding the country's procurement system. The Government formed a Task Force with a diversified composition to work with the Bank's CPAR team. The list of Task Force Members is attached as **Annex 1**. At the end of each main mission a workshop was convened by the Task Force, and the CPAR team was allowed to present its observations and draft recommendations. During the workshop discussions, the Task Force provided extensive input and advice to the team, and the CPAR reflects this important input from the Task Force.

3. The report is divided into (a) an Executive Summary (b) Main Report on Findings and Recommendations streamlined along the four pillars of sound public procurement as agreed by the World Bank and the OECD, and (c) Annexes.

1.2. Acknowledgements

4. The CPAR Team wishes to acknowledge the extensive cooperation and support received from officials and staff of the Uganda public organizations, parastatals, private companies, NGOs and professional organizations interviewed during the assessment and who readily provided background documents, as appropriate.

1.3. The CPAR Team

5. The CPAR Team was comprised of: Mr. Rogati Kayani, Task Team Leader (TTL), Mr. Richard Olowo, Ms. Emma Mariano and Ms Noeline Kitonsa, World Bank; Mr. Emmanuel Lomo, African Development Bank; Mr. Harman Idema, Netherlands Embassy; Mr. Jack Titsworth, independent governance expert and a team of consultants from Ramboll Management, Denmark lead by Mrs. Mette S. Lassesen and also comprising Mr. Soren Staugaard Nielsen and Mr. Claus Thomsen. Two local consultants, Mr. Charles Akora and Mr. Muhwana Wilberforce Aggrey provided assistance in collecting procurement related information.

2. INTRODUCTION

2.1. Relevant Country Information

2.1.1. *Country Background*

6. Uganda has been undertaking economic reforms geared to maintenance of macroeconomic stability, high rates of economic growth, and above all, reducing poverty as espoused in the country's Poverty Eradication Action Plan (PEAP). Furthermore, the country has made a commitment to meeting the Millennium Development Goals (MDGs) within the specified timeframe. The pivotal economic reform Uganda has implemented is liberalization of markets in all sectors of the economy and the decision that the private sector should lead the economic growth process. Indeed, the country registered high rates of economic growth during the 1990s and poverty declined from 54% in 1997 to 35% in 2000. However, from the turn of the century the Ugandan economy began experiencing several challenges reflected mainly by the slow down in the rate of economic growth, which registered GDP growth of 4.9 percent in 2002/03. In addition, 2002/03 estimates of poverty indicate that poverty headcount has increased from 33 to 38 percent between 1999-2003.

7. However, coffee exports which had fallen by 53.9% between 1999/00 and 2001/02 due to low prices on the international market, increased by 25% from US\$86 million in 2001/02 to US\$107 million in 2002/03 due to an increase in the price. Non-traditional exports rose from US\$335 million in 2000/01 to US\$440 million in 2002/03. The share of agriculture in total GDP fell from 51.1% in 1991/92 to 39.4% in 2002/2003 reflecting continuing structural transformation of the Ugandan economy.

8. Turning to the government budget, Uganda faces the challenge of stagnation of domestic revenue at about 12% of GDP. Driven by the development needs and other spending requirements, government has been running a budget deficit that rapidly increased from about 6.1% of GDP in 1997/98 to 13% of GDP in 2001/02 – before grants. The large budget deficit has adverse effects on macroeconomic stability, private sector investment, export performance, and budget performance. While Government expenditure rose from 16.1% of GDP in 1997/98 to 25.3% of GDP in 2002/03, government revenue stagnated at about 12% of GDP. The large budget deficit was financed by foreign aid flows amounting to more than half the budget. Budget support has become the preferred and most popular form of external assistance in the last three years. Resultantly the fiduciary concerns of external assistance have become an important concern for all donors.

9. The substantially large external aid has posed a number of macroeconomic management challenges. To sterilize excess liquidity created by fiscal operations, Bank of Uganda has mainly used sale of Treasury Bills to mop up excess liquidity and thereby avert any inflationary pressures. The net effect of this has been a rise in interest rates, crowding out of private sector credit, and a rise in domestic interest payments. The challenge is how to manage the increased aid inflows in the medium term so as to minimize its adverse effects on private sector credit and budgetary distortions.

10. There is a consensus that, everything else considered, the fiscal deficit should be reduced. However, the strategy to reduce the fiscal deficit is still under debate given the need to ensure that MDGs are pursued and growth prospects of the private sector are not undermined. The fiscal deficit could be reduced either by cutting government spending or by mobilizing more domestic revenues. Avenues for increasing domestic revenue still lie in improvements in tax administration and introduction of new tax policy measures to widen the tax base and reduce inefficiencies (e.g. corruption). Regarding reduction of the fiscal deficit via cutting of government expenditure, there is need to explore areas of government spending that could be cut without jeopardizing the economic growth and poverty reduction objectives. One area that lends itself to possible cuts is public administration (PA), which in 2002/03 accounted for about 17.6% of total government expenditure.

11. The public service reform (including the pay reform) will need to be addressed as priority. In addition enhancement of budget discipline especially for PA will be critical to minimize budget overruns, which have become a common feature. The budget overruns which amounted to 13.9% of budget for PA in 2000/01 and 8% in 2001/02 not only undermines the budget process but also hinders the attainment of poverty targets as the overruns are financed by budget cuts from other sectors. It is against this background that we are proposing to undertake a comprehensive look at the budget resource utilization and establish value for money, in terms of budget allocation, execution, monitoring, and public procurement of goods and services. It is estimated that 60-70% of the budget passes through the procurement system. Therefore, the CPAR will be an important instrument in assisting the government in terms efficient management and accountability of public resources.

2.2. Nature and Objectives of the CPAR

12. The main objective of the CPAR is to establish the need for and guide the development of an action plan to improve the country's system for procuring goods, works and consultant services. The CPAR has become increasingly important in the last few years because of two main reasons. First, with transparency and broader governance concerns having become an integral part of country assistance strategies, the efficiency and transparency of public procurement systems has increasingly been seen as an important component of public sector management. Second, changes in the Bank's business over the years, including the increased use of programmatic lending and the introduction of poverty reduction support credits (PRSC) and other forms of debt relief, has resulted in the requirement that a comprehensive diagnostic of the country's fiduciary accountability environment, including an assessment of the country procurement system, be undertaken before committing to such lending. In order to underscore the importance of the exercise, in July 2000 the CPAR was officially designated as economic and sector work (ESW) requiring revisions to the instruction to comply with Bank business processes for ESW. The work on this CPAR will be undertaken under the umbrella of the Country Integrated Fiduciary Assessment (CIFA) which also embraces Country Financial Accountability Assessment (CFAA) and ongoing Public Expenditure Review (PER). An integrated CIFA Report will be produced to cover the three areas. Simultaneously with the CPAR exercise, an Independent Procurement Review (IPR) was being carried out on four World Bank financed projects: HIV/AIDS Control Project; National Agricultural Advisory Services Program; Second Road

Development Program; and Second Economic & Financial Management Project. The main objective of the IPR is to verify compliance with procurement and contracting procedures and processes stipulated in the Credit/Grant Agreements between the Bank and the Uganda Government.

2.3. Background and Need for Procurement Reforms

2.3.1. *Country Procurement Assessment Report (April 2001)*

13. In the context of the first Poverty Reduction Support Credit (PRSC1), the donor community and the Government carried out a complete Country Procurement Assessment Report (CPAR) that reviewed the whole public sector procurement system, including the Local Government. The CPAR was issued in April 2001. The primary objectives of the CPAR were:

- to provide a comprehensive analysis of the country's public sector procurement structure, including the existing legal framework, organizational responsibilities and capabilities, and present procedures and practices, including how these may differ from the formal rules and procedures;
- to make possible a general assessment of the institutional, organizational and other risks associated with the procurement process;
- to establish the basis for dialogue between the country and donors on how to streamline and improve the economy, efficiency and transparency of public sector procurement;
- to develop a detailed action plan for reform to achieve institutional improvements, including interim modifications to existing practices in the country so that contracts being financed under current projects will meet the Bank's procurement standards pending completion of the broader reform program; and
- to encourage better commercial practices in the private sector.

14. The Recommendations resulting from the CPAR became the basis for the ongoing procurement reforms which are being implemented under the PRSCs since 2001. The key recommendations include to:

- abolish the Central Tender Board
- enact a Procurement Law
- establish a Policy and Regulatory Body
- establish Contract Committees
- establish Procurement Units in procuring entities
- harmonize central and local government regulations
- incorporate procurement plans in sector investment programs
- prepare standard bidding documents
- establish a procurement cadre in the civil service
- restore professionalism in the procurement function

- increase financial resources for procurement training
- implement a pilot project for introducing e-procurement

2.3.2. Progress on Ongoing Reforms

15. Implementation of the above recommendations has been going on since March 1, 2001 when New Procurement Regulations were promulgated. The status of implementation of the 2001 CPAR is detailed in **Annex 3**. In November 2002, a new procurement legislation based on the UNCITRAL model was passed by Parliament and was subsequently signed into law by the President of the Republic of Uganda on December 19, 2002, resulting in “*The Public Procurement and Disposal of Public Assets Act, 2003*”. The new law came into force when the Minister of Finance, Planning and Economic Development by Statutory Instrument appointed February 21, 2003 as the commencement day of the Act. The Donor community contributed substantially to the development of the new legislation. The supporting regulations were published in the Uganda gazette on September 5, 2003

16. The Public Procurement Act, 2003 applies to all public procurement and disposal activities undertaken by public institutions, including parastatal organizations and defence procurement. It specifies Procuring Entities, and then the Accounting Officers, Contract Committees or Tender Boards (in case of Local Governments), Procurement Units, Evaluation Committees and User Departments of the procuring entities, each with a different responsibility. In general, all central government ministries now have contract committees and procurement units to carry out procurements and the Permanent Secretaries (Accounting Officers) provide the first line of appeal in case of complaints. The Public Procurement and Disposal of Public Assets Authority (PPDA) has replaced the former Central Tender Board which had been renamed the Reformed Central Tender Board (RCTB) in March 2001 before the Procurement Act became effective. The PPDA is a procurement regulatory body. Thus, effectively public procurement has been decentralized to the Procuring Entities, leaving the PPDA the functions of developing regulations, guidelines, standard bidding documents and carrying out compliance checks and audits, publishing contract awards, and pre-qualifying and approving the use of Third Party Procurement Agents (TPPA) by Procuring and Disposal Entities. The Authority also provides a second line of appeal in case of complaints. There is no formal appeals body beyond the PPDA and a formal mechanism is yet to be established to handle appeals and complaints.

17. Development Partners intend to provide assistance in implementing the new procurement legislation and regulations through various interventions among which is supporting this harmonization process through the Second Local Government Development Project. Other aspects of the implementation of the Public Procurement Act, 2003 are being implemented under PRSC 3 and will continue under PRSC 4 and PRSC5. The PPDA has prepared drafts of national procurement guidelines, national standard bidding documents and evaluation forms and is in the process of pre-qualifying third party procurement agencies that will, assist weak procurement units on an as-needed basis.

2.4. The Proposed CPAR

18. It is evident from the above that there is a solid ongoing program of procurement reforms in Uganda based on the 2001 CPAR. The CPAR will be updated to incorporate lessons learned from the ongoing reforms and the changing role of donors in their fiduciary oversight resulting from the shift of focus from project lending to program lending. The up-dated CPAR will, inter alia, cover the issues related to weaknesses in the existing institutional framework, the Procurement Regulations and capacity building. The CIFA will be the vehicle for designing the reforms and PRSC will continue to be the instrument for implementing and monitoring the reforms to be proposed by the updated CPAR.

3. LEGISLATIVE AND REGULATORY FRAMEWORK

3.1. The Legal Framework of Uganda

19. The Republic of Uganda is governed by a centralized form of government with the Constitution of Uganda (1995) as the supreme legislative instrument. The legislative powers are with the Parliament. The Constitution does not contain any sections aimed specifically at public procurement, as this is considered a public finance issue.

20. Uganda has a tradition for strong local authorities. The local authorities are governed by directly elected councillors under the Local Government Act (1997). The responsible entity at central level is the Ministry for Local Government.

3.1.1. *The legal framework for public procurement in Uganda – Introduction*

21. Prior to 2001, public procurement in Uganda was governed by The Public Finance Act, supported by the Public Finance Regulations (1997). With the entering into full force of the Public Finance Procurement Regulations in 2001 the Central Tender board was transformed into the Reformed Central Tender Board with a policymaking and monitoring role. Actual performance of procurement was decentralized to individual contract committees in the procuring entities. The concept of a central body (tender board) approving and directing procurement was thus abolished

22. The entering into force of the Procurement Act in 2003 was the culmination of the legal component of the procurement reform program initiated in 1997 under the context of the PRSC1. The Reformed Central Tender Board was abolished and the Public Procurement and Disposal of Assets Authority (PPDA) was formed as an authority empowered to guide, monitor, and enforce the Procurement Act.

23. The legal framework for procurement in Uganda was last reviewed in 2001, when the last CPAR¹ was carried out. The main recommendations in the report on the legal framework were to 1) enshrine the necessary procurement rules in a specific procurement act and 2) harmonize central and local secondary legislation (procurement regulations). The first recommendation has now been accomplished, the second is still outstanding.

24. The legal framework chapter of this report will review and assess how the legal reform has progressed since the CPAR (2001) was concluded and whether any further recommendations on the legal framework can be made. The actual impact of the new legislation on the practices in Uganda will be assessed in the Procedures and Practices section below.

3.1.2. *The present legal framework for public procurement*

25. Within the last year Uganda has seen some profound changes in its legal framework for procurement. The principal legal instruments governing public procurement at central level are:

- The Public Procurement and Disposal of Public Assets Act (2003)

¹ Uganda Country Procurement Assessment Report (2001) by the World Bank..

- The Public Procurement and Disposal of Public Assets Regulations (2003)

3.1.3. *The Public Procurement and Disposal of Public Assets Act*

26. The Public Procurement and Disposal of Public Assets Act (PPDAA/the Procurement Act) was passed by Parliament and assented by the President on December 19, 2002. The Procurement Act entered into force on February 21, 2003 by a Statutory Instrument issued by the Minister of Finance, Planning and Economic Development.

27. The Procurement Act allows a grace period of 12 months for the procuring entities to comply fully with the Act². This grace period expired on February 21, 2004. The essential features of the Procurement Act are:

- To establish the Public Procurement and Disposal of Assets Authority(PPDA)
- To confirm and strengthen the decentralisation process initiated under the previous procurement regime
- To define the procurement activities of the entities in a decentralized procurement environment
- To establish the PPDA as a credible complaints authority in public procurement
- To define the essential principles of sound procurement and provide the legal support for their implementation in the Regulations

The functions of the PPDA are covered in the Institutional section of this report.

28. The Procurement Act applies to “all public procurement and disposal activities” undertaken by public institutions, including parastatals and the military. In addition, the Act covers procurement carried out by non-public entities, which benefits from public funds.

29. Under the previous procurement regime, parastatals were established under legal statutes were at par with the procurement regulations. This caused some confusion as to procedures were legally applicable³. The Procurement Act supersedes any existing statutes, and any existing conflicting legislation containing provisions on procurement. All parastatals are as such required to comply fully with the Act and it’s supporting Regulations.

30. The Act covers all non-security-related procurement⁴. This constitutes a significant change from the situation under the previous regulations, where all Ministry of Defence procurement was considered exempted from the general rules for public procurement. However, the Act⁵ requires the MoD to separate its procurement in an “open” and a “restricted” list. Procurement of items on the open list shall comply fully

² Section 98.3 of The Procurement Act

³ As noted in the CPAR (2001)

⁴ Estimates are that up to 25% of the total procurement volume in Uganda is carried out by the Ministry of Defence and the Uganda Peoples Defence Force (UPDF). The MoD/UDF is amongst the largest buyers in the country of foodstuffs, clothes any many other ordinary items.

⁵ Section 42 of the Act

with the Act, while procurement of items on the restricted list only utilises the restricted methods of procurement as mentioned in the Act.

31. In practice the team witnessed that 1) The MoD has not yet formed the contracts committees that were a requirement even in the old regulations and reiterated in the Procurement Act, 2) The MoD apparently defines the division between open/restricted items itself, without the PPDA being involved this division, 3) The PPDA has not yet asserted its role as an authority performing monitoring and enforcement on procurement carried out by the MoD. As such, the PPDA at the moment is unable to properly assess the implementation and compliance with the Act and Regulations for the large part of the country's overall procurement volume carried out by the MoD.

32. With the entering into force of the new Procurement Act, Uganda now has a primary procurement legislation that embodies the procurement principles of efficiency, accountability and value for money. It is the opinion of the team that the Act has struck the right compromise between being concrete enough to serve these principles, but on the other hand so abstract that the necessary flexibility to adjust the actual implementation through Regulations and Guidelines is preserved.

33. On the actual procurement methods and their application, the Act only describes in broad terms the methods available and leaves it to the Regulations to specify the conditions for their use.

Recommendations on the application of the PPDA Act:

- *The PPDA should assert its authority at the Ministry of Defence to monitor and enforce the timely compliance with the Act and Regulations*

3.1.4. The Procurement Regulations

34. Supporting the Procurement Act, the Minister of Finance issued Public Procurement and Disposal of Public Assets Regulations on September 5, 2003. The Regulations came into force on this date, without any grace period. The Regulations do not apply to the local authorities, as described in the section below.

35. The mission has identified some weaknesses in the Regulations when compared to internationally accepted principles for sound procurement. These include access to negotiations with lowest bidder, application of domestic preference, and access to a merit point evaluation system

36. The Regulations allow pre-contract negotiations in a number of instances.⁶ Even under competitive tender methods, the entity can negotiate with the lowest evaluated bidder as long as this does not substantially alter the requirements. The need for negotiations can be acknowledged as a necessity born out of the average quality of specifications and bidding documents as experienced by the team. Even though the Regulations limits the situations in which negotiations can take place, the mere access to negotiations, in any form, will make it impossible to enforce the ban on undue negotiations and will project the perception of the system as being non-transparent.

⁶ According to the Regulations section 219 and 220

37. Preferential treatment of bidders based on their nationality is allowed by the Regulations.⁷ Such domestic preference could be a barrier to the market and could restrict value for money. There are other ways of achieving local empowerment, through proper packaging of the procurements, and not through preference schemes. However, it is internationally accepted that a developing country can apply its procurement rules to support its private sector. To achieve this, domestic preference should be limited to international tenders and follow specific and mandatory margins of preference.

38. The Regulations allow for a merit point evaluation system⁸. It is now recognized best practice that the merit point system of award allows for subjective and arbitrary decisions not compliant with the principle of transparency.

39. However, the single most pressing issue with the Regulations is the manner in which they have been compiled, given the procurement environment of Uganda. At a total of 958 pages including scores of forms and appendixes the Regulations are certainly not well adapted to its audience in a decentralized procurement system. This observation is confirmed throughout the entities visited by the team. Indeed, the bulkiness and complexity of the Regulations appear to be the greatest obstacle to its proper dissemination and implementation.

Recommendations on the Procurement Regulations:

- *The PPDA should issue simplified guidelines, including step-by-step guides and check-lists*
- *The PPDA should disperse the standard forms contained in the Regulations and enforce mandatory use of these standard forms to increase transparency*

3.1.5. Standard Procurement Documents

40. A number of standard procurement documents have been issues by the PPDA, including:

- “Bidding document for the procurement of works”
- “Pre-qualification Document for the Procurement of Supplies”
- “Lump Sum Document for the Procurement of Supplies”
- “Frame Work Documents for the Procurement of Supplies”

41. The standard document packages contain entire sets of documents, including prequalification documents, bidding forms and terms of contract.⁹ See the Procurement and Practices section of this report for an assessment of the application of standard documents in Uganda. To date the PPDA has publicised a number of guidelines:

⁷ According the Regulations section 173 mentioning “participation by nationals” is an award criterion that can be weighted up to 10% of the overall score.

⁸ According to the Regulations section 173, the merit point system allows the procuring entity to take the qualifications or performance in an interview into account when awarding a contract.

⁹ The three sets of documents concerning supplies are all available on the PPDA web-site: <http://www.ppda.go.ug/>, while this is not the case for the documents concerning works.

- Guideline 1 - Thresholds for Procurement Methods - 16 July 2003
- Guideline 2 - Reference Numbers for Procurement and Disposal Transactions - 16 July 2003
- Guideline 3 - Guidance on Bid and Performance Securities - 16 July 2003
- Guideline 4 - Codes of Ethical Conduct for PPDA employees- 16 July 2003
- Guideline 5 - Requirements for Procuring and Disposing Entities in providing safe keeping for documents - 16 July 2003
- Guideline 6 - Administrative Review Fee - 16 July 2003
- Guideline 7 - Use of Standard Letter of Bid Acceptance - 16 July 2003

3.1.6. Complaints system and access to the courts

42. Both the Act and the Regulations stipulate procedures for handling of complaints at the procuring entity, and as a second level of complaint, at the PPDA. However, the team did find the procuring entities largely unaware of their responsibilities in this respect. Most entities handled complaints ad hoc and the PPDA is yet to assert itself as a credible avenue of complaints. Accordingly, the vast majority of complaints where the complainer is not satisfied by the official result is pursued at the IGG, Auditor General or handled through informal contacts with the procuring entity.

43. Generally the procuring entities informed the team that they did not have any or very few¹⁰, complaints at all. There will always be complaints, but this is a sign that the aggrieved bidders may not have faith in the treatment they are getting from the entities.

44. The few cases handled by the PPDA did appear to have received a comprehensive and qualified treatment, but the perception of the bidders is certainly that the PPDA will not provide them with justice. The team suspects that this problem is related to the lack of ability of the PPDA to enforce the proper application where political influence is high. The same lack of power also hinders the PPDA in performing its role as a complaint authority.

45. At the CPAR stakeholders workshop a need for a new independent complaints handling body was recognized. Even though the PPDA, by virtue of its mandate, is independent of actual procurement operations, the PPDA has been approached for advice in a number of concrete procurement cases. The perception of the PPDA as an unbiased entity is difficult to uphold when complaints concern cases where the PPDA has been advising. Such complaints could and should be handled by the IGG and to handle such complaints the IGG should appoint a specialist procurement body with the necessary expertise.

46. The highest court in Uganda is the Supreme Court, followed by (in descending order) the Court of Appeal (which also functions as the Constitutional Court for cases of first instance involving constitutional issues), the High Court, the Chief Magistrate's Court, and local council (LC) level 3 (sub-county) courts, LC level 2 (parish) courts, and LC level 1 (village) courts. In addition there are a few specialized courts that deal

¹⁰ Most of the entities could remember that there used to be complaints “some years ago”, but none were able to procure any statistics or samples of documents in handling the complaint.

with industrial and other matters. The private sector perceive the court system in general as being a costly and time consuming process which they tend to avoid, and at the lower levels riddled with corruption and arbitrarily decisions. As a consequence of this only very few cases concerning mis-procurement have actually been settled in the courts. However, The Commercial Courts handling commercial disputes, and with branches throughout the country, are perceived by businesses to perform fairly well.

3.2. Legal, Regulatory and Institutional Framework of procurement, at the local level

47. Local authorities in Uganda are: 1) Districts, City and Municipal Divisions; 2) Sub-counties, and; 3) Villages. Under the Local Government Act, the districts and other authorities on the same level enjoy a high level of autonomy, being able to collect revenue of their own, and with the decentralization of the procurement process also able to carry out procurement independently. Sub-counties and villages are only able to perform procurement with explicit delegation of powers from the relevant higher district, city or municipal division.

48. The local authorities are under the supervision of the Ministry of Local Government, but due to their high level of autonomy the local authorities are not subject to any approval or vetting by the Ministry in performance of their procurements.

49. The legal framework for procurement at local government level is the Procurement Act. This includes the procurement carried out by the local authorities because the Procurement Act covers “all public procurement”. Since the Procurement Act is largely concerned with the basic principles of procurement, even though it is applicable at local level, the Act is so general that it is virtually impossible to implement it without proper supporting Regulations.

50. In practice the local authorities still apply the Local Government Act (1997) and the Local Government Financial Regulations (1997). An attempt was made to modernize the local regulations and a draft was circulated. For this reason the Draft Local Government Tender Regulations (2001) are in use in some of the local authorities. Even though the Procurement Act repealed the Regulations at central level, this did not include the Local Government Regulations. In theory the Procurement Act overrules the present Local Government Regulations. In practice, as the team witnessed during visits to various local authorities, the Procurement Act has not yet had any impact at the local level.

51. The general impression at the moment is that procurement at the local government level is non-transparent and not economic¹¹. One of the main reasons for these weaknesses is the way in which tender board members are nominated and appointed. The Local Government Act requires the chairman of the District Council to nominate tender board members, who are then appointed by the political wing of the District Council. It is acknowledged that the appointment of these members is done on the basis of political patronage. As a result, procurement decisions are tainted by political and local interests rather than the pursuit of the principles of transparency and

¹¹ This is corroborated by a recent study (Assessment of procurement capacities and systems in local governments in Uganda, 2003) undertaken under USAID financing.

economy. A tangible result of this is the widespread use of local preference in award of contracts, as experienced by the team. In many cases local tender boards appeared more interested in keeping business within their own district, rather than promoting value for money.

52. Even though the Act covers local government procurement, the de facto situation at local level is that the Act has been largely ignored since it came into force in 2003. This situation is not likely to change until new local Regulations are in place. The responsible authorities the PPDA and the Ministry of Local Government do not plan to launch any enforcement campaigns before the local Regulations are disseminated.

53. Besides the removal of political influence in the local procurement process, another advantage to be reaped from issuing local Regulations is the harmonization of the rules on central and local level. With similar regulations at both levels huge gains can be made in areas of capacity building, complaints handling etc. This is in line with one of the main recommendations of the CPAR (2001): that a common set of procurement rules for both central and local level be developed. This goal has been partly and formally reached with the enactment of the Procurement Act, which covers both central and local procurement. In reality, not much has changed at the local level.

54. The Ministry of Local Government, aided by the PPDA, has taken action in this area by initiating the drafting of a set of local government procurement Regulations.¹² The team is concerned whether there is the necessary focus on adapting the local Regulations to the specific needs of local authorities.¹³ It is evident that a specific set of thresholds for application of the different procurement methods must be issued for the local authorities.

Recommendations on access to complaints:

- *The PPDA should launch a campaign of informing the public of its role in complains and the take initiative on high-profile cases*
- *The PPDA should assert and strengthen its role in handling complaints*
- *The IGG should appoint a specialist procurement body to handle complaints in cases where the PPDA has been advising party or where the complaint is about PPDA itself.*

Recommendations on local government procurement:

- *Regulations for local government should be harmonized with those at the central level*
- *Local Government Regulations should mitigate the risk of direct political influence on the procurement process at local level, by authorizing the Chief Administrative Officer to nominate and remove members of tender boards.*

¹² The tender for a consultant to draft the local Regulations was underway in March 2004, but had ground to a halt as the PPDA investigates allegations of mis-procurement.

¹³ The Terms of Reference for this consultancy was made available to the team. Unfortunately, the terms do not mention the simplification and adaptation to the local procurement environment, but appears to focus on transforming the existing central Regulations. Furthermore the set time period of two months appear to short.

3.3. Recommendations for legal framework:

- *The PPDA should assert its authority at the Ministry of Defence to monitor and enforce the timely compliance with the Act and Regulations*
- *The PPDA should issue simplified guidelines, including step-by-step guides and check-lists*
- *The PPDA should disperse the standard forms contained in the Regulations and enforce mandatory use of these standard forms to increase transparency*
- *The PPDA should launch a campaign of informing the public of its role in complains and then take initiative on high-profile cases*
- *The PPDA should assert and strengthen its role in handling complaints*
- *The IGG should appoint a specialist procurement body to handle complaints in cases where the PPDA has been advising party or where the complaints are about PPDA itself*
- *Regulations for local government should be harmonized with those at the central level*
- *Local Government Regulations should mitigate the risk of direct political influence on the procurement process at local level, by authorizing the Chief Administrative Officer to nominate and remove members of tender boards.*

4. CENTRAL INSTITUTIONAL CAPACITY

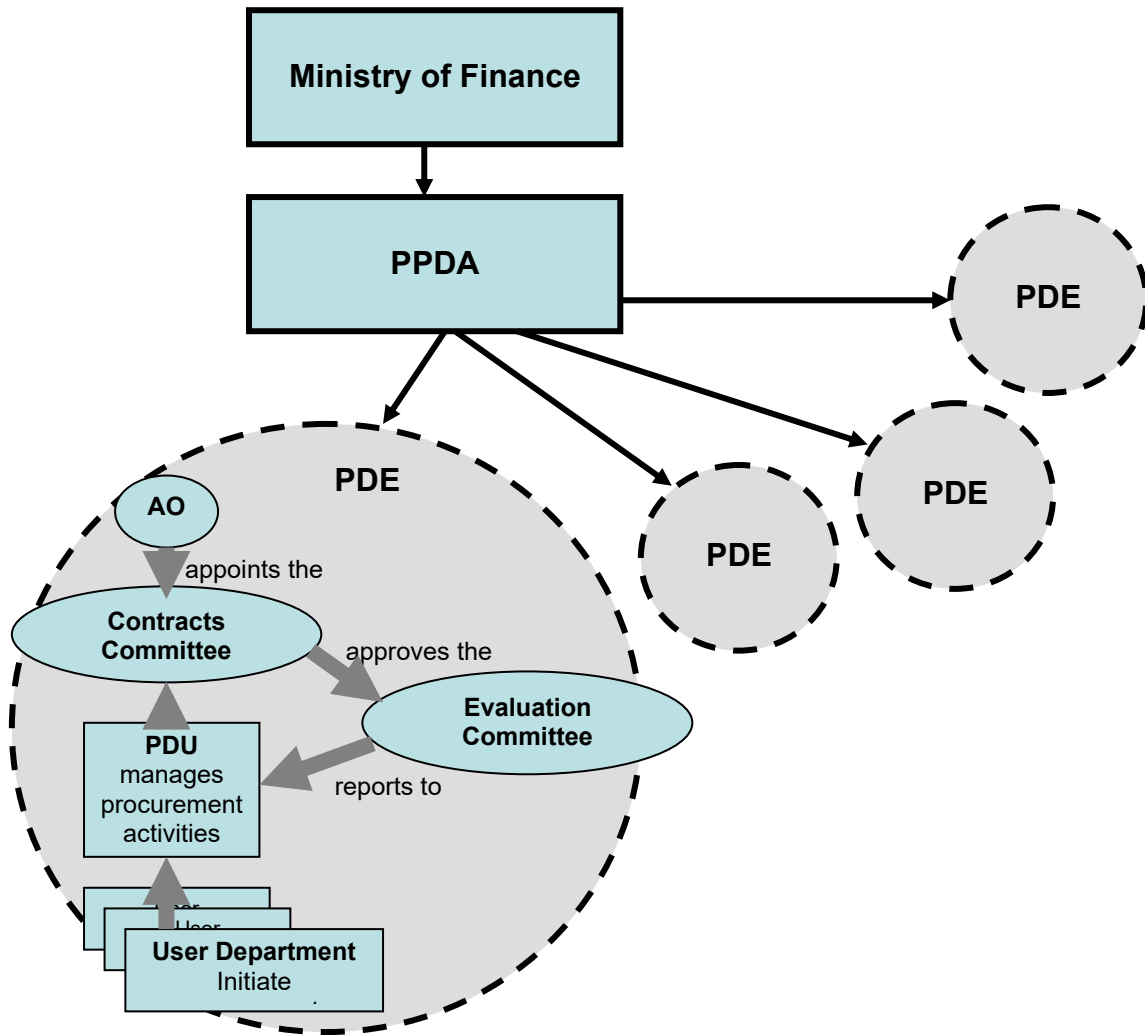
55. Since the 2001 CPAR, a number of improvements in the institutional framework have taken place. This includes the full decentralization of procurement and the replacement of the Central Tender Board (CTB), with the regulatory body, the Public Procurement and Disposal of Assets Authority (PPDA). The location of the PPDA, under the auspices of the Ministry of Finance Planning and Economic Development also corresponds with the recommendations of the 2001 CPAR, and so does the current institutional set-up with contracts and evaluation committees and procurement units. The institutional reform of the procurement sector has demanded much determination and hard work on the side of the Ugandan authorities and the Government of Uganda should be lauded for its persistence and achievements so far. This being said, there are still areas, which remain unresolved. Also areas, which were already addressed in the 2001 CPAR, such as the political influence on the tendering procedure at local government level and lack of benchmarks and performance indicators for public sector procurement. These issues are dealt with in more detail in the sections below.

4.1. The Institutional Framework

4.1.1. Current Institutional set-up as prescribed by the PPDA

56. The Public Procurement and Disposal of Public Assets Act (PPDAA) of 2003 establish the institutional set-up for procurement in Uganda. This includes the regulatory and monitoring body, the Public Procurement and Disposal of Public Assets Authority (PPDA) and the Procuring and Disposing Entities (PDEs) in both central and local government. According to the PPDAA, Article 24 the PDEs shall be composed of an accounting officer, a Contracts Committee (for local governments, a Tender Board), a Procurement and Disposal Unit (PDU), a User Department, and an Evaluation Committee. All these entities are described in more detail in the sections below. The figure below, provides and overview of the institutional set-up.

Figure 1: Institutional set-up for procurement as provided in the PPDAA



57. In addition, there are other relevant organisations such as: the Attorney General, who is responsible for prosecuting breaches of the PPDAA; the Auditor General (AG) who is responsible for auditing¹⁴ parts of the procurement process; the Inspector General of Government (IGG) who investigates corruption cases, including corruption in procurement, and the Director of Public Prosecution (DPP).

58.

4.1.2. The Ministry of Finance Planning and Economic Development

59. According to the PPDAA, the Ministry of Finance Planning and Economic Development (MoFPED) is the line ministry for the public procurement sector. Thus, the PPDA reports to the Minister of Finance, who reports on to Parliament. While the PPDA has resumed its regulatory and monitoring functions vis a vis the procurement sector, the MoFPED retains the policy responsibility for the sector. However, at present there is no specific unit or specified employees within the MoFPED dealing with

¹⁴ For a discussion on procurement audit and the mandates of the Auditor General and the PPDA, please refer to chapter 6.

procurement. It seems as if the MoFPED has completely abdicated from its policy-making role and has assumed that all procurement related work is being handled by the PPDA. This error should be rectified, and the MoFPED should resume its policy making role and overall responsibility for the procurement sector as part of the financial management framework. This can be done by establishing a unit within the MoFPED or clearly identify employees, which are responsible for these matters.

Recommendation on the policy making role of the MoFPED

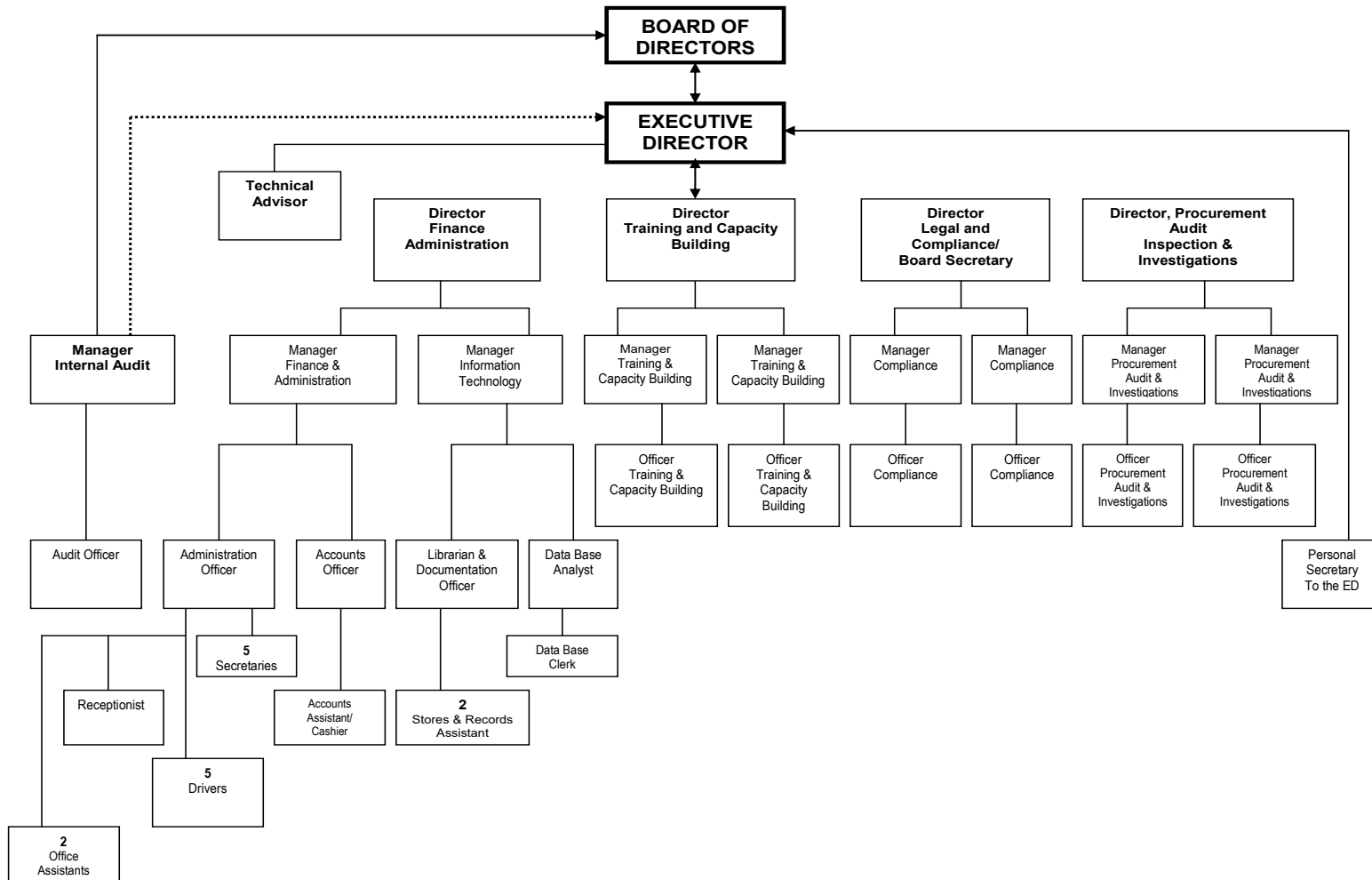
- *The MoFPED should ensure its policy making role for the public procurement sector and as a minimum identify staff responsible for procurement or establish a unit responsible for this task.*

4.1.3. The PPDA

60. The PPDA consists of four main departments: (i) Training and Capacity Building Department; (ii) Legal and Compliance Department; (iii) Procurement Audit, Inspection and Investigations Department, and; (iv) Finance and Administration Department. A full overview of the organisational structure of the PPDA is provided below.

Figure 2: The organisational structure of the PPDA

ORGANISATIONAL STRUCTURE OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY (PPDA)



61. The *objectives* of the regulatory body, the PPDA, are described in detail in the PPDA (Article 6):

- Ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement and disposal standards and practices
- Harmonize the procurement and disposal policies, systems and practices of Central Government, Local Government and statutory bodies
- Set standards for the public procurement and disposal systems in Uganda
- Monitor compliance of procuring and disposing entities
- Build procurement and disposal capacity in Uganda

62. The *functions* of the PPDA include (PPDA Article 7):

- Advising Government on public procurement matters
- Monitoring procurement performance
- Develop training and certification standards for the procurement cadre and maintain links with professional associations
- Issue standard bidding documents and guidelines
- Collect procurement data (statistics) and develop and maintain information database
- Maintain a register of providers
- Conduct periodic inspections and procurement audits
- Maintain and update a list of common items
- Undertake procurement research and surveys
- Administer and enforce compliance with the PPDA

63. As the PPDA is still in a constituting phase, not all of these functions are currently carried out. Thus, training and certifications standards have not been developed and standard bidding documents and guidelines are still in draft formats. Also, the PPDA has yet to establish a register of providers and maintain a list of common items. No research or surveys have been initiated so far. As for the collection of procurement statistics, the database is currently being developed, and a few PDEs have started forwarding the required monthly forms.

64. The PPDA is governed by a Board of Directors (PPDA Article 10) appointed by the Minister of Finance in consultation with the Cabinet. The Board of Directors is responsible for formulating the policy of the PPDA and approving the budget. At present the Board consists of six members, headed by a Chairman. The Board also appoints the Executive Director, who is the day-to-day and accounting officer of the PPDA. The Executive Director is appointed for a three year period, which is only renewable once. At present, the PPDA has no substantive Executive Director. The Director of the Legal and Compliance Departments is currently acting Executive Director. Notably, the PPDA specifies that the Executive Director “shall not engage in any business, profession, occupation or paid employment elsewhere” (Article 17.3). The Executive Director is not formally required to declare his interests or activities elsewhere¹⁵, and the clause is not extended to the department directors, despite their management roles within the organisation.

¹⁵ Under the Leadership Code of 1992 all top civil servants and politicians have to declare their assets to the anti-corruption watchdog, the Inspector General of Government (IGG). The management of the

65. The PPDA is referred to in the PPDA as an “autonomous” and “corporate” body (PPDA Article 5). According to the Act, after each financial year, the PPDA shall submit an Annual Performance Evaluation Report to the Minister of Finance, and the Minister shall then present the Report to Parliament. The fact that the PPDA reports to the Minister of Finance may be perceived as limiting the independence and autonomy of the Authority and counter-productive to the desirable objective of having the PPDA as a strong, properly empowered institution that oversees the entire procurement framework (Laws and Rules, oversight and enforcement). However, organisational set-up, whereby the PPDA is governed by a Board of Directors, which also appoints the Executive Director, limits the ministerial remit and direct managerial authority over the PPDA. Thus, the current organisational set-up is considered by the team to honour fiduciary organizational principles and de-politicize the procurement system (at least at the level of the PPDA).

Recommendations on the functions of the PPDA and its management

- *The PPDA should be encouraged to fulfil and maintain all its regulatory functions as described in the PPDA. Performance of functions should be linked to the financial allocations of the Authority and should also be reflected in the performance contracts of the PPDA management, and in particular the Executive Director. The Annual Performance Evaluation Report of the PPDA should report on all of the objectives and functions listed in the Act.*
- *The clause debarring the Executive Director from engaging in business or employment elsewhere should be extended to the entire management team of the PPDA. Upon taking up a management position in the PPDA, the candidate should be required to declare his interests and professional links outside of the PPDA.*

4.1.4. The Procuring and Disposing Entities

66. All public entities wishing to conduct procurement are obliged to establish a Procuring and Disposing Entity (PDE). According to the PPDA (Article 24), the PDE shall consist of: an Accounting Officer, a Contracts Committee¹⁶, Procurement and Disposal Unit (PDU), a User Department, and an Evaluation Committee.

67. The Accounting Officer has the overall responsibility for the execution of the procurement process within the PDE. Thus, he is responsible for: establishing and appointing members to Contracts Committee; the establishment and staffing of the PDU; advertising bid opportunities and communicating award decisions; the availability of funds to cost the procurement; signing contracts; investigating complaints and submitting reports on these to the PPDA; and ensure that contracts are awarded in accordance with the rules. In most of the public entities the Accounting Officer for

PPDA is also encompassed by this requirement. However, the suggestion here is wider than mere financial interests and also includes professional links and association, which in the name of transparency should be declared.

¹⁶ For Local Governments, a Tender Board, as described in more detail in Chapter G on Local Government Procurement.

procurement is identical with the Accounting Officer for budget matters, and in ministries this joint role is usually carried out by the Principal Secretary (PS).

68. The Contracts Committee shall consist of a chairperson, a secretary and a maximum of three other members one of whom shall be a lawyer (Third Schedule of the PPDAA). The members of the Contracts Committee are appointed by the Accounting Officer for a three-year period with the possibility of one re-appointment, and they must subsequently be approved by the Secretary to the Treasury. Following the appointment, the composition of the Contracts Committee and the qualification of its members shall be communicated to the PPDA. The Contracts Committee is responsible for contract award; approving the Evaluation Committee; approving bidding and contract documents; approving the chosen procurement procedure; ensuring adherence to best practice and compliance with the Act.

69. The Procurement and Disposal Unit (PDU) is where the procurement expertise is vested within the PDE as the procurement expert(s)¹⁷ will usually form part of the staff of the PDU. The PDU is responsible for managing all procurement activities, including: acting as secretariat to the Contracts Committee and implementing its decisions; procurement planning and recommend procurement procedures; prepare and issue bidding documents; prepare bid advertisements; maintain a providers list; prepare and issue contract documents; maintain procurement records and files; prepare reports and coordinate procurement activities of all departments within the PDE. The PDU is also empowered to: recommend the composition of the tender Evaluation Committee, which must be approved by the Contracts Committee; manage bid proposals and provide bid clarifications; provide recommendations on the proposals to the Contracts Committee; ensure overall compliance with the PPDAA and liaise on this with the PPDA.

70. The User Department is the department initiating the procurement by forwarding a request to the PDU. The Department is responsible for providing technical input to requirement statements and for developing the technical specifications. Once the contract has been awarded, the User Department is responsible for contract management and for payment of the provider.

71. All tender evaluations must be conducted by an Evaluation Committee, which reports to the PDU. The Evaluation Committee is not a standing committee with a set composition, but is appointed from tender to tender. The number of committee members may vary depending on the complexity of the tender, though, a minimum of three members is required. According to the PPDAA, the members of the Committee shall be of appropriate seniority and experience, and they may be external to the PDE if the necessary skills or experience are not available within the PDE or if conflict of interest may arise.

72. The table below provides an overview of the number of PDEs and Central and Local Government level. According to the PPDA, most of the PDEs are now in place. In reality, however, the PPDA has only undertaken a limited number of compliance

¹⁷ For a thorough description of the Procurement cadre, please refer to section D.2.

reviews, and whether the PDEs are fully operational and functioning in line with the requirements of the PPDA remains uncertain.

Table 1: Number of PDEs

	Central Level	Statutory bodies	District (and municipal councils)	Total
No. of PDEs	35	65	56 + 13 = 69	169

Source: PPDA Capacity Building Strategy for Public Sector Procurement

Recommendation

- *The PPDA should initiate a programme of comprehensive compliance review targeting all PDEs to ensure that the PDEs are fully operational and functioning in line with the standards of the PPDA.*

4.1.5. A large government procurer – the National Medical Stores

73. As the largest government stores organisation in Uganda, the National Medical Stores (NMS) is of interest to the CPAR. In other countries in the region, it is not uncommon to have several government stores organisations, out of which the medical stores will be one. In Uganda, there is only one such organisation, and the mission therefore focussed on the NMS.

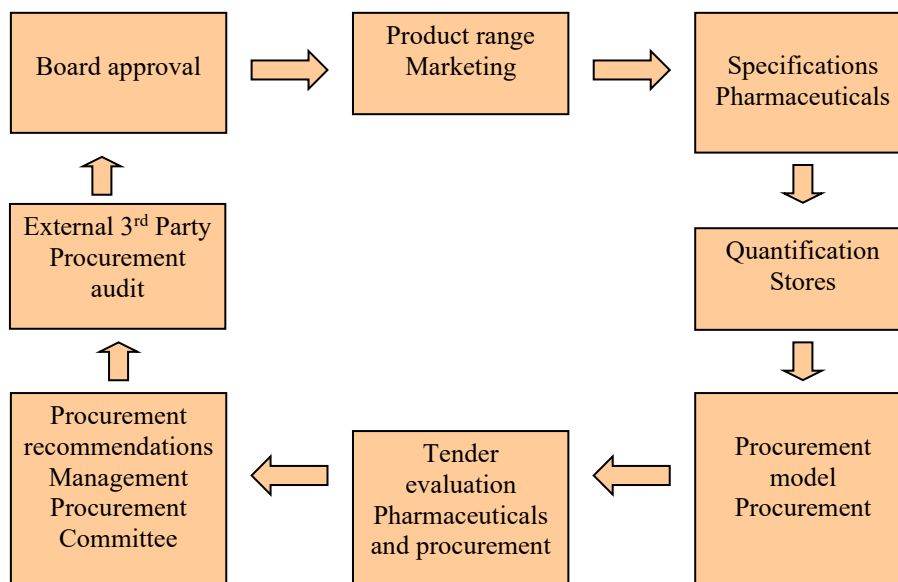
74. The NMS was established as an autonomous government corporation in Uganda in December 1993 by an Act of Parliament, which also ensured the required Government control. The mission of the NMS is to avail quality drugs and other medical supplies timely at sustainable, flexible and competitive terms. Its expressed objectives include efficient procurement of drugs. One way of ensuring this is to use estimations of both current and future needs as a basis for procurement planning and budgeting. The NMS works with three types of procurement procedures: i) international competitive bidding, ii) selective bidding for urgent and specialized items, and iii) single source procurement.

75. The NMS has benefited from capacity-building and institutional development assistance under two programmes funded by the Danish development organisation Danida (UEDSP and HSPS I) for up to ten years since 1998.

76. A drug tracking study in August 2002 indicated sub-optimal levels of drug procurement at the Health Sub-district level. Following the study, the NMS went through a process of restructuring to comply with the introduction of a new order-based supply system, the so-called “Pull System”, introduced nationwide in January 2003. The “Pull System” included, for the first time, the formalization of the institutional role and responsibilities of NMS for public drug procurement and supply. The system has been a success, dramatically increasing the value of orders placed at the NMS and improving the regularity of procurement by districts, health sub-districts and hospitals. While showing such positive results, the “Pull System” has placed considerable pressure on the NMS procurement system, because it requires responsive procurement planning and forecasting systems. Furthermore, the system has challenged the NMS computerised

systems and greatly increased the stock-holding requirement and associated working capital.

Figure 3: NMS procurement cycle



77. As illustrated above and as verified during the mission, the NMS institutional set-up for procurement is not in compliance with the requirements within the PPDA. Thus, at the time of visit the NMS had not yet established the required committees, instead the Board of the NMS approves procurements. According to the NMS itself, it has over the years lost quite substantial business to the private sector, and the Privatization Unit in the Ministry of Finance is in the process of employing a consultant to review various options for restructuring NMS including privatization.

Recommendation for the NMS

- *In light of the particular features of the Uganda health care system and the need for quality assurance of drugs, as well as previous and current extensive donor investment in the NMS, it is suggested that the process of rationalising and restructuring the NMS be continued on priority.*

4.2. Recommendations for the institutional framework

Short term recommendations

- *The MoFPED should resume its policy making role for the public procurement sector and as a minimum identify employees or establish a unit responsible for this task.*
- *The PPDA should be encouraged to fulfil and maintain all its regulatory functions as described in the PPDA. Performance of functions should be linked to the financial allocations of the Authority and should also be reflected in the performance contracts of the PPDA management, and in particular the Executive Director. The Annual Performance Evaluation Report of the PPDA should report on all of the objectives and functions listed in the Act.*

- *The clause debarring the Executive Director from engaging in business or employment elsewhere should be extended to the entire management team of the PPDA. Upon taking up a management position in the PPDA, the candidate should be required to declare his interests and professional links outside of the PPDA.*

Medium term recommendations

- *The PPDA should initiate a programme of comprehensive compliance review targeting all PDEs to ensure that the PDEs are fully operational and functioning in line with the standards of the PPDA*
- *In light of the particular features of the Uganda health care system and the need for quality assurance of drugs, as well as previous and current extensive donor investment in the NMS, it is suggested that the process of rationalising and restructuring the NMS be continued on priority.*

4.3. Procurement Capacity

78. Lack of capacity is the single most important issue in the sector, and all of the interlocutors with whom the Team met, cited lack of capacity and skilled personnel as a great impediment to conducting sound procurement. Most importantly, a general lack of understanding of key public procurement principles is manifest and poses as a main impediment to sound public procurement. With decentralisation and the creation of properly staffed Procurement and Disposal Units (PDUs) in each Procuring and Disposing Entity (PDE), the demand for skilled procurement staff has risen sharply.

79. The PPDA Capacity Building Strategy for Public Sector Procurement¹⁸ estimates that the number of staff presently dealing with procurement amounts to approximately 5416:

Table 2: Number of procurement staff

	Central Level	Statutory bodies	District (and municipal councils)	Total
Number of PDEs	35	65	56 + 13 = 69	169
Average number of staff	5 in the CC 2 in the PDU 30 in the UD	5 in the CC 2 in the PDU 15 in the UD	7 in the TB 2 in the PDU 30 in the UD	
Total estimated number of staff	35 x 37 = 1295	65 x 22 = 1430	69 x 39 = 2691	5416

Source: PPDA Capacity Building Strategy for Public Sector Procurement

¹⁸ "Capacity Building Strategy for the Public Procurement Sector for the Period 1st July 2003 to 30th June 2006", issued in August 2003.

4.3.1. Introduction of the new Procurement Cadre in central Government

80. The PPDA called for the establishment of a new procurement cadre to undertake procurement in the central and local government. Thus in February 2003, the Ministry of Public Service advertised 76 procurement posts for the central Government PDEs. However, the majority of these posts were not filled until September-November 2003. The Ministry of Public Service and the PPDA cooperated on defining the recruitment criteria, though neither conducted a needs assessment prior to this. One of the main recruitment criteria was a CIPS¹⁹ educational background or similar, and it was suggested to the Team that the present procurement cadre therefore mainly has private sector procurement knowledge and background, with limited knowledge of public finance and administration. The PPDA has conducted more workshops in public administration to fill this gap.

81. At the end of November 2003, an analysis based on questionnaires filed by the cadre showed that most of the procurement professionals had problems being accepted in their new organisations (no offices, no IT equipment, no tasks, etc.). One of the main reasons for complaints was the general lack of computerization in the PDEs. The PPDA followed up on these problems by contacting the relevant organisations and trying to devise solutions and/or mediation, and it is important that the PPDA continue to follow the situation for the new procurement cadre closely.

82. The negative reception or some of part of the new procurement cadre seems to have two reasons: First, a resistance from some of the User Departments, which are no longer allowed to procure as they used to (unless so delegated by the contracts committee and then only with a maximum limit of 2 million shillings). Second, several of the organisations already had ‘supply’ officers (mostly with simple shopping expertise), which in most cases were not terminated or transferred to other positions, but just left without tasks. These supply officers on several instances refused to pass on files, office, etc. to the new procurement professional. However, according to the PPDA, by February 2004, these problems have been solved in most of the PDEs.

83. The PPDA has developed an IT database with the purpose of registering the participation of the cadre in training and workshops. Data regarding the educational and practical background of the cadre can be found in this database, but limited by the amount of information the professionals volunteer to provide themselves.

84. Due to the common lack in public sector background of the new cadre, issues such as planning, strategy and financial management is not common knowledge to many of the procurement professionals. Therefore the PPDA in cooperation with the Ministry of Public Service has conducted two workshops on these subjects and will continue to do so.

¹⁹ The Chartered Institute of Purchasing and Supplies (CIPS) is a UK based private organisation providing training and certification in purchasing and supplies management. However, since the focus of CIPS remains on private sector purchasing, CIPS certification is less relevant for public procurement specialists.

85. An unresolved issue is the lack of an official category for procurement professionals at local government level. As this is a requirement of the PPDA, and more so, a necessity for building up procurement capacity and professionalism in local governments, the Ministry of Local Government and the Ministry of Public Service should collaborate on extending the procurement cadre to local government level. Being the line ministry for the public procurement profession, the MoFPED should be involved in this work.

Recommendations on the further development of the procurement cadre:

- *The Ministry of Public Service, the Ministry of Local Government and the MoFPED should urgently establish a formal employment category for procurement professionals at local government level*
- *The PPDA should ensure that the Ministry of Public Service, the Ministry of Local Government and the MoFPED develop of a selection and appointment framework for local government procurement professionals ensuring that the needed qualifications are obtained.*
- *The PPDA should continue to upgrade the procurement professionals on relevant public sector aspects, including financial management principles*

4.3.2. Past and present capacity building initiatives

86. Since the introduction of the procurement reform agenda, a number of capacity building initiatives have taken place involving both international and national organisations, such as the International Trade Centre of the UN (UN-ITC), which assisted in the development of training manuals, curricula, etc. for both public sector and private sector procurement. One of the training institutes benefiting from this assistance was the ‘Centre for Procurement Training,’ which today is conducting different types of short-term training in public procurement. In 2002 DFID financed training on the then Financial Regulations for central Government and in late 2002, the Government of Uganda and the UNDP agreed on a 2½ years capacity building project, which started in January 2003. The UNDP project (estimated value of USD 2,3 million²⁰) provides technical assistance to the PPDA Director for Training and Capacity Building and includes such elements as:

87. Training of trainers (ToT) in the new legal procurement framework

88. Development of training material based on the new legal procurement framework.

89. Institution building of the PPDA, the PDEs, the universities and other relevant organisations

90. Capacity building of the bidders/providers to the public sector.

91. Originally, the training of the PDEs was planned to be carried out mainly by external consultants, which was the reasoning behind the ToT approach. However, in January 2003, the PPDA changed the approach and instead requested the UNDP staff to

²⁰ The UNDP has pledged USD 500.000 and the Government (through PPDA) is expected to fund USD 1 million. The rest of the funding is expected to come from other donors. However, so far no other donors have joined the project, and the Government has so far only contributed with USD 150.000. In 2003 the project was staffed with one Chief Technical Adviser and one national procurement expert. In 2004, more national procurement experts are expected to join the project

organise direct training of the PDEs in the form of one-day training sessions offered mostly at hotels in Kampala. Seven one-day training modules were developed during 2003 based on the PPDAA and the draft regulations:

- Two modules introducing the organisational changes and the procurement cycle
- Four modules in special areas: specification writing; bid opening and evaluation; legal and financial aspects of procurement; and Incoterms
- One module on disposal of public assets.

92. From May to November 2003 a total of 2.135 people were trained in workshops combining one or more modules. As the developed training material and the training mainly focused on the legal framework for procurement, it is therefore recommended that future training activities focus more on the general principles of procurement and less on specific rules with the aim of creating a broader understanding of the key underlying public procurement principles. Also, following a wish from the PPDA, the training conducted in 2003 was supply driven, which had also been the case for previous training. However, the annual report 2003 for the UNDP project states that this method proved difficult to manage and expensive as it often provided logistical problems with either too few or too many participants. Thus, after the introduction of the new procurement cadre, the PPDA changed its training efforts to a more demand driven approach. At present, more of the training is conducted as closed workshops for one entity at a time and often workshops are combined with line support, compliance analyses, organisational/strategic development of the entity, etc.

93. The PDEs are different. Some are small entities with little procurement activity while others are big entities with extensive and complicated procurements. Some entities only have one procurement officer, while others have 5-10 (e.g. the Ministry of Defence, the Police, the Ministry of Works, etc.). Up until now, the capacity building activities offered by the PPDA have not distinguished between the different types of procurement organisations. A target and individual approach like this should be based on gap analysis and need assessments of each PDE.

94. It is also worth noting that the procurement professionals are often met with different demands from the User Departments, often depending on whether the organisation is a mainly government or mainly commercial/customer oriented organisation. In the traditional ministries, the understanding of 'things take time' is more common than in some of the new customer oriented and self financed parastatal organisations. The PPDA has to take these differences into consideration when developing the capacity building activities. Another aspect to be considered is that some of the customer-oriented parastatals are generally further advanced in implementing the new legal framework than the traditional government organisations. This should be mirrored in the capacity building activities offered and can only be done if the PPDA interacts more closely with the organisations.

95. In the PPDAA, the PPDA is given the mandate to build procurement and disposal capacity in Uganda through setting up training standards, competence levels, certification requirements and professional development paths for the procurement professionals in each of the PDEs. The Act states that the PPDA shall fulfil this task in

consultation with competent authorities, such as the Ministry of Public Service, the Ministry of Local Government and each of the accounting officers in the PDEs. Unfortunately at the time of the CPAR Mission, the Inter-ministerial Professional Development Committee for Procurement, which is envisaged to become the key forum for inter-institutional coordination of capacity building initiatives, had not yet been activated.

96. The mission also noted that despite the MoFPED being the line ministry for the public procurement sector, and the “parent-ministry” for the procurement cadre, the ministry is presently not involved in the career development of the cadre. However, the MoFPED could play an important role in asserting the importance of the procurement cadre in the public sector and in professionalizing the sector.

97. Notably, the capacity building mandate of the PPDA does not imply that the PPDA has to finance the development of training manuals and the implementation of training sessions. It only states that the PPDA has the responsibility to ensure that the PDEs are staffed with professionals at a certain professional level and that the PPDA is to take initiatives to help solve the situation, if this is not the case. It is therefore positive that the PPDA in its recent capacity building activities has taken up further responsibility than the PPDA contemplates. Thus, the PPDA has financed, managed, developed and arranged training of the new public procurement cadre and other actors involved in public procurement, such as the accounting officers, the contracts committees and the user departments.

Recommendations on capacity building initiatives

- *Career development and management programmes for the procurement cadre in government should be developed in cooperation between the MoFPED, the PPDA and the Ministry of Public Service, hereby ensuring that the required procurement knowledge is present in the PDEs.*
- *The PPDA should address the general lack of the fundamental understanding of the key public procurement principles, including the ethical aspects of procurement.*
- *The capacity building initiatives should distinguish between the different types of PDEs*
- *The Inter-ministerial Professional Development Committee for Procurement should be activated*

4.3.3. The capacity of the PPDA itself

98. In the period from 2001 to date, the PPDA has received assistance from several organizations (World Bank, ITC, DFID, UNDP, the Dutch Government, etc.), but the assistance has mainly targeted the external service delivery of the PPDA and not capacity building within the Authority. This was mainly due to the lack of staff in the PPDA. Thus, throughout 2003, the staffing of the PPDA was rather sparse and merely included the four directors and 6-8 temporary staff. Today, the PPDA has around 35 staff members. Yet no sound HR measures, including individual career development plans, performance measures, etc. are in place to cater for the development of the staff.

99. The CPAR Team noted that while the PPDA directors have all participated in international public procurement training abroad, only few of the regular staff has a theoretical or practical background in public procurement. Still, when it comes to the institutional and human resource capacity, the management of the PPDA remains relatively weak and there is a need to improve inter-organizational skills through external management expertise. As mentioned above, the PPDA is divided into four departments. The four departments work quite independent despite the fact that they could learn from each other. Knowledge sharing should be encouraged between the four departments. To build further capacity and to share the knowledge obtained from the interaction with the PDEs, the IGG and with other partners, the PPDA could host internal workshops, where experiences can be shared. Also, a knowledge management system based on the procurement cases that have been brought to the knowledge of the PPDA should be developed and should be open for use by all interested parties, such as staff, consultants, universities and training institutions.

Recommendations on the capacity of the PPDA

- *HR measures, including individual career development plans, performance measures, and training, etc. for the development of the PPDA staff should be introduced.*
- *The PPDA to develop a knowledge sharing policy and to ensure that knowledge-sharing activities take place within the PPDA and between the PPDA, the Entities and the providers.*
- *Knowledge management system should be introduced*

4.3.4. The PPDA Strategic Plan for Capacity Building

100. The PPDA has prepared a strategic plan for Capacity Building. The plan has all the essential components of a good strategic plan. It has been discussed and endorsed by stakeholders. The next step is for the PPDA to prepare a detailed implementation plan.

Recommendation on the capacity building strategy of the PPDA

- *PPDA to prepare a detailed implementation plan for the capacity building strategy*

4.3.5. Capacity in the PDEs

101. As mentioned above, the lack of procurement professionals in Uganda is a major problem for the PDEs in both central and local government, and it has been difficult for the Ministry of Public Service to find enough qualified procurement professionals for all the entities. Also, the general lack of understanding of the fundamental public procurement principles and the new organisational set-up for procurement as prescribed by the PPDA has caused problems in the entities. It is still true that many of the politicians and higher-ranking managers in the local and central government find that they have the right to intervene in the procurement procedures causing unprofessional procurement decisions. The problems appear to be most serious at local government level.

102. There has been little attempt to measure the result of the training in the PDEs or to link the performance of the entities with the capacity building activities that has taken place for the entity. Thus, the PPDA needs to introduce methods for measuring the

effect of the capacity building activities on the performance in the PDEs. This will require close cooperation between the departments at the PPDA.

Recommendation on the capacity within the PDEs

- *The PPDA to introduce methods for measuring the effect of the capacity building activities on the performance in the PDEs.*

4.3.6. Up-grading and Accreditation of Procurement Professionals

103. PPDA's capacity building mandate implies that the PPDA is to develop competence levels, certification requirements and professional development paths for the procurement professionals in each of the PDEs. Development of frameworks for professional career development, and certification systems are demanding tasks, which demands close coordination and cooperation with the involved ministries (Ministry of Public Service and Ministry of Local Government) as well as with one or more educational institutions (Uganda Management Institute or one of the universities). At the same time, a proper accreditation system is an important mechanism to ensure consistent high standards among the public procurement profession. This is particularly important in view of the previous observations regarding the private sector procurement experience and background of most of the current procurement specialists in the PDEs. The PPDA should lead the accreditation task, but could also outsource this to one or more external organisations.

Recommendation on accreditation of procurement professionals

- *PPDA to initiate accreditation system, linking this to capacity building and career development measures*

4.3.7. Professional Associations

104. The Mission met with two professional associations for procurement/ purchasing professionals: CIPS and the Procurement and Logistic Management Association (PALMA). CIPS is a locally registered group of individuals who have passed the UK CIPS course, whereas PALMA is a Uganda-based organisation, which for some years was supported by the ITC. Both organisations are rather weak and neither focuses explicitly on public procurement. There is, however, a need to promote the establishment of a strong Professional Association for procurement specialists which, together with the PPDA, could promote the profession, provide a professional code of conduct and assist with capacity-building measures. The ethical dimension is particularly important because the current ethical frameworks appear to be weak and self-regulation is virtually non-existent. Thus, neither of the current organisations could provide examples of members having been excluded on ethical grounds, despite numerous examples of misconduct.

4.3.8. Professional Ethics

105. The public procurement profession in Uganda has for many years had the reputation of being infected by highly unethical behaviour. If not initiated by the procurement professionals themselves, then through pressure from the management and politicians in the public sector. This reputation has deterred the serious professionals, while instead attracting the more frivolous types. With procurement professionals occupying a central role in the public expenditure cycle, the necessity of high moral and

ethical standards becomes pertinent, and there is a need for increased focus on this aspect.

106. With the introduction of the PPDA some new ethics measures have been instituted. Thus, the Act states that all civil servants in a PDE and all experts engaged to deliver specific services to the Entity shall sign a special Code of Ethical Conduct specified in the Fifth Schedule of the Act. However, until now, it seems that no checking from the PPDA for compliance with this specific schedule has taken place, and the Team has not been able to confirm whether the staff members in all the PDEs have indeed signed the codes.

107. In a special Guideline (4/2003) from the PPDA, the bidders and providers are required to adhere to the 'Code of Ethical Conduct for Bidders and Providers' contained in this guideline. The Guideline states that bidders must enclose a signed form in the bids, while the successful provider will sign the form once more when signing the contract. It has not been possible to confirm whether the system is functioning in any of the Procuring and Disposal Entities, and the PPDA should ensure compliance to this extend.

108. In terms of ethics and development of high professional standards, the professionals associations as mentioned above will also have to play a key role. Thus, proper self-regulation mechanisms among procurement professionals as well as among providers should be put in place. This includes exclusion of membership or other sanctions, once the ethical standards are violated.

Recommendation on self-regulation within the procurement profession

- *The establishment of a strong Procurement Professionals Association should be supported and particular attention should be paid to the institution of a sound ethical framework. This includes implementation of measures for self-regulation aimed at increasing the professional standards and integrity within the profession.*

4.3.9. Procurement Educational and Training Institutions

109. The lack of procurement professionals is not only a problem for the PDEs, but also for the universities and the private training institutes, who have difficulties identifying qualified lecturers/trainers. The same applies to the private consultancy companies, where only very few can offer consultants with an academic procurement education or longer lasting public procurement experience.

110. The lack of well-educated procurement staff has led to a situation, where both the universities and the private sector training institutions have seen a potential market for short-term training and longer lasting education. At least seven new offers for different types of education in procurement have been introduced in the period since the new procurement act was introduced in February 2003 (short-term, diplomas, BA's).²¹ Many of these new courses seem more feigned, as the curricula often more or less are a

²¹ In total four new BA's have started/are close to start, three types of diplomas have been introduced and a 2 week's training course specifically on the new procurement Act has been developed.

compilation of already existing subjects in finance, IT, human resource and other related subjects, and unfortunately they all bear the stamp of the lack of professional lecturers/trainers.

111. There is a need to depart from the present sole use of short-term lecturers in favour of building up capacity of the existing fulltime lectures. As a consequence of the lack of professional lecturers at the universities and the low level of the curricula, the Netherlands Embassy has since October 2003 worked on developing a capacity building project for two of the universities (Kyambogo and Makerere University Business School), which will also include a twinning-element with one or more universities from the Netherlands.

4.3.10. Capacity Building at local government level

112. 219. The efforts for building capacity have mainly focussed on the central government, despite of the fact that the PPDA covers both central and local government. One of the main reasons for this is that the regulations for local government are not yet in place. They are, however, expected to be ready by May 2004.

113. The procurement capacity in the local government is indeed very diminutive and generally prone to political influence, which with the ongoing decentralisation calls for quick yet carefully planned capacity building interventions. The Ministry of Local Governments is aware of the urgency and the extensive need for public procurement capacity building for the local governments, and it has been decided that the Local Government Development Programme II (LGDP-2) will support the procurement reform by funding procurement officers to be employed in specific procurement units. In addition, LGDP-2 also budget for capacity building of all staff and politicians involved at the local levels.

114. In November 2003, the Ministry of Local Government and the PPDA agreed on how to cooperate with regards to capacity building at the local level, and it is important that the MoFPED being the line ministry for the entire procurement sector is also involved in this work. The current division of work implies that the responsibility for the capacity building (by use of external consultants) rests on the Ministry of Local Government, while the responsibility of the quality assurance rests on the PPDA. This agreement, which does not exist in writing, is in the spirit of the capacity building mandate provided to the PPDA in the PPDA. However, there are also certain risk elements, such as an activity falling between the two and discussions on responsibilities. It is therefore recommended that the PPDA and the Ministry of Local Government agree on a detailed action plan, which clearly defines the tasks ahead and the responsibilities of each party. The action plan should also make sure that regular progress meetings are held.

115. In the meantime, the Ministry of Local Government has started developing Training-of-Trainers courses, and it has been decided that the PPDA will provide quality assurance and monitor the training sessions to ensure that the procurement training provided to the local governments is in compliance with key procurement principles and the legal framework.

Recommendations Capacity Building at local government level

- *The PPDA and Ministry of Local Government should initiate study on need for procurement capacity building based on the local Regulations when available.*
- *PPDA and the Ministry of Local Government in collaboration with the MoFPED agree on a detailed action plan, which clearly defines the capacity building tasks ahead and the responsibilities of each party.*

4.4. Recommendations for Procurement Capacity

Short term recommendations

- *The PPDA should continue to upgrade the procurement professionals on relevant public sector aspects, including financial management principles*
- *The PPDA should address the general lack of the fundamental understanding of the key public procurement principles, including the ethical aspects of procurement.*
- *The capacity building initiatives should distinguish between the different types of PDEs*
- *The Inter-ministerial Professional Development Committee for Procurement should be activated.*
- *HR measures, including individual career development plans, performance measures, and training, etc. for the development of the PPDA staff should be introduced.*
- *PPDA should prepare a detailed implementation plan for the capacity building strategy*
- *PPDA should initiate accreditation system, linking this to capacity building and career development measures*
- *The Ministry of Public Service, the Ministry of Local Government and the MoFPED should urgently establish a formal employment category for procurement professionals at local government level*
- *The PPDA should ensure that the Ministry of Public Service, the Ministry of Local Government and the MoFPED develop of a selection and appointment framework for local government procurement professionals ensuring that the needed qualifications are obtained*

Medium term recommendations

- *The PPDA should develop a knowledge sharing policy and to ensure that knowledge-sharing activities take place within the PPDA and between the PPDA, the Entities and the providers.*
- *Career development and management programmes for the procurement cadre in government should be developed in cooperation between the MoFPED, the PPDA and the Ministry of Public Service, hereby ensuring that the required procurement knowledge is present in the PDEs.*
- *Knowledge management system should be introduced in the PPDA*
- *The PPDA should introduce methods for measuring the effect of the capacity building activities on the performance in the PDEs*
- *The establishment of a strong Procurement Professionals Association should be supported and particular attention should be paid to the institution of a sound*

ethical framework. This includes implementation of measures for self-regulation aimed at increasing the professional standards and integrity within the profession

- *The PPDA and Ministry of Local Government should initiate study on need for procurement capacity building based on the local Regulations when available.*
- *PPDA and the Ministry of Local Government in collaboration with the MoFPED should agree on a detailed action plan, which clearly defines the capacity building tasks ahead and the responsibilities of each party.*

5. PROCUREMENT OPERATIONS AND MARKET PLACE

5.1. Procurement Operations and Practices

116. Having visited a large number of procuring entities²² from both central and local levels, it becomes clear that Uganda is only in the very early stages of implementing the procurement reform. Even though both the Procurement Act and the Regulations are now in place and institutional reforms have been executed, the impact on the practices of the procuring entities is still to be seen.

117. The team found that although the entities at the central level were generally aware of the existence of the new Procurement Act, few knew of the Regulations, and very few appeared to be conversant with the actual contents and specific rules of the Regulations.

118. During each entity visit, the team went through the procurement cycle as carried out by that particular entity. In almost all instances the team found gross deviations from the procedures prescribed in the Regulations. Some of these practices would qualify as mis-procurement, neglecting key principles of sound procurement, but in many cases ad-hoc alternative procedures were used, reflecting lack of knowledge and incentive to follow proper procedures. The actual practices in key areas are described in the following section.

119. There are three main reasons for the weak compliance:

- 1) lack of knowledge of the legal framework, caused by poor dissemination of the Act and Regulations;
- 2) lack of capacity by the procuring entities to implement the very comprehensive Regulations; and
- 3) lack of incentives to follow proper procedures, caused by weak monitoring and enforcement.

5.1.1. *The Procurement Cycle*

120. The procurement cycle as described in the Regulations follow the generally accepted path from budgeting and planning, through advertisement, to award and implementation. However, looking at actual practises the average procurement cycle is marred by a number of issues described below.

121. In chronological order the issues appearing in the procurement cycle are the following:

1. Planning is not performed properly
2. Misuse of the decentralized registration system
3. Excessive use of restricted tendering
4. Excessive use of negotiations in open competitive bidding.

²² In January and March 2004 the team visited a total of 54 procuring entities to discuss their views on the procurement system and their current practices. The information gathered during the visits and an IPR carried out on 4 Bank financed projects form the basis of this section of the report.

5. Poor quality and consistency in filing and record keeping
6. Poor contract management

The IPR team also observed lack of procurement planning; poor record keeping and poor contract management. The sections below will elaborate on these issues.

5.1.2. Budgeting and procurement planning

122. The Regulations²³ specify a requirement for every procuring entity (user department) to prepare “a multi-annual rolling work-plan for procurement based on the approved budget”. Generally, the Regulations contain a comprehensive and complete list of the activities and content required for proper and timely procurement planning. However, the team only witnessed very few instances of this actually happening and then only in some of the ministries and parastatals with very large procurement budgets. The general impression was that procurements were launched either when funds were available or on an annual basis, regardless of how this corresponded with current needs.

123. The reasons for the lack of procurement planning must be found in 1) Lack of understanding of the value of proper planning and 2) Lack of emphasis on planning in enforcement of the rules. The first issue is rooted in the general low capacity²⁴ to apply the procurement rules. At most entities there is the annual entrenched process of budgeting involving all senior executives. This process needs to include procurement planning before the proper links between budgeting and procurement are made. This is not yet the case.

124. The consequences of this practice are 1) Procurement failing to timely meet the actual needs of user departments 2) Advantages of scale and bulk purchasing are not achieved 3) Packaging and timing are not utilized to achieve value for money

125. The Regulations require²⁵ that funds are available before procurement is initiated and that this is confirmed during the planning process. Even though the Regulations allow for procurement to be initiated when funds are “anticipated to be effected” this exception is not used in practice. As a consequence any procurement planning is stalled awaiting final approval of each year’s budget and when funds are released procurement is rushed, causing value for money to suffer.

Recommendations on budget and procurement planning:

- *PPDA to step up enforcement of procurement planning as required in the Regulation*
- *Procurement planning should be integrated in the budget process*
- *Procurement planning to have central placement in curriculum for future capacity building initiatives*

²³ Division II of the Procurement Regulations and specifically section 96.

²⁴ The team did meet a number of procurement professionals at entity level, trained in procurement procedures with an understanding of the need for proper planning and packaging. However, these professionals were clearly not “in the loop” at their workplaces and consequently their knowledge was not utilized.

²⁵ Procurement Regulations section 104 and 105.

5.1.3. Selection of procurement method

126. Available procurement methods are spelled out in the Act and Regulations,

Table 3: Selection of procurement method

Procurement Method	Characteristics	Threshold for application (Supplies)
Open domestic Bidding	Public advertisement of tender or prequalification notice in national paper.	UGX 70 million or USD 35.000
Open international bidding	Public advertisement of tender or prequalification notice in international paper.	UGX 70 million or USD 35.000
Restricted domestic or international bidding	Without advertisement. Bids invited from shortlist developed from entities registration list or otherwise approved by Contracts Committee	UGX 50 million or USD 25.000
Quotations and proposals	Without advertisement. A minimum of three bids from a shortlist and approved by Contracts Committee	UGX 30 million or USD 15.000
Micro procurement (single source procurement)	Direct procurement method without advertisement and without mandatory procurement records or any written documentation. Statistics reported to the Contracts Committee and PPDA	UGX 2 million (USD 1000)
Sole source procurement	In emergency situations and when only one supplier is available. Reported to the Contracts Committee	At the discretion of the procuring entity if conditions are met.

127. The thresholds for applying the different procurement methods are defined in guidelines²⁶ issued by the PPDA. The thresholds seem appropriate, or at least not too low²⁷. This was confirmed by both public entities and private bidders. With the thresholds defined in a guideline, the PPDA can easily update them when the need arises.

128. The team was able to identify a number of common methods used by procuring entities to circumvent the rules on proper selection of procurement method, such as splitting of tenders and use of micro procurement. Micro procurement can be utilised for all procurement with a value below UGX 2,000,000 equalling approximately USD

²⁶ The current one being Guideline 1/2003 of 16 July 2003 on “Thresholds for Procurement Methods”.

²⁷ One could consider whether a threshold of UGX 70,000,000 or USD 35,000 for open bidding and UGX 2,000,000 or USD 1000 in supplies procurement is not on the high side in the Ugandan context. This is, in the opinion of the team, not the case for central government, but it certainly will be for local government.

1,000. The team received widespread reports of procurement packages being split up to facilitate the use of micro procurement in direct contradiction with the rules preventing this. Using the micro procurement method, the procuring entity may forego competition and is not obliged to maintain any written records other than the fact that the procurement took place, and the size. This makes it very difficult for any audit measures to have any impact. The Regulations provides a check on the use of this method by forcing the entities to submit a report to the PPDA on the use of micro procurement²⁸. The team did not hear of any such reports being submitted.

129. The Restricted Bidding method is without doubt the most commonly used procurement method in Uganda. This method can be used for any procurement with a value below USD 35,000 (Supplies)²⁹. The method implies the use of a shortlist to be compiled by the procuring entity. The team witnessed a gross lack of transparency in the way these shortlists were applied. It could be considered as an interim measure to lower the thresholds for use of the restricted methods until compliance with the Regulations and any forthcoming guidelines is acceptable. The use of the shortlists is discussed in the section on bidders' eligibility below.

Recommendations on selection of procurement method:

- *The adequate provisions of the Act and the Regulations for choice of procurement method should be enforced through procurement audits.*
- *The excessive use of restricted bidding methods should be reduced by narrowing down the situations where restricted methods are allowed.*
- *The mandatory submittal of reports to the PPDA on choice of procurement method applied should be enforced*

5.1.4. Publication of tenders

130. The Regulations calls for all tenders to be made available to the public through posting on a notice board and through advertisement in “at least one newspaper” of wide circulation.³⁰ It is the impression of the team that this requirement is generally adhered to.³¹ The private sector interviews did also confirm that, when the open tender methods are used, advertisement is adequate and generally available.

131. Uganda does not have a dedicated procurement gazette or similar publicly owned and maintained instrument of making procurement notices available. However, with the system of advertisement in the newspapers functioning so well, the country does not seem to need one. Some entities, but not all, did perceive the existence of a procurement gazette, as a means of reducing their costs for advertising, but advertisement costs were not generally seen as excessive by the entities.

²⁸ According to section 118(9) of the Regulations, the PPDA would be allowed to monitor the use of micro procurement and take appropriate action if these reports were submitted.

²⁹ The additional thresholds are USD 50,000 (Works), USD 25,000 (Services). The PPDA, Art. 82 requires that “the circumstances do not justify or permit the open bidding procedure”. By allowing free access to restricted bidding for all procurement below certain thresholds, the Regulations seem to have stretched the mandate of the Act to its limits.

³⁰ The Procurement Regulations section 140.2.

³¹ Notices usually published in either “The Nation” or “The Monitor” and in some instances in the “East African Procurement News” based in Kenya.

132.

133. Even though this is a requirement in the Regulations, the PPDA has yet to maintain an updated list of all bidding opportunities on its web-site.³² This would address the issues high advertisement cost, which the team found in some instances had actually been the only reason why an open tender method was not applied.

134. Real progress in improving the overall transparency of the public procurement process in Uganda lies not in systems of publication, but in increasing the volume of procurement carried out through open tenders, and through proper application and enforcement of the rules of procurement methods.

Recommendation on publication of tenders:

- *The PPDA should make all advertised procurement opportunities available on its web-site as required by the Regulations*

5.1.5. Eligibility of bidders – application of qualification lists

135. The Regulations have a provision³³ for the use of the so-called prequalification lists or “registration lists” as they are commonly described, to minimize the cost and time of pre-qualifying for each procurement. Most procurement entities on the central level have chosen to apply such lists where bidders are pre-qualified annually and included on lists together with other suppliers of that particular group of supplies/services/works.

136. Since restricted bidding based on shortlists developed from the registration lists is the preferred procurement method, it is a general rule that a supplier must be on a list to do business with the public.³⁴ The team has identified a number of issues concerning the use of these registration lists:

Tendering of the lists

137. The lists are tendered and advertised annually. The criteria for inclusion on the lists are usually generic criteria such as “Financial standing”. It is rarely that the criteria are actually adapted to the specific needs of the procuring entity and the nature of the supplies/services required.

Verifying information

138. The information contained in the applications received from potential bidders is rarely verified. This is in part caused by lack of resources at the entity, but blame is also put on the Company Register for not providing timely information regarding tax-registration, ownership and other relevant information.³⁵ . Reports were abundant of registration lists consisting almost solely of companies owned by the same person or

³² A general assessment of the quality and potential of the PPDA web-site is found in the e-procurement section of this report.

³³ The Regulations section 126.

³⁴ The team met with private companies forced to maintain and resubmit requests for inclusion on registration lists at over 40 different entities.

³⁵ Having visited the Company Registrar it was clear that they were presently not able to supply the information required by the procuring entities to verify information. The performance of the Company Registrar is assessed in the Anti-Corruption section of this report.

group of persons. With proper access to information action could have been taken in such cases.

Selecting candidates for short lists

139. Perhaps the most worrying practice surrounding the registration lists is the way in which potential bidders are picked from the list. The Regulations require the bidders to be “rotated” on the shortlists, but the team found evidence that the rotation was flawed. In no circumstances did the team find the necessary and required public disclosure of a rotation system

140. The perception of the private sector is that the decentralization has fostered these lists which are 1) administered unevenly and in contradiction with the principles of transparency and equality and 2) costly, as quite substantial fees are required to maintain the companies’ position on those lists.

141. The Regulations require the PPDA to establish and maintain a central “Register of Providers”, where each registered provider shall be classified by

1. Physical and financial capacity
2. Core operational area
3. Performance track record
4. Certificates of compliance with quality standards etc.
5. Ownership or control

This register has not been established, even though this would certainly address some of the grievances expressed over the present system of decentralized registration lists. The register should however, not be mandatory to use, but only seen as a service to the entities, justifying a much more limited policy towards the registration lists maintained by the entities themselves.

142. Relevant experiences from other countries on the use of registration lists include: Tanzania, where independent bodies, such as the Contractors Registration Board, are maintaining a system of centralized registration lists. For domestic tendering a bidder must be registered to bid and in international tenders a bidders must be registered to be awarded a contract. In restricted tendering entities are not allowed to limit their invitations to bid, to only include suppliers registered by that entity itself. EU-countries, where procuring entities, under the EU-procurement Directives, are not allowed to build and maintain their own qualification lists, unless these are tendered separately in the form of actual framework agreements.

143. In lack of the Register of Providers, procuring entities turning to the PPDA for guidance are presently encouraged by the PPDA to apply the registration lists maintained by the Ministry of Works or Ministry of Education. Thus, it seems quite arbitrarily to the team whether the entity’s own list or lists from the PPDA are applied. This all adds to the general perception of lack of transparency and opportunity for corruption that surrounds the current use of the registration lists.

144. A number of registration boards are functional as means of registering members of professional cadres.³⁶ Uganda does not at the moment have any national systems of registering and evaluating the capacity of its suppliers and contractors.³⁷

145. Actual prequalification on a case-by-case basis is prescribed in the Regulations, but is only very rarely seen in the procurement environment in Uganda. Even though this method of asserting eligibility is quite costly and time consuming, it is the opinion of the team that this is the best way forward when dealing with complex procurement and that it is too rarely applied by the procuring entities.

Recommendations on registration lists:

- *The PPDA should issue guidelines on the proper application of the registration lists, in particular concerning compilation of shortlists from the registration lists*
- *When bidders in restricted procedures are picked from registrations lists, all suppliers on the list should be allowed to bid.*
- *The PPDA should establish the Register of Providers, as allowed in the Regulations, to provide a non-mandatory central database of suppliers and prices.*

5.1.6. Use of Standard bidding documents

146. Even though the PPDA has released quite extensive standard bidding documents³⁸, the team found that very few procuring entities were applying them. The procuring entities are required by the Regulations³⁹ to use the bidding documents approved and issued by the PPDA. However, the entities can “customize” the documents to suit their specific needs. Such customization must be approved by the relevant contracts committee and if it concerns the fundamentals of the document also by the PPDA. In practice only few of the entities visited by the team did apply the documents issued by the PPDA. The majority applied variations of donor documents, mostly World Bank standards, but some were also applying standards of their own.

147. The team has reviewed the standard documents issued⁴⁰ by the PPDA and found them to be of acceptable standard, though they appear to be quite generic and not tailor-made to the Ugandan context. Standard terms of contract are contained in the documents issued by the PPDA. They follow the principles laid out in the Regulations, which defines a number of eligible types of contracts, and are generally in compliance with international standards.

³⁶ Such as the Engineers Registration Board and the Architects Registration Board.

³⁷ Many countries in the region require bidders for works to be registered with a Contractors Registration Board or similar, where their technical capacity is monitored.

³⁸ See the list of available documents in the Legal Framework chapter of this report

³⁹ Regulations section 127.

⁴⁰ There is some confusion as to whether the currently issued standard bidding documents are drafts or final documents as the PPDA seem to allow draft documents to be circulated and applied by procuring entities. The mission was informed by the PPDA that the documents listed here were final.

Recommendation on standard bidding documents:

- *The PPDA should enforce use of its own standard bidding documents, through the mandatory requirement for use of these documents and approval of any deviations*

5.1.7. Bid submission, opening, and evaluation

148. Bids in open procedures are submitted in tender boxes and opened publicly at the end of the tender period or delivered personally to the procuring entity. The entities are free to choose the most convenient method. The majority of tenders are delivered in person. There are some indications that information is leaking from the procuring entities to selected bidders in contradiction to the principle of equality, but this is not generally regarded as a problem.

149. The procedures surrounding the actual process of receiving and handling the bids seem to be carried out in an acceptable manner. The Regulations⁴¹ specify a minimum time allowed for submittal of bids of 22 working days (open domestic bidding), which appears sufficient. The Regulations do not list eligible award criteria, but only stress the importance of criteria being listed in the bidding documents, and applied without additions or changes, and in the priority as stated in the bidding document.

150. However, impression by the team was that the procuring entities in general are not applying either to general criteria, or applying criteria not mentioned in the bidding documents. Both situations lead to a need for negotiations, decreasing transparency and make the award process vulnerable to undue manipulation. This situation is caused by poor knowledge of the importance of well adapted award criteria and probably by the conditional access to negotiations allowed by the Regulations.

151. The issues of the merit point system and access to domestic preference, both allowed by the Regulations, are dealt with in the Legal Framework section of this report.

Recommendations on bid submission, opening, and evaluation:

- *use of proper award criteria should be enforced through audits*

5.1.8. Negotiations and award

152. The Regulations allow the use of pre-contract negotiations in a number of instances⁴². It was the experience of the team that negotiations are common in the award process and that this is considered as natural by the procuring entities. Negotiations are more the rule, than the exception, even in open competitive bidding. The issue of the Regulations allowing access to negotiations is dealt with in the Legal Framework section of this report.

⁴¹ Regulations section 145.

⁴² According to Regulations section 219 and section 220.

153. The Attorney General must approve all contracts, with a value above Ushs 50 million., before they are signed by the government.⁴³ With a staff of about 22 lawyers dedicated for procurement approvals, the Attorney General approves approximately 30 contracts per week. According to the Attorney Generals office, the average time needed for approval varies between two days to one week. The perception of the procuring entities is that the time needed for approval is somewhat longer, but it doesn't appear that the approval system acts as a bottleneck. In a number of the larger ministries the Attorney General have officers posted at the local contracts committees, which appear to be a well functioning system.

Recommendation on negotiations and award:

Access to negotiations should be restricted for goods and works contracts which are awarded on the basis of open competition.

5.1.9. Records and Filing

154. The Records and Archive Act (2001) requires all public entities to observe proper filing. The Act has not yet been fully implemented. In addition the Procurement Regulations have very detailed instructions on the contents of a proper “procurement file”. The team found two issues in filing: 1) Missing or incomplete files, caused by carelessness or apparent malpractices and 2) Faulty filing systems, where documents are grouped with similar documents⁴⁴ instead of in one complete file. Such lack of proper filing has also been recorded in every audit report on procurement in Uganda.⁴⁵ Notably, the purpose of the procurement file is to serve as the basis for any audit and enforcement effort. To look at it another way; to allow filing to be incomplete or missing is to give room for corruption to spread.

155. But the “procurement file” will not only improve the audit procedures, it will also provide the PPDA with the statistics necessary for it to perform its role as a monitoring and policymaking body. Even though the procurement audits will provide some insight in the actual practices, any major policy decisions should be made based on solid statistical information. Without proper filing and timely submittal of the required information, the PPDA will be “left in the dark” as to what requirements and obstacles the procuring entities are facing. Thus, the recommendation in this area should be considered of highest priority and the full resources of the PPDA should be directed to this issue.

Recommendations on records and filing:

- *The records and Archive Act should be fully implemented*
- *The PPDA should monitor and enforce the proper use of the “procurement file” through its procurement audits*

⁴³ By the powers given the Attorney General in the Constitution.

⁴⁴ For example it is quite common for all advertisements or all bids received in a year to be filed together without reference to the rest of the procurement file.

⁴⁵ In some of the latest draft audit reports seen by the team, missing or incomplete files were an issue in more than 80% of the cases audited.

5.1.10. Payments and Contract Management

156. Even though many public entities report payments are on time, the picture given from the private sector is one of month-long delays. The reason for these delays lies within the current budget system of Uganda and poor contract management by the procuring entities. Issues of budget and untimely release of funds are discussed in the CFAA.

157. The Regulations⁴⁶ contain comprehensive provisions covering contract management and transfer of responsibility from the contract committee to the user departments for proper contract management. Even though the Regulations are comprehensive and in line with generally accepted practises, the actual performance of the procuring entities leaves a lot to be desired.

158. The perception of the private sector, a perception confirmed by some of the meetings of the team, is that contract management is poor, leading to the public losing money. This is also confirmed by the audits performed by the Auditor General. The reasons for this are 1) Poor specifications leading to excessive need for variations 2) Lack of knowledge of simple contract law and standard terms of contract 3) Lack of qualified professionals to perform quality assurance

Recommendations on payment and contract management:

- *The procuring entities should strengthen their focus on contract management capacity and increase the resources allocated to contract management.*

5.1.11. Enforcing procurement rules

159. It should be evident from the description of the practises experienced by the team described above that the single most important factor that would improve the procurement environment of Uganda is the establishment of effective enforcement measures. Without effective enforcement mis-procurement is rampant, and the risk of detection is minimal.

160. With the enactment of the Procurement Act, the responsibility for enforcing procurement rules lies with the PPDA. A number of other authorities, such as the Auditor General and the IGG are by the nature of their responsibilities involved in enforcing proper procurement⁴⁷. However, the PPDA is the only authority specifically tasked with enforcement of procurement rules.

161. Even though the PPDA is required by the Act to monitor procurement compliance and carry out procurement audits, it has only carried out 2 audits of which none has yet been released to the public. The number of random inspections is at a minimum, and the PPDA are presently acting only on the few complaints received. Both the Auditor General and the IGG handle complaints involving procurement issues, but neither of these authorities are able or supposed to perform actual audits of the correct application of procurement procedures. An assessment of the effectiveness of the audit

⁴⁶ The Regulations division IV.

⁴⁷ See the Anti-Corruption section of this report for an analysis of the interaction between these authorities in performing audits.

measures by both the PPDA and the Auditor General can be found in Section 6 (Anti-Corruption) of this report.

162. The current situation as to the ability of the PPDA to enforce the rules can be illustrated by the following examples:

1) The Uganda Wildlife Authority had publicly denounced the PPDA and declared that it would not comply with the provisions of the Procurement Act before they were given assurances that its board could participate in the procurement process.⁴⁸

2) At the time of the CPAR, the Ministry of Defence and the UPDF had yet to form the contracts committees required by the Procurement Act. In addition the Ministry of Defence has assumed the full responsibility of deciding the division between classified and other procurements, even though this should be a joint responsibility of the PPDA and the Ministry.

163. The team did learn that the PPDA in a number of high-value procurement cases had been issuing waivers to allow deviation from the Act and Regulations. However, the team was unable to produce any statistics on the scale of this practice. To increase transparency and strengthen the public's perception of equal justice for all, the PPDA should make any such cases public.

Recommendations for enforcing procurement rules

- *PPDA should increase its audit initiatives to meet the requirements of the Procurement Act of effective and credible audit measures*
- *PPDA should make the mandatory list and statistics concerning waivers and reasons for their use public.*

5.1.12. Information Management

164. According to the Act, one of the functions of the PPDA is to “monitor and report” on the public procurement systems of Uganda. The Regulations contain a number of instances where forms, reports and notifications must be submitted to the PPDA, as listed in the Regulations⁴⁹, such as:

- a monthly report on all procurement, containing all relevant data on procurement method, size etc.
- a monthly report on the use of the micro procurement method
- any changes in membership of contracts committees

165. The principle of the Regulations is to provide the PPDA with as much information as possible, but only establishing a requirement for prior acceptance in very few cases, such as approval of deviating standard documents or approval (waivers) of any deviating procurement methods. This is to prevent the PPDA becoming a bottleneck

⁴⁸ As expressed in a letter of February 2004 from the UWA to the Ministry of Tourism, where the UWA points to the different role of a Board of Directors in a parastatal or authority versus the Board of trustees in a statutory body such as UWA.

⁴⁹ As listed in schedule 5 of the Regulations

for approval, and to prevent the PPDA assuming a role like the one held by the old Central Tender Board before procurement was decentralized.

166. The very high volume of information flowing into the PPDA, combined with the demand for the PPDA to proactively review the incoming information and act accordingly, puts quite high demands on the organisation and resources of the PPDA, a demand, which the PPDA is presently not able to meet. The PPDA is yet to play its full role in the decentralized procurement environment.

Recommendations on information management:

- *The PPDA should step up enforcement of the mandatory flows of information mentioned in the Regulations*
- *The PPDA should strengthen its capacity to receive, organise and analyze incoming information from the procuring entities.*

5.1.13. Procurement practices at local government level

167. The procurement practices at local level do indeed reflect the shortcomings of the legal framework, the absence of credible enforcement and a massive need for capacity building. The team witnessed instances of ad hoc procedures, lack of advertisements, non-publicised award criteria and more.

168. State Attorneys from the Ministry of Justice are posted at each district tender board to supervise contracts. A similar or combined effort could be made by the PPDA to have a presence at the local level. This would certainly be a very important step in the effective enforcement of the local Regulations, when they are available.

5.2. Recommendations for Procurement Operations

Short-term recommendations

- *PPDA should step up enforcement of procurement planning as required in the Regulations*
- *Procurement planning should be integrated in the budget process*
- *Procurement planning to have central placement in curriculum for future capacity building initiatives*
- *The adequate provisions of the Act and the Regulations for choice of procurement method should be enforced through procurement audits.*
- *The excessive use of restricted bidding methods should be reduced by narrowing down the situations where restricted methods are allowed.*
- *The mandatory submittal of reports to the PPDA on choice of procurement method applied should be enforced*
- *The PPDA should make all advertised procurement opportunities available on its web-site as required by the Regulations*
- *The PPDA should issue guidelines on the proper application of the registration lists, in particular concerning compilation of shortlists from the registration lists*

- *When bidders in restricted procedures are picked from registrations lists, all suppliers on the list should be allowed to bid.*
- *The PPDA should establish the Register of Providers, as allowed in the Regulations, to provide a non-mandatory central database of suppliers and prices.*
- *The PPDA should enforce use of its own standard bidding documents, through the mandatory requirement for use of these documents and approval of any deviations*
- *use of proper award criteria should be enforced through audits*
- *access to negotiations in the Regulations should be reduced.*
- *Access to negotiations should be restricted for goods and works contracts subject to open competition*
- *The records and Archive Act should be fully implemented*
- *The PPDA should monitor and enforce the proper use of the “procurement file” through its procurement audits*
- *The procuring entities should strengthen their focus on contract management capacity and increase the resources allocated to contract management.*
- *PPDA should increase its audit initiatives to meet the requirements of the Procurement Act of effective and credible audit measures*
- *PPDA should make the mandatory list and statistics concerning waivers and reasons for their use public.*
- *The PPDA should step up enforcement of the mandatory flows of information mentioned in the Regulations*
- *The PPDA should strengthen its capacity to receive, organise and analyze incoming information from the procuring entities.*

5.3. The Market Place

5.3.1. *The Market Place and Procurement - Introduction*

169. The market place in the form of trade practices and commercial practices are important in relation to procurement for three reasons:

- Firstly the public sector needs efficient suppliers and an enabling environment and open competition for and in the private sector therefore becomes essential both in terms of obtaining good quality and a competitive price.
- Secondly the public sector needs a competent counterpart in terms of innovating products and solutions but also in terms of a competent controlling counterpart to enhance accountability and improving public procurement practices.
- Thirdly there is a need for efficient international suppliers and supplies, not only in terms of goods the public sector procures internationally, but also in terms of supplies for the private sector Uganda for it to produce efficiently and at

competitive prices. Efficient and non-corrupt trade practices and imports and exports of goods is a precondition for this.

170. Public procurement can be a significant driver for private sector development but only if the procuring entities focus on price/quality competition. Private sector development is driven by competition, not by preferences.

5.3.2. Issues addressed since the 2001 CPAR

171. The major issue raised in the 2001 CPAR was the lack of efficiency of the pre-shipment inspection. Since 2001, however, little effort was made in to address this issue, and pre-shipment inspection has since been abandoned. This makes sense, as the recent development of technology (the capacity to open most containers without leaving traces) leaves the efficiency of pre-shipment inspection in question. This is especially the case if an efficient system is not already in place. Focus should instead be given to the improvements and development of the destination inspection as specified below.

172. In connection with pre-shipment inspection the issue of quality control of imports was raised. This is still an issue and is an issue to be dealt with primarily by Uganda National Bureau of Standards (UNBS). UNBS has taken steps but is a young organisation with some way to go.

173. Procurement in the private sector was in the 2001 CPAR in general said to be inefficient and uneconomic. This is still so, but the problem for a majority of Ugandan Small and Medium Sized Companies (SMEs) has deeper roots. There is a need for training and development of procurement in SMEs, but this will have to build upon a basic development of financial and book keeping skills as well as development of good business practices.

174. Finally, the 2001 CPAR recommended reviewing bank charges for Letters of Credit especially in World Bank financed projects. The team has not established if this was carried out. However, the rates reviewed by the team do not seem unreasonable in comparison with other countries. Rather it is a question of developing basic skills with importers to oversee and handle the financial transactions involved.

175.

5.3.3. General Trade Policies and Conditions

176. The Ugandan economy is fully liberalised comprising major trade agreements with the East African Union, the EU and the US. Trade agreements are also in place with Asian markets. Import licences are only required on goods deemed to be sensitive for health or security reasons. In cases where licenses are required, however, the set-up is weak in terms of procedures being comprehensive due to the requirement to obtain certifications not from one, but from a number of different institutions. Export permits are only required for goods that are monitored for environmental conservation or national heritage. All imports are subject to a 17% Value Added Tax. Apart from this a three-tier structure applies for tariff rates on import duties.

177.

5.3.4. Trade Practices, Customs, Imports and Exports

178. Revenue collection in customs and in general in the URA has improved and customs have exceeded the set target last year. This is a good indicator of increasing efficiency in customs operations. However, extensive smuggling, false labelling and

under and over invoicing is reported from both customs and the business community. On the side of importers and industry delays and inefficiencies in import procedures are reported, including loss of bonds in connection with transit. In a 2003 survey of administrative barriers to investment in Uganda customs are in top five. Facility payment (bribe) of customs that takes place in the private sector suggests that it is widespread. The facility payment of customs is supplemented by a practice among some forwarding and clearing agents to inform importers that facility payments are necessary where in fact they are not. Receipts are of course not issued for facility payments and the importer therefore has no means of controlling the use of the funds.

179. The key issues concerning trade practices are:

- valuation of goods
- lack of capacity, ethics and knowledge within the private sector
- The need for a revision of the Customs Act of 1971.

180. URA is using the GATT valuation procedures, but at present customs *valuation of goods* is based on unsophisticated data and the personal experience of individual customs officers. As a result, valuation is generally inconsistent and lacks objective arguments. Importers experiences large differences in the valuation of the same goods. Furthermore, there is no sharing of data among individual ports of entry, which lead to different valuation of the same goods at different ports. Experienced importers put substantial resources into knowing which port have the lowest valuation of a given commodity at a given time. The inconsistent valuation provides room for negotiation between importers and clearing agents on the valuation causing, in turn, delays and a creating a high risk of corruption as well as causing delays and inefficiency in economic transactions. The URA has set up a research unit which is expected to draw up “Reference values” for commonly imported items whose price should form the standards for valuation. The expectation from URA is that the acceptable valuations from various entry ports should not vary very much from these reference values.

181. In general, further computerisation of customs procedures (including full implementation of ASYCUDA++) is essential and a major tool to achieve increased efficiency, to counteract such issues as delay in the return or loss of bonds in connection with transit, and to reduce corruption. ASYCUDA++ comprises a functionality, which allows importers to lodge data into the system themselves and retrieve an overview of the expected valuation of their goods. This allows for alignment of expectations between importers and customs.

182. Full implementation of ASYCUDA++ also include a selectivity module where imports depending on an assessment of importers, agents and the type of goods will pass through the green, blue, yellow or red line with increasing demands for documentation and inspection from to green to red. Implementation of the selectivity module will increase speed and efficiency in imports. Implementation of ASYCUDA++ has been in a pilot phase in the last four months. This involves the station based in Nakawa in Kampala. Full implementation of ASYCUDA ++ within the Kampala Region is expected to take place by Mid-May 2004. The exercise is expected to move to the Eastern Uganda Border (Malaba and Busia) by September 2004. It is targeted that the whole country is expected to be covered by end of 2006.

183. A single issue arises concerning exports. Irregularities in exports years back caused a demand for all exports to be inspected. This delays verification as well as causing customs to use resources that are much needed elsewhere.

184. The Customs Act of 1971 is outdated, flaws are numerous and a revision is urgently needed. Among other things, the Act hinders efficient sanctions against fraud and corruption. For example, according to the Act agents and importers are jointly responsible for irregularities. Also, the punishment for misdemeanours is too severe on customs officers, which tend to prevent sanctions being imposed for irregularities.

Recommendations on Customs

- *The URA's research unit should move as quickly as possible and implementation of reference values should take place as soon as possible. Sharing of data among ports of entry should be established as soon as possible, consistence in valuation of the same goods is a minimum requirement*
- *Customs should be equipped with access to an international price database or the instalment of price-robot software.*
- *A group of customs officers specialised in valuation and classification should be established and trained to enhance capacity in this field as the personnel trained today is not no sufficient to meets demands.*
- *Full implementation of ASYCUDA++ should move forward quickly, including access for importers to lodge data into ASYCUDA++ prior to entry and the blue, green, yellow, red line classification*
- *Introduce green, blue, yellow, red classification of exporters*
- *Revise the Customs Act of 1971 and bring it up to the required modern standards*

5.3.5. The clearing and forwarding profession

185. The professional level of forwarding and clearing agents is very low (except for the major companies) both in terms of knowledge on rules, procedures and tariffs and in terms of ethics. Likewise, importers' knowledge of rules, procedures and tariffs is insufficient, and poor general financial management practices hinder the deliverance of correct documentation to customs in the valuation process or in the process of claiming Duty Draw Back. The consequences are delays, under- and over-invoicing, bribes being offered to customs officers, and irregularities in the relationship between agents and importers.

186. Another consequence of importers limited professional skills is that they are not likely to go to any lengths to obtain useful information or rather that the reflection on what information is necessary and useful or the search for this is not systematic. Essential available information as the Finance Bill with tariffs and exemptions for specific goods, set tariffs for services of clearing agents and compulsory standards find very little use among other than the largest importers. Consequences are mishaps as importers importing goods and only to discover out that they do not comply with compulsory standards. As the implementation of the EAC customs union move forward with the necessary revisions of procedures and tariffs this becomes an even more pressing issue to address.

Recommendations on clearing and forwarding

- *An education program for forwarding and clearing agents should be established. The program should teach the basic principles and ethics of customs forwarding, clearance, valuation and tariffs as well as the specific step by step process in Uganda in all three matters. The program should be developed in collaboration between universities, URA customs and the Association of Forwarding and Clearing Agents. It is essential that URA customs and the Association of Forwarding and Clearing Agents find the content relevant and directly applicable in practice*
- *Also, a certification system for clearing agents based on the qualifications acquired in the education program should be developed, including measures for loss of certification in case of misconduct*
- *Courses for importers should be developed pertaining to principles, procedures and rules in relation to imports focusing especially on the proper documentation to obtain and maintain on the imported goods*
- *Awareness must be raised regarding possible sources of information for importers and clearing agents, e.g. the Finance Bill, tariffs for services of clearing agents, compulsory standards for imported goods – and development and implementation of a short and long term communication strategy targeted at smaller importers taking their present professional level into account is a key issue*
- *In short term perspective, the Finance Bill should be made available for importers and clearing agents (as a minimum on the MFA website) and existing tariffs for the services of clearing agents should be publicised targeted at importers*

5.3.6. Practices concerning government taxation of imports

187. An issue raised by some of the major clearing agents refers to the requirement that Government is subject to taxation on its imports, whereas this requirement is not respected in practice. Goods are released by customs, after which the clearing agents cannot obtain release of their bonds before taxes are paid. This often takes years, and practice should be put in line with the formal rules.

Recommendation on government taxation of imports

- *Practice concerning Government tax payment on imports should immediately be put in line with the formal rules.*

5.3.7. Commercial Practices and Framework for the Private Sector

188. Uganda's status as a liberal economy can be seen clearly in table 4 below. The private sector accounts for more than 80 percent of GDP with agriculture accounting for about 50 percent of the private sector.

Table 4: Real GDP at factor cost at constant (1997/1998) prices: (million shillings and percentages contribution) 1997/1998-2001/2002

Sector	1997/98	1998/99	1999/00	2000/01	2001/02
Agriculture	2,899,395 42.2%	3,068,757 41.7%	3,240,537 41.8%	3,389,548 41.2%	3,551,047 40.9%
Mining & quarrying	44,798 0.7%	47,424 0.6%	49,697 0.6%	52,629 0.6%	56,714 0.7%
Manufacturing	626,861 9.1%	712,550 9.7%	737,418 9.7%	802,759 9.8%	843,003 9.7%
Electricity & water	99,565 1.4%	105,510 1.4%	114,655 1.5%	125,349 1.5%	133,429 1.5%
Construction	504,973 7.4%	549,794 7.5%	557,956 7.2%	573,822 7.0%	609,623 7.0%
Wholesale & retail trade, hotels and restaurants	832,281 12.1%	906,243 12.3%	928,170 12.0%	986,009 12.0%	1,040,498 12.0%
Transport & communications	300,000 4.4%	320,985 4.4%	344,639 4.4%	372,933 4.5%	410,044 4.7%
Community services	1,044,940 15.2%	1,087,527 14.8%	1,192,314 15.4%	1,289,530 15.7%	1,368,363 15.8%
Rent & Owner-occupied dwellings	515,363 7.5%	552,823 7.5%	588,005 7.6%	625,023 7.6%	662,956 7.6%
Total GDP	6,868,176 100.0%	7,351,612 100.0%	7,753,391 100.0%	8,217,603 100.0%	8,675,677 100.0%

Source: Uganda Bureau of Statistics

189. Major exports are coffee, fish and gold. Especially fish exports have experienced significant growth in the new millennium. Table 5 shows the export development.

Table 5: Export by value ('000 US\$, 1994-2002)

Exports by value ('000 US\$), 1994-2002						
Commodity	1994	1997	1998	2000	2001	2002
<i>Coffee</i>	343,289	309,362	295,666	125,316	97,652	96,626
Cotton	3,485	29,197	7,691	22,088	13,434	9,520
Tea	0	30,483	28,181	37,050	30,031	31,293
Tobacco	6,608	12,576	22,332	26,889	32,096	44,635
<i>NON-TRADITIONAL EXPORTS</i>						
Maize	28,671	15,063	9,359	2,437	18,339	3,865
Beans and other legumes	13,238	11,875	6,451	4,454	2,354	2,080
Fish and Fish products	12,011	27,864	39,879	30,818	78,150	87,944
Cattle hides	10,895	10,020	6,088	12,893	25,532	9,810
Sesame seeds	1,549	1,448	11	747	796	510
Soya beans	2,056	236	40	12	91	74
Soap	1,740	2,273	1,717	1,639	2,700	3,298
Electric Current	2,245	11,688	11,741	18,634	10,554	15,645
Cocoa beans	586	1,300	1,429	1,191	1,921	2,023
Cobalt	0		0	10,963	12,656	7,032
Hoes and hand tools	1,019	262	247	334	359	88
Pepper	448	81	117	354	397	111
Vanilla	674	4	1,260	781	2,417	6,897
Live animals	150	30	75	21	199	80
Fruits	283	314	386	733	68	670
Groundnuts	365	21	118	14	26	75
Bananas	1,529	52	257	983	672	225
Roses and Cut flowers	768	3,592	7,502	9,912	14,750	17,827
Ginger	132	23	21	77	26	462
Gold and gold compounds	224	80,615	19,493	43,285	49,293	59,370
Other Precious Compounds		n.a.	0	0	48	0
Other products	28,165	46,249	76,673	41,336	44,952	31,675
Petroleum products			0	8,684	12,252	2
Traditional export	353,382	381,618	353,870	211,343	173,213	182,074
Non-traditional exports	106,748	213,010	182,877	190,302	278,552	249,765
TOTAL	460,130	594,628	536,747	401,645	451,765	431,839

Source: Uganda Bureau of Statistics

190. The Top 10 imports in 2002 are presented below.

Table 6: 10 major imports by value: SITC grouping ('000 US\$), 2002

Imports by value: SITC Grouping (000 US\$ 1994-2002)		
SITC	Label	2002
33	Petroleum, petroleum products and related material	173,791
78	Road vehicles (including air-cushion vehicles)	105,074
4	Cereals and cereal preparation	73,039
67	Iron & Steel	55,448
66	Non-metallic mineral manufactures, nes,	40,970
77	Electrical machinery, apparatus and appliances, nes	40,337
76	Telecommunications and sound recording/reproducing apparatus etc.	39,512
72	Machinery specialized for particular industries	36,704
89	Miscellaneous manufactured articles, nes	36,494
64	Paper, paperboard and articles of paper pulp, paper and paperboard	33,419

Source: Uganda Bureau of Statistics

191. Liberalisation prevails in Uganda, but the private sector is still young and the enabling institutional framework is not yet fully in place. The costs of doing business are high due to, among other reasons, general security issues and Uganda's land locked geographical location, which results in higher fuel prices and ineffective infrastructure.

192. Also, the formation of cartels among companies is widespread, and the Ugandan market lacks transparency leading to limited price levelling. Cartel formation is not illegal as the Competition Bill of 2002 is not yet enacted by Parliament. For the same reason no competition authorities are in place. The proposed and ready to be passed bill provides for the establishment of the Competition Commission of Uganda.

193. Other institutions that ensure an efficient regulatory framework for the private sector have been established successfully. These are the Commercial Court, the Centre for Dispute Resolution and the Tax Appeals Tribunal. The private sector perceives these institutions as a major positive contribution to the conditions of doing business. However, for the time being all the institutions primarily operate in the Kampala area and the private sector encourage that their outreach be expanded to cover the entire country.

194. Operations at the Registrar of Companies are irregular, and information is generally unreliable if not incomplete with files on companies missing. Also, accessing data remains difficult since the entire filing system is paper based. This would be less of a problem. If all files were maintained in order. The unreliability of the Registrar of Companies is unfortunate as investors and joint venture partners need an independent place to check the solidity of other companies before venturing into economic relations. Notably, the Registrar of Companies is on the top five list of administrative barriers to investment in Uganda according to a survey among private enterprises in Uganda carried out in 2003.

Recommendations for the Ugandan competition framework

- *Parliament should approve the Competition Act without further delay and measures for implementation should be instituted*
- *A competition authority/ body aimed at overseeing the development of a competitive market in Uganda should be established*
- *In the short term, the competence to enforce competition and counteract cartel formation needs to be developed in an existing body*
- *The Registrar of Companies need to develop into an entity, whose information is credible*
- *Institutions in place such as the Commercial Court, the Centre for Dispute Resolution and the Tax Appeals Tribunal should be given nationwide outreach*

5.3.8. *Private sector capacity for participating in public procurement*

195. Many smaller businesses lack basic business skills and there is a strong need to build capacity. Focus should remain on ensuring that the private sector is capable of participating efficiently in public tenders and thus become suppliers of works, goods and services. The need for capacity building includes: training/information on good business practices; financial management including accountancy practices; quality control and adhering to standards; and procurement - most urgently in terms of understanding rights and obligations in relation to public sector procurement, but also in the private sector's own purchasing and supply practices.

Recommendation for capacity building of the private sector

- *Support capacity building of the private sector in basic business skills*

5.3.9. *Business ethics*

196. The professional level and the business ethics must continuously be pressed towards higher standards. In this process it is essential that the private sector actively "keeps order in own house". There is a need for the self-regulating bodies of business, industry and professionals to enforce their own standards and ethical codes vis-à-vis their members. Also, there is a need for Government registration and certification boards to develop rules for and impose sanctions on companies, which violate the conditions for registration and certification. This should be developed in collaboration with the self-regulatory bodies. Rules are developed but have rarely been enforced, and most registration boards have never had a case of exclusion of one of its certified members.

197. In addition, most registration boards have been more or less dormant for a very long period and only recently campaigns for registration have been initiated. An obstacle for registration of younger (or foreign for that matter) professionals and their companies have e.g. been caused by the fact that the conditions for obtaining registration has focused on experience alone and not primarily on competences and quality. This, and the lack of critical mass of registered professionals, hinders the feasibility in enforcing the actual legal requirement for choosing only registered professionals for publicly procured works.

Recommendations for business ethics and self-regulation of the private sector

- *Government registration and certification boards, in collaboration with the self-regulatory professional bodies, should develop rules for and impose sanctions on companies that violate the conditions for registration and certification*
- *It is necessary to take a look at the conditions for obtaining registration and certification with individual boards to ensure that quality and competences are the conditions for obtaining registration rather than “age”*
- *Campaigning for professionals to apply for registration with the different Boards of Professionals should be supported*

5.3.10. Standardisation and quality control

198. Standardisation and quality control are issues which need attention, since much Ugandan production is substandard, and the industry lacks understanding of the need to improve competitiveness through increased quality. A condition for improvement is the development of the capacity of the Uganda National Bureau of Standards (UNBS). The UNBS strategy has been to start out as a full fledged standardisation bureau entering all major possible areas of activity. To become an efficient bureau, the UNBS will need more funding both by generating its own income (e.g. through testing facilities) and the state budget, but it is essential that UNBS focuses its strategy with a major limitation in scope before moving forward.

199. The Public Procurement Regulations specify that tender documents/ToRs must specify which standards the desired goods, works or services must be in accordance with. This is not adhered to but could be one of the major drivers in promoting standards and raising the quality of private sector production.

Recommendations for Standardisation and quality control

- *A communication strategy for dissemination of information on Ugandan standards must be elaborated and implemented – funds need to be allocated for this*
- *A website where standards are published must be set up*
- *The Public Procurement Regulations specify that tender documents/ToRs must specify which standards the desired goods, works or services must be in accordance with – procuring entities must adhere to this*
- *Even additional funding will not allow the UNBS to operate efficiently with the scope of activities UNBS portfolio holds today, to become an efficient operation it must prioritise its activities and focus its strategy*

5.3.11. Access to capital

Bank rates are generally high, but rather than the high cost of capital, it is the access to capital, which limits SMEs in developing further and becoming effective suppliers. This is in particular the case for businesses above the mini and micro levels, and capital provision for these businesses is an issue that needs to be addressed.

5.4. Recommendations for the Market Place

Short term recommendations

- *The URA's research unit should move as quickly as possible and implementation of reference values should take place as soon as possible. Sharing of data among ports of entry should be established. Consistency in valuation of the same goods is a minimum requirement.*
- *Customs should be equipped with access to an international price database or the instalment of price-robot software.*
- *A group of customs officers specialised in valuation and classification should be established and trained to enhance capacity in this field as the personnel trained today is not sufficient to meet demands.*
- *Full implementation of ASYCUDA++ should move forward quickly, including access for importers to lodge data into ASYCUDA++ prior to entry and the blue, green, yellow, red line classification*
- *Courses for importers should be developed in principles, procedures and rules pertaining to imports focusing especially on the proper documentation to obtain and maintain on the imported goods*
- *Awareness must be raised on possible sources of information for importers and clearing agents – development and implementation of a communication strategy targeted at smaller importers is a key issue*
- *The Finance Bill should be made available to importers and clearing agents (as a minimum at the MFA website) and tariffs for the services of clearing agents should be published*
- *Practice concerning Government tax payment on imports should immediately be put in line with the formal rules*
- *Revise the Customs Act of 1971 and bring it up to the required modern standards*
- *Introduce green, blue, yellow, red classification of exporters*
- *Parliament should approve the Competition Act without further delay and measures for implementation should be instituted*
- *A competition authority/ body aimed at overseeing the development of a competitive market in Uganda should be established*
- *In short term, the competence to enforce competition and counteract cartel formation needs to be developed in an existing body*
- *The Registrar of Companies need to develop into an entity, whose information is credible*
- *Support capacity building of the private sector in basic business skills*
- *Government registration and certification boards, in collaboration with the self regulatory professional bodies, should develop rules for and impose sanctions on companies that violate the conditions for registration and certification*
- *A communication strategy for dissemination of information on Ugandan standards must be formulated and implemented*
- *A website where standards are published must be set up*

- *Procuring entities must adhere to the regulations demand for tender documents to specify which standards the desired goods, works or services must be in accordance with*
- *UNBS must prioritise its activities and focus its strategy*

Medium-term recommendations

- *An education programme for forwarding and clearing agents should be established.*
- *A certification system for clearing agents based on the qualifications acquired in the education programme should be developed*
- *Institutions in place such as the Commercial Court, the Centre for Dispute Resolution and the Tax Appeals Tribunal should be given nationwide outreach*
- *It is necessary to take a look at the conditions for obtaining registration and certification with individual boards to ensure that quality and competences are the conditions for obtaining registration rather than “age”*
- *Campaigning for professionals to apply for registration with the different Boards of Professionals should be supported*

6. INTEGRITY OF THE PUBLIC PROCUREMENT SYSTEM

6.1. AUDIT

6.1.1. *Organisations involved in audit and review of procurement*

200. The organisations involved in the audit and review of public procurement includes:

- The Auditor-General (external audit)
- The Public Procurement and Disposal of Public Assets Authority
- The Ministry of Local Government Inspection Department (MoLGID) (internal audit)
- The Inspection Departments of other public procurement and disposal entities (internal audit)

6.1.2. *Financial and value for money audits by the Auditor-General*

201. The mandate of the Auditor General (AG) is spelled out in the Constitution and obliges the AG to “Conduct financial and value for money audits in respect of any project involving public funds.”⁵⁰ In addition, the Public Finance and Accountability Act (PFAA) authorises the AG to conduct financial audits of the procurement and disposal functions either through the PPDA or directly through a qualified company. The PFAA also provides for the AG to have access to all records, reports, etc. of all public institutions, including the PPDA, this includes access to any procurement audits conducted by the PPDA of procuring and disposing entities.

202. Regarding Value for Money Audits, the PFAA sets out the AG’s mandate apropos of establishing the economy, efficiency and effectiveness of the operations of any public organisation with respect to expenditure of public funds and the use of public resources and the conduct of and the performance of public functions, which includes the public procurement and disposal functions.

203. The most pressing issue with regards to audits carried out by the AG is the lack of capacity and outreach. Thus, while the AG is keen to become involved in the procurement sector, he lacks qualified staff with knowledge of procurement. This highlights the need for coordination and collaboration with the PPDA, which has the procurement expertise, and the AG in the area of procurement audits.

⁵⁰ A financial audit is an evaluation of whether data in an auditee’s financial records and statements reflect the actual state of its assets and liabilities, sources of funding, property management, and compliance with its budget. A value for money audit is a comprehensive examination that provides an objective and constructive assessment of the extent to which financial, human and physical resources are managed with regard to economy, efficiency and effectiveness by the Central and Local Governments and other organisations in receipt of money from the Treasury.

6.1.3. Procurement Audits by the PPDA

204. The PPDA⁵¹ states that the functions of the PPDA *inter alia* are to institute:

- i) procurement or disposal audits during the bid preparatory process;⁵²
- ii) contract audits in the course of the execution of an awarded bid; and
- ii) performance audits after the completion of the contract in respect of any procurement or disposal, as may be required.

205. In addition the PPDA states that all procurement and disposal shall be conducted in a manner that promotes economy, efficiency and value for money.⁵³

206. From the above, the AG and the PPDA would appear to have similar and possibly overlapping mandates with respect to auditing the procurement and disposal functions and to conducting value-for-money audits of procuring and disposing entities. Notwithstanding apparent similarities, the audit mandates of the two organisations are markedly different. Thus, the Auditor-General is the supreme audit institution in the country, and is the only external auditor that reports to Parliament, and whose reports are referred systematically to a designated Standing Committee, the Public Accounts Committee, which has the lead responsibility for financial oversight in Parliament. The PPDA, in turn, plays a key policy formulation and regulatory role in respect of public procurement and disposal activities and related matters; with respect to audits of the procurement function and of public procurement and disposal entities.

207. It is, however, apparent that there is a great deal of scope for cooperation between the AG and the PPDA. This is particularly the case given that the PPDA is a new Authority with a new mandate. The AG and the PPDA should establish open lines of communication and a collaborative, strategic approach for the monitoring, audit and oversight actions associated with the procurement and disposal function. This would accord closely with the PPDA Act that states that one of the functions of the Authority is to “Establish and maintain institutional linkages with entities with professional and related interest in public procurement and disposal.” It would also confirm the statement of Government intention in the Progress Report against Government’s Strategy and Plan of Action to Fight Corruption and Build Ethics and Integrity (GSPOA), presented to the Consultative Group Meeting in 2003, where it states under the section on “Future Plans” that the Auditor-General will “Conduct procurement audits in collaboration with the PPDA.”

208. In establishing a collaborative, strategic approach to auditing the procurement and disposal functions, the AG and the PPDA should establish targets for the number,

⁵¹ PPDA Article 7, (j)

⁵² A procurement audit is an examination of how a procurement process was undertaken and whether it complied with the relevant regulations and procedures. It will note areas of non-compliance indicating, if appropriate, why the non-compliance occurred, the impact it had on the outcome of the procurement and any recommendations deriving from the non-compliance. The recommendations may range from proposing disciplinary action against the individual or organisation committing the act of non-compliance through to proposing changes to the procedures.

⁵³ In August 2003 the international auditing firm, PriceWaterhouseCoopers was appointed by the PPDA to perform procurement audits in the Ministries of Education and Sports and Water, Lands and Environment for the 27-month period ending in June 2003. The draft report was submitted to the PPDA in November 2003 and has not yet been released.

value and sectors of procurement and disposal entities and activities they audit annually, and Government should ensure that their allocated budgets are sufficient to meet these targets.⁵⁴ They might, for example, undertake to concentrate during a given year on the procurement and disposal entities in the area of public works. They could then conduct financial, value-for-money, and procurement audits that would cover all the relevant procurement entities. The AG would conduct the financial audits; the AG and the PPDA would identify together the procurement or disposal activities that warranted value for money audits, and would ensure that, say, 20% of the value of all procurement activities completed during the year in the sector were given a procurement audit. They would also want to ensure that there was representative coverage at the Local Government Level.

Recommendations for collaboration between the AG and the PPDA on procurement audits

- *The AG and the PPDA should establish open lines of communication and a collaborative, strategic approach for the monitoring, audit and oversight actions associated with the procurement and disposal function.*
- *This includes the establishment of targets for the number, value and sectors of procurement and disposal entities and activities they audit annually, and Government should ensure that their allocated budgets are sufficient to meet these targets*
- *The AG and the PPDA should also want to ensure that there is representative coverage with respect to procurement audits of local government procurement*

6.1.4. Follow-up/enforcement mechanisms

209. The follow-up and enforcement mechanisms to audit and inspection findings vary from one organisation to the other but collaboration amongst the organisations concerned is essential. The Auditor-General, for example, may well find financial mismanagement, mis-procurement or other kinds of wrongdoing in the course of his work. Depending on the nature of the wrongdoing, he may exercise his judgment to pass what he has learnt to: (i) the PPDA which can exercise its authority under the PPDA, or (ii) to the Inspectorate General of Government (IGG) who can initiate an investigation that could lead to prosecution and conviction under the appropriate legislation. Alternatively, the AG may decide to include his findings in his annual report to Parliament that could lead, eventually, to Accounting Officers being sanctioned via the annual Treasury Memorandum.

210. The IGG, in responding to complaints relating to public procurement, may investigate them himself, or alternatively, as the PPDA develops capacity, he may transfer certain cases to the PPDA who could deal with them under the authority of the PPDA.

⁵⁴ Since FY 1998-99, the AG's total funding in US\$ from Government has nearly doubled, but the workload, expressed as number of accounts to be audited has nearly tripled. The AG has just begun to conduct VFM audits so a cost trend-line has not yet been established. The PPDA has just begun to operate as an organisation so it too does not yet have a trend-line for the costs of its auditing responsibilities.

211. The PPDA, in the exercise of its regulatory functions, may commission or undertake investigations and institute procurement or disposal contract and performance audits of any public procurement or disposal transactions. Persons or entities who have committed a corrupt act under the PPDA may be fined or imprisoned. Presumably, if the PPDA identifies certain corrupt practices, it would be able to call upon the IGG or the Anti-Fraud Squad of the CID to help it with its investigations if it lacked the required skills in-house. It should be noted that the PPDA does not have a mandate to prosecute persons who it identifies as having committed a corrupt act. This would have to be done by either the IGG or the DPP.

Recommendations for follow-up and enforcement mechanisms

- *Ensure that the mechanisms are in place to follow through on parliamentary directives to sanction Accounting Officers who have been identified as having allowed or participated in mis-procurement and other corrupt offences in the procurement process;*
- *Clarify the mandates of the PPDA, the IGG and the CID with respect to responsibilities for receiving and investigating complaints, carrying out investigations, prosecuting cases, etc.*

6.2. ANTI-CORRUPTION MEASURES

6.2.1. *Corruption in Procurement*

212. The CPAR mission was informed about several examples of corrupt practice in public procurement and disposal, including facility payments, bribery of evaluation and tender board members, favouritism and conflict of interest especially in the form of biased evaluations and exclusions based on improper reasons. Surveys conducted by the Inspector General of Government (IGG) describe corruption as being endemic in Uganda. These findings are confirmed by Transparency International (TI), which since 1998 has included Uganda amongst the most corrupt countries in the World. In 2003, it ranked Uganda as the 113th most corrupt country out of 133 countries surveyed. The International Country Risk Guide gives Uganda a low rating, 2 out of a possible 6 with respect to corruption.

213. In particular for local government, the IGG has in more contexts made it clear that there is a lot of work to be done in regard to corruption in procurement at the local levels. Especially the political appointment of tender board members creates a lot of problems. Some of the other problems are: Local tender board members award contracts to themselves; secretaries of tender boards award tenders; contract sums are increased for no reason; some tender board members can barely read or write (qualifications); etc. This was confirmed by an assessment of the procurement capacities and systems in local governments in Uganda, which was initiated and funded by USAID in the first half of 2003. The report stated that corruption can be found at local government level manifesting itself in various ways including embezzlement, conflict of interest and influence peddling, but legal and preventive measures are in place to minimize this. The CPAR team expects that strengthening of capacity and improvement in procurement efficiency might result in amelioration of corrupt tendencies.

214. Concerning corruption in general, the IGG, the World Bank, the media, NGOs and others have described corrupt practice in the financing of politics; personnel management; the Justice, Law and Order Sector; revenue collection; the financial sector; and the procurement of public goods, services and assets, and the disposal of public assets. Public procurement is about 70 per cent of annual expenditure, and 70 – 90% of the complaints received annually by the IGG relate to corruption in public procurement. The Auditor-General has estimated that some 20% of the value of public procurement is lost through corrupt practices with concomitant effect on the cost, quantity and quality of public services, and thence, on the attainment of national poverty reduction and other policy objectives. The IGG's 2003 2nd National Integrity Survey ranked Tender Boards as the second most corrupt of government institutions.

215. Corruption in public procurement figures in both Central and Local Government. High profile cases from the past include:

- 1998: The Board of Directors of the Uganda Electricity Board dismissed the Managing Director and 11 other officials following an investigation by the IGG and CID, and an external audit, which revealed mis-procurement totalling over US\$15 million.
- 1999: Parliament suspended the sales of public enterprises when it was learned that Westmont Land, the successful privatisation bidder, had sold its shares in the Ugandan Commercial Bank to Greenland Investment, a company associated with the privatisation process;
- 2000: Parliament approved the purchase of a new Presidential Plane for roughly US\$ 33 million but questioned the final cost (up to US\$47 million) and the failure to open the procurement to competitive bidding;
- 2001: Commission of Inquiry into Helicopter Purchases reports on a Ugandan Army (UPDF) contract with a foreign supplier (Belarus) for four reconditioned helicopters that was terminated after two un-reconditioned helicopters, different from those inspected by UPDF representatives, were supplied. It was alleged that a reasonable price would have been US\$5 million instead of the US\$12 million reportedly paid. Cabinet has adopted the recommendations in the white paper and directed relevant institutions to implement them. Some action is expected from the Directorate of Public Prosecutions.
- 2002: The construction of the US\$ 500 million, 250-mw Bujagali hydro-electric power station, which would have increased Uganda's electricity supply by about 40%, was put on hold when it was learned that a former Minister of Energy may have received a \$10,000 bribe.

6.2.2. Legal and Judicial Framework

216. Uganda's 1995 Constitution establishes a number of institutions entrusted with investigating and prosecuting corrupt practices. Specific articles of the Constitution relevant to anti-corruption are:

- the Leadership Code of Conduct (Articles 233-236)
- the Inspectorate of Government (Articles 223-232)

- the Director of Public Prosecutions (Articles 120)
- the Auditor-General (Articles 163-164)

217. The most significant laws specifying corrupt offences, the applicable penalties, and the institutions empowered to investigate cases of corruption, prosecute, and punish offenders are:

- The Penal Code Act of 1964, as amended (1998)
- the Prevention of Corruption Act of 1970, as amended (1998)
- the Leadership Code of 1992, as amended (2002)
- the Inspector General of Government Statute of 1988, as amended (2002)
- the Public Finance Act of 1962, as amended (2003)
- the Magistrates Court Act, as amended (1998)
- the Trial on Indictment Act, as amended (1998)
- the Police Act of 1964
- the Local Government Act of 1997, which provides for removal from office of the Chairperson of a District Council on grounds of corruption and abuse of office.
- The Public Procurement and Disposal of Public Assets Act of 2003

218. The enactment of the PPDA legislation in particular provides government a much stronger basis for dealing with corruption in the areas of public procurement and the disposal of public assets, i.e.:

- The PPDA of 2003 established the PPDA instead of the former Reformed Central Tender Board in order to ensure compliance with regulation and standards and to conduct procurement audits;
- Each public institution is now a procurement entity with a Procurement Committee to reduce the corruption attributable to the over centralization and monopoly of procurement at the Central Tender Board;
- The new law and regulations provide for the blacklisting of companies that engage in corrupt practices;

It is also proposed that all Procurement Officers should belong to a National Procurement Professional Association with a legal mandate to vet, sanction and discipline its members. This will serve as an additional measure to increase the participation of professionals in curbing corruption.

219. Notwithstanding the existence of this comprehensive legal and regulatory framework, Government has recognized that additional legislation is required, and that several elements of it that relate to accountability and corruption require strengthening. These measures are all set out in the *Government Strategy and Plan of Action to Fight*

Corruption and Build Ethics and Integrity in Public Office (GSPOA). They are listed and described below along with their current status:

Prevention of Corruption Act

220. The principles for the amendment of the Prevention of Corruption Act have been concluded and are expected to be on the Cabinet agenda presently. The proposed amendments have a number of indirect relationships to corruption in public procurement: they strengthen the definition of corruption and provide for the offence of illicit enrichment, thus strengthening the IGG's ability to enforce the Leadership Code. Parliament is expected to approve the Bill by end 2004.

Access to Public Information Act

221. Freedom of access to public information is a prerequisite to all elements of accountable governance, including public procurement. In Uganda, development of the Access to Public Information Act, that corresponds and is required to implement Article 41 of the Constitution, is being spear-headed by the Ministry of Public Service and the Directorate of Information; principles for this legislation have been tabled before Cabinet but will have to be reconciled with a private member's bill that has been tabled recently by civil society. The Speaker has decided that the first Bill to arrive in the House will be the one to be debated.

Whistleblower Protection and Qui Tam Act

222. Whistleblower Protection and Qui Tam legislation go hand-in-hand, and Government has decided to include them in a single piece of legislation. The former ensures that citizens who report covert acts of corruption to the anti-corruption agencies are protected from reprisal. Qui Tam provides the legal means for the public to sue corrupt actors on their own behalf. The initial phase of analysis of the Whistle Blower Protection and Qui Tam acts has been concluded and national consultations are being carried out presently, since both of these are new legislations. Principles should be produced by the end of April 2004.

Recommendations for legal and judicial framework

- *Government should enact and make effective the amendment to the Prevention of Corruption Act,*
- *Government should enact and implement the Right of Access to Public Information law, in accordance with Article 41 of the Constitution, which will ensure that information no longer depends on the individual discretion of government actors, reduce the amount of classified information and permit the free flow of information necessary for citizens and parliament to hold Government accountable.*
- *Government should enact and implement the joint Whistleblower Protection and Qui Tam law, which will ensure that citizens who report covert acts of corruption to the anti-corruption agencies are protected from reprisal, and which would provide the legal means for the public to sue corrupt actors on their own behalf.*

6.2.3. Institutional Set-up for Fighting Corruption in Procurement

223. The legal, judicial and enforcement agencies involved in anti-corruption vary in capacity but, in general, they tend to be weak, under-funded and, lacking human and material resources. Furthermore, the *Second National Integrity Survey* shows that the Courts, an organisation that should be in the lead in stamping out corruption, are within the top third of the most corrupt organisations in the country. The Judiciary and the IGG, who currently takes the lead in investigating most cases of corruption, including corruption in procurement, are reasonably well resourced. But another key element in the legal-judicial system, the Director of Public Prosecutions (DPP), is constrained by limited resources and low pay. Most of these agencies are especially handicapped at the district level and this is noteworthy given the extent to which government is decentralized.

224. The Ministries, Departments, and Agencies involved in law enforcement related to anti-corruption include:

- The Inspector General of Government (IGG) established in 1988, is empowered to investigate, arrest, and prosecute corruption cases, take preventive measures, and advise Government on steps to prevent future abuses; the IGG reports to the Parliament.
- The Director of Public Prosecutions (DPP) holds concurrent jurisdiction with the IGG and prosecutes corruption cases investigated by the police.
- the Police, in particular the CID, which has a 150-person National Fraud Squad.
- the independent Judiciary, which is governed by the Judicial Services Commission and includes the Magistrate Courts (Grades 1, 2, and Chief Magistrates), the High Court, including a special branch established in 1998 to deal with commercial law cases, the Court of Appeal, and the Supreme Court.
- Local Council Courts, established under the Local Government Act, exercise judicial powers at the local council level; however, they fall under the Ministry of Local Government and are not part of the Judiciary.
- the Uganda Prison Service (UPS) is responsible for the detention of suspects or convicted offenders.
- the Public Procurement and Disposal of Public Assets Authority (PPDA) is responsible *inter alia* for monitoring the compliance of procuring and disposing entities with the Act, Regulations and Guidelines

225. The mandate and functions of some of these organizations are described elsewhere in this report, others are briefly described below.

226. But anti-corruption goes well beyond law enforcement. Government realized that tackling corruption requires political will, public awareness, collective action among government civil society and the private sector, and institutional strengthening across a broad front, not only for investigation and prosecution, but also to address the prevention of corruption and its root causes.

227. When the President first identified corruption as a high priority issue requiring top-level Government attention, an Anti-corruption Unit was created in the Office of the Vice-President to coordinate the anticorruption activities of the agencies, the Inspectorate of Government (IGG), the Criminal Investigations Department of the Police (CID), the Auditor-General (AG), the Ministry of Finance, Planning and Economic Development (MoFPED) and the Ministry of Public Service (MPS). Because some of these agencies did not have a voice in Cabinet, the Vice-President was made the spokesperson. The section grew to a Directorate headed by a full Cabinet Minister, lodged in the Presidency. Its name was changed to “Directorate of Ethics and Integrity” to reflect its wider mandate. A Minister of State currently heads the Directorate and has not had a substantive Permanent Secretary for some time; nor is it fully staffed.

Office of the President: The Directorate of Ethics and Integrity (DEI)

228. The mission of DEI is to spearhead and co-ordinate government efforts to eliminate corruption and build an integrity system that promotes ethical standards and good governance. The mandate encompasses:

- Formulation of government policies on corruption and building integrity.
- Setting and institutionalizing legal standards on fighting corruption and building integrity.
- Establish effective coordination mechanisms among government agencies.
- Building capacity of government institutions in areas of fighting corruption and good governance.
- Establish effective monitoring systems.
- Articulate/advocate the needs of anti-corruption partners to the relevant authorities.

Inspector General of Government

229. The IGG) is also a Constitutional Office as provided by the 1995 Constitution. Its functions include:

- Promotion and fostering of strict adherence to the rule of law and principles of natural justice in administration, to eliminate and foster elimination of corruption;
- Promote of fair, efficient and good governance in public offices;
- Supervision of the enforcement of the Leadership Code;
- Stimulation of public awareness about the values of constitutionalism and the activities of the office; and
- Investigating any act, omission, advice, decision or recommendation by a Public office or any other authority to which this article applies.

Ministry of Local Government Inspection Department

230. The mission of the Ministry of Local Government (MoLG) – Inspection Department is to coordinate and support Local Governments for sustainable, efficient and effective service delivery in a decentralised system:

- The inspection department is mandated under the Local Governments Act, 1997 to inspect, monitor, mentor and advise Local Governments in financial management as well other aspects;
- The department is also responsible for capacity building and training of Local Governments;
- The MoLG Inspection Department is also responsible for capacity building and training of Local Governments Accounts and Audit cadre in financial management, Local Government Tender Boards in procurement procedures and Local Government Public accounts Committees in addressing Audit queries;
- It is also responsible for ensuring compliance of Local Governments with laws, policies and regulations issued by central ministries and other stakeholders in fulfilment of the decentralisation policy.

Inter-Agency Forum

231. The Minister of Ethics and Integrity has established the Inter-Agency Forum (IAF) that meets monthly and whose members include senior representatives from the DEI, the Directorate of Public Prosecution (DPP), IGG, Criminal Investigations Department (CID), Ministry of Justice and Constitutional Affairs (MJCA), The Judiciary, MoFPED, MoLG, MPS, Public Service Commission (PSC), Uganda Revenue Authority (URA), AG and, since recently, the PPDA.

6.2.4. Strategic Framework

232. The strategic framework for combating corruption in public procurement and disposal is set out in *The Government Strategy and Plan of Action to Fight Corruption and Build Ethics and Integrity in Public Office* (GSPOA) 2001-2004 prepared by the DEI in collaboration with the Inter-Agency Forum (IAF). In the past, responsibility for addressing issues of corruption in procurement and disposal were dispersed and, before the PPDA was established, the procurement and disposal functions were not represented as such in the IAF. Now that the PPDA is a member of the IAF, it can act as the focal point for developing the procurement and disposal strategy action plan for future GSPOAs and related progress reports. In this respect, an essential piece of work will be the preparation of the GSPOA for 2004 – 2006. This medium-term plan will reflect *inter alia* past experience, the findings and analysis of the Second National Integrity Survey, the recommendations of recent Commissions of Inquiry and White Papers and the recommendations of a series of analyses carried out by government in collaboration with the World Bank and other development partners. The latter include the current Country Integrated Fiduciary Assessment and the Governance Matrix prepared in concert with the Poverty Eradication Action Plan (PEAP) and its related financial instruments.

Recommendation on PPDA's role in the institutional and strategic framework

- *The PPDA should participate actively in the IAF and proactively contribute to the sections of the GSPOA that relate to corruption in public procurement and disposal.*

6.2.5. Monitoring and Controlling Corruption in Public Procurement

233. Corruption in public procurement can be monitored and controlled systematically through either the inspection, audit and monitoring of procurement processes and practices as described elsewhere in this report and, additionally, through a regular, purpose-designed survey of the private sector and of public officials. The Second National Integrity Survey conducted by the IGG touched upon corruption in public procurement and other functions of government, but in-depth treatment was considered to be beyond its scope. Survey instruments do exist, however, that consist of purpose-designed questionnaires for the procurement function and which are administered separately to targeted groups of private sector representatives and public officials. These survey instruments could be adapted for use in Uganda and administered biennially by the IGG every two years, but not in the same year when the National Integrity Surveys are being conducted. These National Public Procurement Surveys could be designed and conducted so as to capture empirical data by, e.g., procurement and disposal entity, by district, and on the various points in the procurement process that are subject to corrupt practice. The results could be used to help the PPDA and others hold procurement and disposal entities to account, target its inspections and audits, and to better focus its training and other capacity-building undertakings for procurement and disposal entities.

234. At the 2001 Consultative Group Meeting, the Minister of Ethics and Integrity stated that “We have...gone through what we believe to be a process of identifying, ranking and developing indicators for monitoring and controlling the *core functions of government* that must perform well if corruption is to be curbed.” The functions that she subsequently cited included “Public procurement management” and “Public facilities management. The DEI, in consultation with procurement specialists, subsequently prepared a preliminary format for monitoring, reporting and controlling public procurement processes. This format has been discussed with the PPDA and considerably strengthened in the course of the current CPAR mission. It is now ready to be used for reporting at the Local Government, Central Government and National levels. See attached Annex 2.

Recommendations for monitoring corruption in procurement processes

- *The IGG and the PPDA should collaborate (with other stakeholders) to conduct regular National Public Procurement Surveys*
- *Implement a system of monitoring, reporting, and controlling the key elements of the public procurement process on the basis of the indicators developed initially under the aegis of the DEI, presented by the Secretary to Cabinet to the Consultative Group Meeting in 2001, and strengthened by PPDA in early 2004*

6.2.6. Right of Access to information

235. Right of access to information is enshrined in the Constitution in which Article 41 states that:

(1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.

236. Access to information is the fount upon which all accountability processes and systems rest; parliament, organisations of both horizontal and vertical accountability are utterly dependent upon access to public information to hold the executive accountable for its performance as achieved through procurement and other functions.⁵⁵ With respect to the organisations of horizontal accountability, their right of access to information is enshrined in the laws, but this is not sufficient because record-keeping is often poor, i.e., some government organisations in the accountability sector report that other organisations in government do not readily provide the information they need to do their work because of the culture that derives from the Official Secrets Act. Citizens and the organs of vertical accountability are also frustrated by the difficulty in obtaining access to government information.

237. The organs of horizontal accountability, such as the PPDA, when it is conducting procurement inspections and audits, should have ready access to well-maintained records and information. Citizens and organs of vertical accountability need not have access to the same records and information but, with respect to public procurement, they should have ready access to, for example, government planning and financial information that would inform them about goods, services and works contracts that are planned for their areas of interest; the results of procurement and disposal processes should be made available to the public on a timely basis; citizens have ready access to the information kept with the Registrar of Companies in the Office of the Attorney General so they can learn who owns and determine who is related or connected to the firms who compete for and win public contracts; citizens should have ready access to the registry the PPDA is to keep of firms and individuals who have been blacklisted for corrupt practice.

Recommendations

- *The PPDA should encourage, monitor and enforce the proper maintenance and use of the “procurement file” through its training programmes and procurement audits*
- *The list of firms tendering for government contracts and the results of all bid evaluations and contract awards above a certain threshold value should be published quarterly and posted on the PPDA’s website*

⁵⁵ There is a distinction between the accountability *imposed upon* a government directly, by its citizens, and accountability that a government *imposes upon itself* through the creation of public institutions whose mandate is precisely to act as a restraint on government. The distinction is referred to as “vertical” accountability (to citizens, directly, via public elections, civil society and some of the media) versus “horizontal” accountability (to public institutions of accountability like the AG and the PPDA).

6.2.7. *Involvement of civil society and the media*

238. There are a number of ways in which civil society and the media can help control corruption in public procurement and disposal activities. One of the most ambitious ways is for collaboration among government, civil society and the private sector as in the model of *Islands of Integrity* developed by Transparency International and discussed with Government in the past. This model tries to bring together government agencies and private sector bidders in public procurement, with civil society groups monitoring the agreement. It calls for transparency in all payments made in the procurement process and ties tough legal sanctions to any attempt to influence the bidding-process through corruptive measures. This model also requires a certain level of capacity across the financial management, legal and judicial systems within which procurement and anti-corruption processes function. The capacity constraints in Uganda's current procurement and related processes made it inadvisable to adopt this approach in the past and a good deal of institutional strengthening would still have to take place before it could be adopted and implemented in the future.

239. There are also mechanisms of social accountability. For example, the Uganda Debt Network (UDN) has mobilised grassroots groups against corruption. As a pilot, three district-level anti-corruption coalitions were established to receive and investigate complaints from the public. These coalitions receive 3 to 6 complaints a week that include instances of payments made to contractors for goods or services never delivered. In addition, UDN has paired with elementary schools to include accountability issues in school curricula, and linked with universities to increase research into corruption in public procurement and other areas.

240. And there are other possibilities. Once the potent combination of the *Access to Public Information, Whistle-Blower and Qui Tam* legislation is enacted and becomes effective, citizens, civil society organisations, the private sector, parliament and the media⁵⁶ should be much more able to initiate fact-finding and investigatory work, and individual or collective actions to expose corruption in public procurement and to hold the Executive more accountable.

241. Citizens, the media, research organisations, NGOs and others will obviously be able to be much more effective in researching and identifying corruption in procurement if they have ready access to such records as those in the Registry of Companies, the land registries, the registry of declaration of assets and liabilities maintained by the IGG, and so on.

6.3. Recommendations for the integrity of the procurement system

242. The mission will recommend a number of measures that will be linked to audit of the public procurement system and anti-corruption *per se*. One should note, however, that virtually most, if not all of the recommendations related to public procurement will help to increase accountability and reduce corrupt practices. In

⁵⁶ Studies at the World Bank show that the higher the level of press freedom in countries, the higher the control of corruption. Freedom House give Uganda a Press Freedom Score of 45 (Partly free). The World Audit Organisation gives Uganda a Press Freedom Rank of 67 out of 149 countries with populations in excess of 1 million.

addition, the strengthening of financial management generally, and the more effective working of the justice, law and order system (JLOS) will help reduce corrupt practice.

Short-term recommendations

- *The AG and the PPDA should establish open lines of communication and a collaborative, strategic approach for the monitoring, audit and oversight functions associated with the procurement and disposal functions*
- *In establishing a collaborative, strategic approach to auditing the procurement and disposal functions, the AG and the PPDA should determine targets for the number, value and sectors of procurement and disposal entities and activities they undertake annually*
- *Ensure that the mechanisms are in place to follow through on parliamentary directives to sanction Accounting Officers who have been identified as having allowed or having been implicated in mis-procurement and other corrupt offences in the procurement process;*
- *Clarify the mandates of the PPDA, the IGG and the CID with respect to responsibilities for receiving and investigating complaints, carrying out investigations, prosecuting cases, etc.*
- *Government should enact and make effective the Prevention of Corruption Act,*
- *Government should enact and implement the Right of Access to Public Information law*
- *The PPDA should participate actively in the Inter Agency Forum and proactively contribute to the sections of the GSPOA that relate to public procurement and public disposal.*
- *The list of firms tendering for government contracts and the results of all bid evaluations and contract awards above a certain threshold value should be published quarterly and posted on the PPDA's website*
- *Implement a system of monitoring, reporting, and controlling the key elements of the public procurement process on the basis of the indicators developed initially under the aegis of the DEI, presented by the Secretary to Cabinet to the Consultative Group Meeting in 2001, and strengthened by PPDA in early 2004;*

Medium-term recommendations

- *The AG and the PPDA should also want to ensure that there is representative coverage with respect to procurement audits of local government procurement*
- *The IGG and the PPDA should collaborate (with other stakeholders) to conduct regular National Public Procurement Surveys.*
- *Government should enact and implement the joint Whistleblower Protection and Qui Tam law*

7. E-PROCUREMENT

7.1. E-procurement in Uganda

243. Uganda is a country grappling with major problems of poverty, poor infrastructure, and illiteracy. So, is it not an illusion to promote advanced technology in public procurement when such basic problems appear more pressing? The answer is: No, e-procurement is an opportunity for Uganda to leap-frog evolution, and reaps benefits from comparably small investments. As discussed further below, the cost incurred by making all bidding opportunities available on the Internet, as required by the Procurement Regulations, is minimal.

244. With the formation of the Uganda Computer Services (UCS) a semi-autonomous body under the Ministry of Finance, the government has taken steps to devise a strategy and coordinate future efforts in technology and e-government.⁵⁷

7.1.1. Access to information – utilisation of government websites

245. The PPDA and few of the central ministries maintain functioning websites. In a survey conducted by the team only the Ministry of Education and Makerere University were actively using their websites to display procurement opportunities.

246. The PPDA has a website⁵⁸, which is used to display some information on legal framework and guidelines. The information on the PPDA website appears static and doesn't seem to have been updated for some months. The Regulations require the PPDA to maintain a website with content as specified, including:

- current legislation
- standard forms and solicitation documents
- specification standards
- list of registered providers
- list of suspended providers
- training courses and training institutions available
- information on registration procedures

In addition, the Regulations require the website to contain all bidding notices.⁵⁹

247. If the PPDA just updated its website to contain the information required by the Regulations this would mean a big step forward in increasing transparency by providing the public and bidders with relevant procurement information. A situation where each procuring entity maintains its own system of making procurement information available on its website will not bring the advantages in transparency that a single information point can. With the website already in place the costs incurred will be minimal.

⁵⁷ A team under the Inter-ministerial Committee on Procurement (ICOP) prepared a list of all current technology projects in the central government as of 2003. This list will serve as a departing point for the strategy work about to commence with the UCS in charge. The “National ICT Policy” issued by Uganda National Council of Science will provide input to this work.

⁵⁸ <http://www.procurement-capacity.org/ppda/>

⁵⁹ Regulations section 140.3.

7.1.2. E-procurement focus areas

248. The major issues facing a developing country like Uganda can be categorized as tabulated below:

Table 7: Factors for developing e-procurement in Uganda

Issue areas	Basic requirements for e-procurement	Situation in Uganda	Remarks
Governance	<ul style="list-style-type: none"> Adapted legal framework Procurement oversight organisation in place 	<p>–</p> <p>√</p>	<ul style="list-style-type: none"> The Procurement Act appoints the PPDA as the responsible authority for providing information services through its website. More advanced e-procurement systems will require changes to the country’s basic legal framework in such areas as contract law and general commercial law.⁶⁰ For e-procurement to advance beyond the initial stages, these additional legal issues must be assessed and solved.
Human resources	<ul style="list-style-type: none"> Capacity to utilize system in place and well trained staff 	<p>–</p>	<ul style="list-style-type: none"> The central ministries, although with a fair penetration of office technology, have poor capacity to utilise the systems. At the local level, the knowledge of the use of technology is as scarce as the technology itself. Many local district administrations are totally without office technology and knowledge thereof.
Institutions	<ul style="list-style-type: none"> Work flows adapted to system Coordinating institution in place Uniform information (data) schemes applied Functioning private market with access to technology and able to perform under e-procurement system 	<p>–</p> <p>√</p> <p>–</p> <p>–</p>	<ul style="list-style-type: none"> UCS has been appointed as the responsible authority for e-government, and thus also e-procurement, in Uganda. So far, all thoughts on e-government in Uganda have remained at the concept stage, but e-procurement could very well prove to be the first step for the country into e-government. At the same time, it could prove the case on how e-government can provide value without heavy technology investment. In the private sector, only the largest companies have access to the Internet, and access is not perceived as a decisive factor in the competition within the private sector.
Technology	<ul style="list-style-type: none"> Infrastructure in place Access to infrastructure established through office technology Necessary e- 	<p>(√)</p> <p>(√)</p> <p>(√)</p>	<ul style="list-style-type: none"> There are no coordinated infrastructure or technology efforts except at the MOFPED. Technology penetration and access to email at central government is fair, but lacking networks and common standards. Other public offices and some districts are

⁶⁰ The Legal Reform Programme” has a commercial law component containing among other issues an update of the legislation to accommodate electronic commerce and formation of agreements.

Issue areas	Basic requirements for e-procurement	Situation in Uganda	Remarks
	procurement software in place		connected to the Internet through dial-up connections, often only providing email capability.

7.1.3. Governance

249. The role of the PPDA is pivotal to the success of procurement reform in Uganda. An important part of the tasks to be performed by the PPDA is to monitor, enforce and disseminate procurement rules. Using the Internet and the website of the PPDA would be a cost effective way of supporting these tasks. The Procurement Act provides the necessary legal framework for Uganda to take its first steps into e-procurement.

7.1.4. Human Resources

250. There have not been any coordinated efforts to train civil servants in the use of office technology. One part of UCS' responsibility is to develop a strategy for training in office technology covering the whole central administration. On the local level, the lack of availability of technology will make any attempts of coordinated training programs by the Ministry of Local Government futile.

251. Given the major outstanding issues concerning poor compliance and enforcement stressed elsewhere in this report, the capacity for absorbing the work-flow changes that are necessary for implementation of the more advanced e-procurement systems will not be available for some time.

7.1.5. Institutions

252. The PPDA is responsible for disseminating procurement information and the UCS is responsible for IT-strategy and coordinated e-government initiatives. With these two entities working together the institutional prerequisites for further development of e-procurement is present.

253. On the recipient side, the private sector, only the largest companies have access to the Internet. Until this situation changes using websites for spreading of information can only be a supplement to conventional methods. The availability of a good procurement website could, however, be the incitement some companies need to gain access to the Internet.

7.1.6. Technology

254. Presently every entity in the government is responsible for their own technology purchases and application.⁶¹ Except for the MOFPED, the central ministries in Kampala are not connected via any common network. Penetration of office technology is estimated⁶² at approximately 25% of offices in central government, with approx. 30% of employees in the central government having access to email.

⁶¹ The coordination of technology application is covered by the mandate of the UCS.

⁶² By the UCS.

255. E-procurement systems can be categorized as tabulated in Table 8:

Table 8: Features and complexity of e-procurement

E-procurement systems	Features	Complexity
Electronic information system	Supports dissemination of information, monitoring and statistics gathering but does not offer any interactivity between participants	Low. Minimal technical requirements.
Electronic purchasing system	Contains e-commerce features such as electronic formation of contracts on pre-determined terms. Suitable for administration of large framework agreements.	Medium. Technical, legal and organisational requirement.
Electronic tendering system	Supports the entire procurement cycle and eliminates the use of paper entirely. Contains functionality for formation of complex contracts, auctioning and complaints handling.	High. Requires mature markets and thorough legal and organisational reforms that cannot be seen outside the context of a larger e-government reform.

256. With the present state of capacity and technology in Uganda, the country could start to reap the early benefits from electronic information systems, by making procurement information available on the PPDA website. To promote further steps towards Electronic Purchasing Systems, pilot-projects in isolated sectors could be launched.

7.2. Recommendations for e-procurement

- *The PPDA should actively use its website to support the dissemination of procurement information*
- *The PPDA should make the Registry of Providers, and other information as required by the Regulations, available on its website.*
- *The PPDA should make all bidding opportunities, as required by the Regulations, available on its website.*
- *The government should establish isolated pilot projects of more advanced e-procurement systems in sectors most likely to benefit*
- *Move towards giving the public access to the procurement records as prescribed in the Regulations, thereby enlisting the public in the ongoing effort to enforce the rules to the advantage of society as a whole.*
- *Launch assessment of potential legal barriers in contract law to the introduction of more advanced electronic tendering systems.*

8. Procurement Performance Indicators

257. It is essential that performance indicators are developed to monitor the procuring entities performance and development. The indicators should measure the performance of the procuring entities in relation to four major parameters:

258.

- Economy
- Efficiency
- Accountability
- Transparency

259. Table 9 provides a number of examples of indicators on the four parameters. One performance indicator can relate to more than one parameter, e.g. “the number of procured projects carried out in accordance with the published procurement plan” is an indicator relating both to efficiency and accountability.

260. Measuring performance demands resources, and this should be considered when selecting indicators. As far as possible, indicators should be based on available data or data the procuring entities are liable to record and collect in accordance with the regulations. This will minimize the resources needed to measure performance.

261. Measurement of the indicators the first year will establish a baseline against which targets for improvement in performance in the coming years can be set. Therefore the performance indicators should be chosen in accordance with best practice for setting targets. Best practice for targets is that they should **SMART**:

- **Specific:** they should be directed towards specific activities taking place, not general developments
- **Measurable:** it must be possible to measure or test the progression of the indicator
- **Achievable:** targets should not be set unrealistically high – they should be ambitious but not impossible to achieve
- **Relevant:** they must be the factors that actually determine if performance has been improved
- **Timed:** indicators must be measurable at a specific point in time and targets must express a forward movement in time – where do we want to be in a year

Table 9: Procurement Performance Indicators

		Objectives							
		Economy		Efficiency		Accountability		Transparency	
A. Monitoring and Controlling Public Procurement at PPDA									
1	Number and percentage of Procuring and Disposing Entities (PDEs) that do not have a procurement plan approved by their accounting officer	X		X		X		X	
2	Number and percentage of PDE procurement activities that have been initiated but are not in the approved procurement plan	X		X		X		X	
3	Number and percentage of PDEs to which funds have been released but that have not prepared procurement plans	X		X					
4	Number and percentage of procurement activities for which there has been no public advertisement to tender							X	
5	Number and percentage of bids issued before requirements have been defined, and specifications and estimates established	X		X					
6	Number and percentage of contracts awarded without bids having been solicited	X						X	
7	Number and percentage of contracts not awarded to the lowest evaluated bid	X		X				X	
8	Number and percentage of contracts awarded without a bid evaluation based upon pre-determined evaluation criteria							X	
9	Number and percentage of contracts awarded more than 60 days after the bid-closing date			X		X		X	
10	Total value of contracts awarded using methods that are less competitive than those set out in the approved procurement plan, and their value as a percentage of all contracts awarded			X					
11	Number and percentage of contract awards that have been appealed					X			
12	Number and percentage of contract awards that have been appealed successfully					X			
13	Number and percentage of contracts awarded before there was a confirmation of funds being available			X					
14	Number and percentage of approved contract variations that exceed the thresholds set out in the Public Procurement Regulations			X		X		X	
15	Total value of approved contract variations that exceed the thresholds set out in the Public Procurement Regulations, and their value as a percentage of the total value of the contracts to which they are related	X						X	
16	Number and value of bid validities that have been extended			X					
17	Number and percentage of payments to contractors that have been paid more than 30 days after the submission of a claim			X				X	
18	Number and percentage of contracts terminated early by PDEs after payments were made but before goods and services were delivered	X							
19	Total value of payments issued against contracts terminated early by PDEs before goods and services were delivered, and the value of this amount as a percentage of the total value of the contracts to which they are related	X							
20	Number and percentage of contracts abandoned by contractors after advance payments were received, but before good and services were delivered	X				X			

Table 9: Procurement Performance Indicators

	Objectives							
	Economy		Efficiency		Accountability		Transparency	
21 Total value of advance payments issued against contracts abandoned by contractors before good and services were delivered, and the value of this amount as a percentage of the total value of the contracts to which they are related	X				X			
22 Number of complaints about corrupt practice in procurement filed with the PPDA, IGG or CID					X		X	
23 Number of firms and individuals blacklisted for having been found guilty of any corrupt practice including misrepresenting any facts in respect of ownership in a tender submission or in registration with the Registrar of Companies					X		X	
24 Number of staff who have been disciplined, sanctioned or charged with breaking the law in connection with public procurement or disposal activities					X			
25 Number and percentage of PDEs that have been given a clean audit certificate by the PPDA			X		X			
26 Number and percentage of PDEs that have been given a clean audit certificate by the Auditor General					X			
27 Number and percentage of PDE accounting officers sanctioned for matters relating to public procurement or disposal			X		X			
B. Monitoring and Controlling Public Procurement at PDE level								
1 Availability of a procurement plan approved by the accounting officer	X		X		X		X	
2 Number and percentage of procurement activities that have been initiated but are not in the approved procurement plan	X		X		X		X	
3 Have funds been received before the procurement plan was prepared and approved?	X		X					
4 Number and percentage of procurement activities for which there has been no public advertisement to tender							X	
5 Number and percentage of bids issued before requirements have been defined, and specifications and estimates established			X					
6 Number and percentage of contracts awarded without bids having been solicited	X						X	
7 Number and percentage of contracts not awarded to the lowest evaluated bid	X		X				X	
8 Number and percentage of contracts awarded without a bid evaluation based upon pre-determined evaluation criteria							X	
9 Number and percentage of contracts awarded more than 60 days after the bid-closing date					X		X	
10 Total value of contracts awarded using methods that are less competitive than those set out in the approved procurement plan, and their value as a percentage of all contracts awarded	X		X					
11 Number and percentage of contract awards that have been appealed					X			
12 Number and percentage of contract awards that have been appealed successfully					X			
13 Number and percentage of contracts awarded before there was a confirmation of funds being available			X					
14 Number and percentage of approved contract variations that exceed the thresholds set out in the Public Procurement Regulations			X		X			
15 Total value of approved contract variations that exceed the thresholds set out in the Public Procurement			X		X			

Table 9: Procurement Performance Indicators

		Objectives							
		Economy		Efficiency		Accountability		Transparency	
Regulations, and their value as a percentage of the total value of the contracts to which they are related									
16	Number and value of bid validities that have been extended			X					
17	Number and percentage of payments to contractors that have been paid more than 30 days after the submission of a claim			X				X	
18	Number and percentage of contracts terminated early after payments were made but before goods and services were delivered	X							
19	Total value of payments issued against contracts terminated early, before goods and services were delivered, and the value of this amount as a percentage of the total value of the contracts to which they are related	X							
20	Number and percentage of contracts abandoned by contractors after advance payments were received, but before good and services were delivered	X				X		X	
21	Total value of advance payments issued against contracts abandoned by contractors before good and services were delivered, and the value of this amount as a percentage of the total value of the contracts to which they are related	X				X			
22	Number of staff who have been disciplined, sanctioned or charged with breaking the law in connection with public procurement or disposal activities			X		X			
23	Number of complaints about corrupt practice in procurement filed with the PPDA, IGG or CID			X		X		X	
24	Number of providers blacklisted for not having complied with the PPDA Act or its associated regulations and guidelines including misrepresenting any facts in respect of ownership in a tender submission or in their registration with the Registrar of Companies			X		X			

9. RECOMMENDED ACTION PLAN FOR KEY RECOMMENDATIONS

253. A detailed Action Plan for all the recommendations listed in the report are presented in Annex 6. Table 10 below is the action Plan for the key Recommendations.

Table 10 - Key Measures to be taken to Improve Public Procurement under the Four Basic Pillars of Procurement Fiduciary Management

The four pillars of sound public procurement	Recommended Actions	Short term (0-2 years)	Medium term (2-5 years)
Pillar 1: Legislative and Regulatory Framework	The PPDA should assert its authority to monitor and enforce the timely compliance with the Act and Regulations	X	
	The PPDA should issue simplified guidelines, including step-by-step guides and check-lists	X	
	The PPDA should disperse the standard forms contained in the Regulations and enforce mandatory use of these standard forms to increase transparency	X	
	The PPDA should launch a campaign of informing the public of its role in complaints and the take initiative on high-profile cases	X	
	The IGG should appoint a specialist procurement body to handle complaints in cases where the PPDA has been advising party or complaints about PPDA itself	X	
	Regulations for local government should be harmonized with those at the central government including giving to the Chief administrative the authority to appoint and remove tender board members	X	
Pillar 2: Central Institutional Capacity	Institutional framework The MoFPED should resume its policy making role for the public procurement sector and as a minimum assign staff or establish a unit responsible for this task.	X	
	The clause in the Regulations debarring the Executive Director from engaging in business or employment elsewhere should be extended to the entire management team of the PPDA. Upon taking up a management position in the PPDA, the candidate should be required to declare his interests and professional links outside of the PPDA.	X	
	The PPDA should initiate a programme of comprehensive compliance review targeting all PDEs to ensure that the PDEs are fully operational and functioning in line with the standards of the PPDA		
	PPDA should prepare a detailed implementation plan for the capacity building strategy and commence its implementation	X	
	The PPDA should address the general lack of the fundamental understanding of the key public procurement principles, including the ethical aspects of procurement.	X	
	The Inter-ministerial Professional Development Committee for Procurement should be activated.	X	
	HR measures, including individual career development plans, performance measures, and training, etc. for the development of the PPDA staff should be introduced.	X	
	PPDA to initiate accreditation system, linking this to capacity building and career development measures	X	

The four pillars of sound public procurement	Recommended Actions	Short term (0-2 years)	Medium term (2-5 years)
	The Ministry of Public Service, the Ministry of Local Government and the MoFPED should urgently establish a formal employment category for procurement professionals at local government level	X	
	The PPDA, the Ministry of Public Service, the Ministry of Local Government and the MoFPED should develop of a selection and appointment framework for central and local government procurement professionals ensuring that the needed qualifications are obtained.	X	
	The PPDA should introduce methods for measuring the impact of the capacity building activities on the performance in the PDEs		
	The establishment of a strong Procurement Professionals Association should be supported and particular attention should be paid to the institution of a sound ethical framework. This includes implementation of measures for self-regulation aimed at increasing the professional standards and integrity within the profession		
	PPDA and the Ministry of Local Government in collaboration with the MoFPED agree on a detailed action plan, which clearly defines the capacity building tasks ahead and the responsibilities of each party		
Pillar 3: Procurement Operations and Market Place:	Procurement Operations		
	PPDA to step up enforcement of procurement planning as required in the Regulations	X	
	Procurement planning should be integrated in the budget process	X	
	Procurement planning to have central placement in curriculum for future capacity building initiatives	X	
	The PPDA should make all advertised procurement opportunities available on its web-site as required by the Regulations	X	
	The PPDA should issue guidelines on the proper application of the registration lists, in particular concerning compilation of shortlists from the registration lists	X	
	When bidders in restricted procedures are picked from registrations lists, all suppliers on the list should be allowed to bid	X	
	PPDA should establish the Register of Providers, as allowed in the Regulations, to provide a non-mandatory central database of suppliers and prices	X	
	The PPDA should enforce use of its own standard bidding documents, through the mandatory requirement for use of these documents and approval of any deviations	X	
	Access to negotiations should be restricted in open competitive bidding for goods and works	X	
	The records and Archive Act should be fully implemented	X	
	Local Preferences should be abolished	X	
	The PPDA should monitor and enforce the proper use of the “procurement file” through its procurement audits	X	
	The procuring entities should strengthen their focus on contract management capacity and increase the resources allocated to contract management	X	
	PPDA should increase its audit initiatives to meet the requirements of the Procurement Act of effective and credible audit measures	X	
	PPDA should publish records and statistics concerning waivers and reasons for their use	X	

The four pillars of sound public procurement	Recommended Actions	Short term (0-2 years)	Medium term (2-5 years)
	<p>Market Place The URA’s research unit should move as quickly as possible and the implementation of reference values should take place as soon as possible. Sharing of data among ports of entry should be established as soon as possible, consistence in valuation of the same goods is a minimum requirement</p>	X	
	Customs should be equipped with access to an international price database or the instalment of price-robot software.	X	
	A group of customs officers specialised in valuation and classification should be established and trained	X	
	Full implementation of ASYCUDA++ should move forward quickly, including access for importers to lodge data into ASYCUDA++ prior to entry and the blue, green, yellow, red line classification	X	
	An education and certification programme for forwarding and clearing agents should be established.		
	Revise the Customs Act of 1971 and bring it up the required modern standards	X	
	Introduce green, blue, yellow, red classification of exporters	X	
	Parliament should approve the Competition Act without further delay and measures for implementation should be instituted	X	
	A competition authority/ body aimed at overseeing the development of a competitive market in Uganda should be established	X	
	The Registrar of Companies needs to be strengthened into an entity, whose information is credible		

	UNBS must focus its strategy and prioritize its activities	X	
Pillar 4: Integrity of Public Procurement System:	The AG and the PPDA should establish open lines of communication and a collaborative, strategic approach for the monitoring, audit and oversight functions associated with the procurement and disposal functions	X	
	In establishing a collaborative, strategic approach to auditing the procurement and disposal functions, the AG and the PPDA should determine targets for the number, value and sectors of procurement and disposal entities and activities they undertake annually	X	
	Ensure that mechanisms are in place to follow through on parliamentary directives to sanction Accounting Officers who have been identified as having allowed or having been implicated in mis-procurement and other corrupt offences in the procurement process	X	
	The mandates of the PPDA, the IGG and the CID with respect to responsibilities for receiving and investigating complaints, carrying out investigations, prosecuting cases, etc. should be clarified	X	
	Government should enact and make effective the Amended Prevention of Corruption Act	X	
	Government should enact and implement the Right of Access to Public Information law	X	
	Government should enact and implement the joint Whistleblower Protection and Qui Tam law		
	The PPDA should participate actively in the Inter Agency Forum and proactively contribute to the sections of the GSPOA that relate to public procurement and public disposal.	X	
	The IGG and the PPDA should collaborate (with other stakeholders) to conduct regular National Public Procurement Surveys.		
	The list of firms tendering for government contracts <u>and</u> the results of all bid evaluations and contract awards above a certain threshold value should be published quarterly <u>and</u> posted on the PPDA's website	X	
	Implement a system of monitoring, reporting, and controlling the key elements of the public procurement process on the basis of the indicators developed initially under the aegis of the DEI, presented by the Secretary to Cabinet to the Consultative Group Meeting in 2001, and strengthened by PPDA in early 2004	X	

Uganda

**Country Procurement
Assessment Report
(CPAR)**

Volume II

ANNEXES

(DRAFT)

May 2004

10. ANNEX 1 - List of Task Force Members

Name	Organization
1. Mr. M.N Kamugisha	Ministry of Finance, Planning & Economic Development
2. Mr. Patrick Mutabwire	Ministry of Local Government
3. Mrs. Adah Kabarokole Muwanga	Ministry of Public Service
4. Mr. Aeloi Deo	Ministry of Works, Housing & Communication
5. Mr. Kisitu Jonathan	Ministry of Health
6. Mr. David Kiyingi	Ministry of Education and Sports
7. Mr. W.Z Bushoberwa	Ministry of Tourism, Trade & Industry
8. Mr. Ashaba-Ahebwa	Directorate of Ethics & Integrity
9. The Solicitor General	
10. Mr. Kalule Swaibu	Inspector General of Government
11. John Walala	Uganda Revenue Authority
12. Edgar Kamara	National Chamber of Commerce
13. Eng. Hans J.W.B Mwesigwa	Uganda Institution of Professional Engineers
14. Eng. G.B Zaribwende	Uganda National Association of Building, Civil Engineering and Contractors
15. Dr. Kituuka Stephen	Institution of Ugandan Surveyors
16. Ms. Rhoda Mugamba	Makerere University
17. Mr. David Kabaterine	Ministry of Finance, Planning & Economic Development
18. Prof. Sam Tulya-Muhika	International Development Consultants Ltd
19. Mr. Mukwaya Bernard	Uganda National Bureau of Standards
20. Mrs. Liz Nkongi	Uganda Local Authorities Association
21. Mr. Julius P. Motto	Private Sector Foundation
22. Architect Stanley Mulumba	Architects Registration Board
23. Dr. Paul Sagala	Uganda Association of Consulting Engineers
24. Mr. Martin Onyach Olaa	Ministry of Local Government
25. Architect Joel Kateregga	Uganda Society of Architects
26. Mr. Daudi Ndiwalana	Uganda Manufacturers Association
27. Ben Michael Kiiza	Victoria Motors Ltd.
28. Mrs. Rebecca Namirembe	UMIA
29. Eng. I.W Barasa	Uganda Association of Consulting Engineers

11. Annex 2: Monitoring and Controlling Public Procurement

Overview of all Central and Local Government Procuring and Disposing Entities

Report for Period

Ending: _____

Indicator	Value	FY00/01	FY01/02	FY02/03	FY03/04	FY04/05	FY05/06	FY06/07
1. Number and percentage of Procuring and Disposing Entities (PDEs) ⁶³ that do not have a procurement plan approved by their accounting officer	Number							
	Percentage							
2. Number and percentage of PDE procurement activities that have been initiated but are not in the approved procurement plan	Number							
	Percentage							
3. Number and percentage of PDEs ⁶⁴ to which funds have been released but that have not prepared procurement plans	Number							
	Percentage							
4. Number and percentage of procurement activities for which there has been no public advertisement to tender	Number							
	Percentage							
5. Number and percentage of bids issued before requirements have been defined, and specifications and estimates established	Number							
	Percentage							
6. Number and percentage of contracts awarded without bids having been solicited.	Number							
	Percentage							
7. Number and percentage of contracts not awarded to the lowest evaluated bid	Number							
	Percentage							
8. Number and percentage of contracts awarded without a bid evaluation based upon pre-determined evaluation criteria	Number							
	Percentage							
9. Number and percentage of contracts awarded more than 30 days after the bid-	Number							

⁶³ This overview report combines information from two groups of Procuring and Disposing Entities (PDEs): Ministries, Departments and Agencies (MDAs) in the Central Government; and Districts at the Local Government level. The expression PDEs thus refers to all MDAs and Districts.

⁶⁴ Ministries, Departments and Agencies of Government

Indicator	Value	FY00/01	FY01/02	FY02/03	FY03/04	FY04/05	FY05/06	FY06/07
closing date.	Percentage							
10. Total value of contracts awarded using methods that are less competitive than those set out in the approved procurement plan, and their value as a percentage of all contracts awarded.	Total Value							
	Percentage							
11. Number and percentage of contract awards that have been appealed	Number							
	Percentage							
12. Number and percentage of contract awards that have been appealed successfully	Number							
	Percentage							
13. Number and percentage of contracts awarded before there was a confirmation of funds being available	Number							
	Percentage							
14. Number and percentage of approved contract variations that exceed the thresholds set out in the Public Procurement Regulations	Number							
	Percentage							
15. Total value of approved contract variations that exceed the thresholds set out in the Public Procurement Regulations, and their value as a percentage of the total value of the contracts to which they are related.	Total value							
	Percentage							
16. Number and value of bid validities that have been extended	Number							
	Value							
17. Number and percentage of payments to contractors that have been paid more than 30 days after the submission of a claim	Number							
	Percentage							
18. Number and percentage of contracts terminated early by PDEs after payments were made but before goods and services were delivered	Number							
	Percentage							
19. Total value of payments issued against contracts terminated early by PDEs before goods and services were delivered, and the value of this amount as a percentage of the total value of the contracts to which they are related.	Total value							
	Percentage							
20. Number and percentage of contracts abandoned by contractors after advance payments were received, but before goods and services were delivered.	Number							
	Percentage							

Indicator	Value	FY00/01	FY01/02	FY02/03	FY03/04	FY04/05	FY05/06	FY06/07
21. Total value of advance payments issued against contracts abandoned by contractors before good and services were delivered, and the value of this amount as a percentage of the total value of the contracts to which they are related.	Total value							
	Percentage							
22. Number of complaints about corrupt practice in procurement filed with the PPDA, IGG or CID ⁶⁵	Number							
23. Number of firms and individuals blacklisted for having been found guilty of any corrupt practice including misrepresenting any facts in respect of ownership in a tender submission or in registration with the Registrar of Companies.	Number							
24. Number of staff who have been disciplined, sanctioned or charged with breaking the law in connection with public procurement or disposal activities	Number							
25. Number and percentage of PDEs that have been given a clean audit certificate by the PPDA	Number							
	Percentage							
26. Number and percentage of PDEs that have been given a clean audit certificate by the Auditor General	Number							
	Percentage							
27. Number and percentage of PDE accounting officers sanctioned for matters relating to public procurement or disposal	Number							
	Percentage							

⁶⁵ Public Procurement and Disposal of Public Assets Authority, Inspectorate General of Government, Criminal Investigation Department

12. Annex 3: Status on recommendations from Uganda CPAR 2001

Uganda CPAR 2001 Recommendations

Status:

Accomplished
In process
No action

Recommendation		Status	Comments
PROCEDURES AND PRACTICES			
<i>Procurement Planning and Annual Updating of Plans</i>			
1	Ministries, agencies and parastatals should be required to prepare procurement plans as part of budget proposals. Funds should not be released to agencies without procurement plans. Procurement plans should be revised on a six-month basis. Repeated ad hoc and emergency procurement should not be sanctioned.		Procurement plans are a requirement of the Procurement Act, but not the requirement is not adequately enforced
<i>Procurement Process and Methods</i>			
2	Standard Bidding Documents (SBDs) should be prepared for goods, works and services. The goods and work SBDs should include the following as a minimum: Invitations for Bids; Instructions to Bidders; General Conditions of Contract; and Standard forms. For consultancy services the minimum should be: Letter of Invitation; Instructions to Consultants; General Conditions of Contract and standard forms. It should be made clear mandatory for all the procurement entities to use the standard bidding documents. The World Bank SBDs could be adapted for this purpose.		The PPDA have issued draft SBDs on works. Even though these are only drafts, they are in use. SBDs in other areas remain.
3	The fees to be charged for bidding documents should be the minimum required to cover production costs. Operational expenses for the Tender Board should be part of the normal operational budget.		Bidders report excessive charging for inclusion on registration lists.
4	Remove requirement for site visit as a prequalification criterion.		This is no longer a requirement in the Regulations.

Recommendation		Status	Comments
5	Stop accepting bid bonds and advance payment security bonds from insurance companies and only accept those issued by reputable Banks. Since bid securities offered by banks are very expensive, one option is to include in the future law automatic suspension of a bidder who, winning a contract, does not sign it.		
6	Develop standard contracts for service, goods and works where these issues are regulated according to normal international standards. This will make issues like size of advance payments -- a non-negotiable issue, provision for interest payments to contractors will be introduced, and liquidated damages will be included. Advance payments should be limited to a maximum of 20% of contract prize.		Standard contracts will be part of the SBDs when they are developed.
7	Implement more limitations on the use of restricted tendering and require that the short-listing process be fair when restricted tendering is used.		The use of the registration lists and non-transparent short-listing procedures remains one of the most pressing issues to be dealt with
8	The use of merit point system for goods and works should be discontinued unless the goods are of very complex nature, because it is prone to subjectivity.		The Regulations allow merit point system
9	In order to determine the level of preferences to be given to domestic suppliers, due consideration should be given to the economic benefits to be derived. To this effect a minimum of 30% value added is being recommended. Domestic preference should be applicable to tenders under international competitive bidding only.		The Regulations do not contain precise and mandatory rules on application of domestic preference
10	To avoid potential conflict-of-interest in procurement, the declaration of assets and liabilities of leaders should include ownership of companies or shares in companies; the new, computerized registry of companies prepared by the Ministry of Justice should be made available to the public on CD ROM and/or an internet web site; the Uganda land registry, beginning with the city of Kampala, should be put onto a computerized data base and be made available to the public; and the list of firms tendering for government contracts should be published quarterly.		The Company Registrar is still unable to provide the information needed.
<i>Monitoring and Contract Management</i>			

Recommendation		Status	Comments
11	(a) Develop a handbook for monitoring services, goods and works. The handbook shall build on best practice and guide contract managers through the job in a systemic and professional manner. The handbook must be designed to suit the existing organisation to enable easy application. It must deal with both financial and technical issues and its development must be linked to the implementation of the new procurement law and the requirements derived from this.		The PPDA intend to develop guidelines in parallel with the SBDs
	(b) For larger contracts, include as a condition for final payment, that an external expert together with the employer's representative co-sign the certificate releasing final payment. In a construction project the external expert can be an engineer who is asked to check that basic quality and quantity is fulfilled by the contractor according to the contract. The external expert shall be nominated by a professional organisation and appointed by the Government. The appointment will be done immediately before the inspection to avoid collusion between the expert and the contractor.		Such a condition is not included in the Regulations
	(c) Strengthen the monitoring system by developing adequate sanctions, which must be well known to both contractors and implementing agencies.		A system of monitoring is well developed in the Procurement Act, but not yet implemented effectively
	(d) A maximum period of one month for payment of contractor claims should be set. Accounting officers should be held responsible for failing to meet such standards.		Such a condition is not included in the Regulations
	(e) Contract variations should be done only under very exceptional circumstances. When this is absolutely necessary, approval must be obtained from the appropriate tender board. The method for determining price variation during contract execution must be incorporated in the contract. The formula method is recommended rather than the method of documentary evidence.		Pre-contract negotiations and contract variations are frequently seen. Often caused by poor specifications.
12	(a) Review the effectiveness of the current procurement filing system in all public entities to ensure transparency and accountability according to international best practice. Include record management as part of basic procurement training program.		Such a review has not been carried out.
	(b) If a new filing system is not feasible as a short-term recommendation, another solution aimed at public procurement must be developed. This can be as a description of minimum requirements for a paper based filing system, which can document the procurement process and ensure accountability according to international standards.		The Procurement Act now contains such minimum requirements for a "procurement record" "

Recommendation		Status	Comments
	(c) Filing systems and accountability shall be included as part of the basic training of the procurement professionals to ensure capacity on how to establish and maintain the filing system. Further it must be ensured that necessary funds are available for the filing and documentation process. It must be possible for the procurement professionals to have access to copy facilities, paper, ring binders, filing cabinets etc.		Training in filing is to some extent available, but funds are lacking for necessary office equipment
	(d) An archiving system should be established.		The Records and Archive Act(2001) has not yet been implemented
ORGANISATION AND RESOURCES			
<i>Resources - findings</i>			
13	It will take the Government some time to build the necessary procurement capacity in the public sector. In the meantime, the Government is advised to employ procurement agents to carry out procurement on its behalf. The procurement agents should also be given the responsibility of training government employees and special incentives should be built in their contracts to ensure that training is carried out.		Government is largely carrying out procurement itself. Training is being piloted by the PPDA.
<i>Resources - recommendations</i>			
14	1. Undertake a needs assessment of procurement professionals and compare it with available procurement capacity in Uganda.		Several needs assessments by various consultancy teams have been carried out, and these now form the basis of the PPDA capacity building strategy
	2. Develop professional standards for procurement cadres, through a certification system		This has yet to be established
	3. Develop training program and training materials leading to certifications as cadre. The training material must build on the procurement manual developed by the RCTB.		A training programme is under development by the PPDA. However, this has not yet been linked to a certification mechanism.
	4. The PALMA is commended for providing the sort of procurement training that is desired and the Government needs to support the Association as much as possible. More organizations providing this sort of training, such as Universities and Technical Colleges are needed to satisfy the training needs of staff at Central and Local Government levels. Such agencies should operate in a network to share experiences and optimize the benefits of cooperation.		After the withdrawal of its main donor, the ITC, PALMA is no longer capable of providing training. However, other training providers have been established and will likely, in time, fill this gap. Efforts are being made by the PPDA, and backed by the Development Partners, to increase training capacity in Uganda
	5. The general, systematic and continuous on-the-job training for all civil servants should be considered alongside the specialized		Training, including on-the-job training is on-going.

Recommendation		Status	Comments
	training of procurement experts.		
	6. Since decisions on procurement are made by multiple layers of administrative officers, procurement training needs to be broadly conceived to benefit such officers as well.		Up until now, training has mainly targeted the new procurement cadre in central government. Building up capacity and establishing training programmes for staff involved in local government remains a challenge
	7. Government should increase availability of training resources in the country for promoting the establishment of a well-qualified and trained procurement cadre. The high cost of training and capacity building, which the proposed reforms entail, should be weighted against the benefits of enhanced capacity and reduction in corrupt practices.		Capacity building efforts have so far mainly been financed by the international donors in Uganda
PERFORMANCE ON BANK-ASSISTED PROJECTS FINDINGS			
<i>Procurement audit</i>			
15	(a) Implementing Agencies should prepare updated annual procurement plans and use the Plan as a monitoring tool.		The CPAR team did not encounter any real procurement plans. Rather the recognition of the importance of planning and the knowledge of what planning entails remains low.
	(b) To augment in-house procurement capacity, Procurement Agents should be hired.		This has not taken place
	(c) Additional training is required for officials dealing with procurement.		This is ongoing and undertaken primarily by the PPDA
	(d) The Bank through its Country Office should take a greater role in providing Procurement Advice to the Projects. A resident procurement expert needs to be recruited for the Uganda Country Office.		A resident procurement specialist is in place in the WB Uganda Country Office
	(e) The filing system needs to be revised to have individual files for each specific procurement action from advertising to contract award and administration.		Individual procurement files are still not in place in the majority of the procuring entities
COMMERCIAL PRACTICE			
<i>Trade practices</i>			
16	The URA should conduct a study into the possibilities of optimising the effect of pre-shipment inspection. This study could among other things include a review of the pre-shipment contract and procedural design including the introduction of proper ex-post reconciliation procedures. The study could review the merits of		As far as the mission know, no effort was made in this respect as pre-shipment inspection since have been abandoned. Given the development of technology (the capacity to open most containers without leaving traces) the efficiency of pre-shipment inspection can be

Recommendation		Status	Comments
	destination inspection for some imports, say, from neighbouring countries. The pre-shipment procedures should (i) increase its focus on quality control of imports to cover dubious imports from certain countries and (ii) continue using random selection procedures for inspection for imports from other countries.		questioned in general especially if an efficient system is not already in place. Focus should instead be given to the improvements and development of the destination inspection as specified below. Quality control of imports is still an issue and is an issue to be dealt with primarily by Uganda National Bureau of Standards. UNBS has taken steps but is a young organisation with some way to go.
<i>Private Sector procurement</i>			
17	There is a need for the private sector to develop procedures that will ensure that they achieve maximum efficiency and economy in their procurement. They could achieve this jointly through their professional associations.		Private sector procurement is still inefficient and uneconomic but the problem for a majority of Ugandan SMEs has deeper roots. There is a need for training and development of procurement in SMEs but this will have to build upon a basic development of financial and book keeping skills as well as development of good business practices.
<i>Financial framework</i>			
18	Bank charges for establishing LCs need to be reviewed especially in World Bank financed projects where irrevocable letters of guarantee are issued by the World Bank. The commercial risk on the commercial bank in these cases is non-existing.		The mission has not established if this was carried out. The rates reviewed by the mission do not seem unreasonable in comparison with other countries. Rather it is a question of developing basic skills with importers to oversee and handle the financial transactions involved.

13. Annex 4: List of people met during main missions

Name	Title	Institution/ Company
<i>Florence Kuteesa</i>	<i>Director Budget</i>	<i>Ministry of Finance, Planning and Economic Development</i>
G.O. Lujwero-Bwoch	Accountant General	Ministry of Finance, Planning and Economic Development
Paul Beggan	Governance Advisor	Directorate of Ethics and Integrity, Office of the President
David Kiyingi Nyimbwa	Principal Procurement Officer	Ministry of Education and Sports
Robert H. Muwanga	Project Coordinator	Ministry of Finance, Planning and Economic Development
John F. S. Muwanga	Auditor General	Auditor General of the Republic of Uganda
Francis Magambe Byaruhanga	Finance & Administration Division Manager	Ministry of Works, Housing and Communications/Road Agency Formation Unit (RAFU)
Patrick Muhumuza	Administrative Officer	Ministry of Works, Housing and Communications/Road Agency Formation Unit (RAFU)
T. Silver Kangaho	Director of Operations	Inspectorate of Government Ministry of Local Government
Adah Muwanga	Commissioner	Ministry of Public Service
Paul Bogere	Assistant Commissioner	Ministry of Public Service
Justin Zake	Deputy Commissioner General Revenue	Uganda Revenue Authority
John Genda Walala	Ag. Commissioner Finance	Uganda Revenue Authority
Edgar Agaba	Ag. Executive Director	Public Procurement and Disposal of Public Assets Authority
Milton Goddie Tumutegyeize	Director, Training & Capacity Building	Public Procurement and Disposal of Public Assets Authority
Mrs Mary P. Sozi (ACCA)	Director Finance and Administration	Public Procurement and Disposal of Public Assets Authority
Patrick Tsekitoleko	Head Standards Division	Uganda National Bureau of Standards
John Okumu	Standars Officers/Standards Development Engineer	Uganda National Bureau of Standards
Abdul Kasule	Deputy Secretary General	Uganda National Chamber of Commerce and Industry
Rolf Verheul	Financial Policy Advisor	Dutch Ministry of Foreign Affairs/Policy Advice Division
Peter Schuurmann		Dutch Ministry of Foreign Affairs/Sustainable Economic Development Direction
Warner ten Kate	First Secretary, Macroeconomist	The Royal Dutch Embassy, Kampala
Ms Astrid Thygesen	Chief Technical Advisor	UNDP/Capacity Building Project, Public Procurement Authority
Joseph Balidawwa	Partner	PriceWaterhouseCoopers

Name	Title	Institution/ Company
Ben Muhigo	Auditor	Price Waterhouse Coopers
Bitarabeho K. Johnson	Chief Administrative Officer	Bushenyi Local Government, Bushenyi
Davis Ampwera	District Promotion Officer	Bushenyi District Private Sector/Promotion Centre, Bushenyi
David Bashakaara	Chief Township Officer	Mbarara Municipal Council
Mukotani Rugyendo	Senior Media and Communications Advisor	Uganda Debt Network
<i>Lukwago</i>	<i>Policy</i>	Uganda Debt Network
Robert K. Rutaagi	General Manager	National Medical Stores
Ms Rose Naikoba	Head Finance & Accounts	National Medical Stores
Nicholas Kyaterekera	Procurement Officer	National Medical Stores
Ms Gertrude Rose Gamwera	Legal Officer, EDF Programme Co-ordinator	ULAA/UAAU Joint Secretariat
Ms Liz Nkongi	Communication Officer	ULAA/UAAU Joint Secretariat
Alfred Ogwang	Statistician/Economist	ULAA/UAAU Joint Secretariat
Irenaeus W. Barasa	Partner	Multiplan Consulting Engineers
Kiyingi David Nyimbwa	President (MCIPS, MILT)	The Chartered Institute of Purchasing & Supply, Uganda Chapter
Charles Ohw-Ubb (<i>Owor</i>)	President	Purchasing And Supply Management Association (PALMA)
Paolo de Renzio	Research Fellow	Overseas Development Institute/Centre for Aid and Public Expenditure/Poverty and Public Policy Group, London, UK
Herbert Tumwesigye	Managing Director	Victoria InsGlass Ltd./ Agents of Kampala City Council Central Division (For Licensing and Collection of Licence fees),
B.M. Gagrani	Financial Controller	Tororo Cement Ind Ltd.
Fred Festus K. Matovu	Managing Director	Kampalu-Longman
Ms Caroline Healey	Managing Director	Crown Agents Uganda Ltd.
Daudi Ndiwalana	Director of Marketing	Uganda Manufacturers Association
Ms Monica A. Ntege	Procurement/Capex Officer	Stanbic Bank
Kyazza Mukasa Patrick	Manager, Finance and Administration	Uganda Manufacturers Association
Godfrey B. Zaribwende	Chairman	Uganda National Association of Building & Civil Engineering Contractors UNABCEC
Paul Mwirumubi	National Treasurer	Uganda National Association of Building & Civil Engineering Contractors UNABCEC

Name	Title	Institution/ Company
Winston Manzi	Training Manager	American Procurement Company Inc. (AMPROC)
Dr. Paul Sagala	Director	Prome Consultants Ltd.
Prof. Sam Tulya-Muhika	Director	International Development Consultants Ltd.
Joel K. Kateregga	Architect, Managing Director/ coordinator	ECO-Shelter & Environmental Consultants
Nimrod Waniala	Executive Director	Private Sector Foundation Uganda
Eng. E.J. Byandala	City Engineer & Surveyor	City Council of Kampala
Ms Josephine Karungonjo (**)	City Advocate	City Council of Kampala
Fred Festus Matoun	Managing Director	Kamalu Limited
Ntale Louis		Lonaco Ltd.
Turyamusuma Apollo	Purchasing Officer	Kampala City Council
Dennis Karuhanga	Senior A/C	
Ms Justine Kasule	Ag Secr	Kampala District Tender Board
Muwonge-Kewasa	Ag. Def. Town Clerk	City Council of Kampala
Herbert Tummesigye	Managing Director	Victoria Insglass Ltd.
Kansine Eldard	Project Manager	Multiplex
Patrick Barasa	Senior Internal Auditor	Tororo District Administration
Adongo Owura	Ag. DWD	Tororo District Administration
Obolh Siwester (<i>Oboth Sylvester</i>)	Chief Administrative Officer	Tororo District Administration
Duncan Bujirwa	Permanent Secretary	Public Service Commission
Wafula Oguttu	Member	Transparency International (Uganda)
Olobo Martin	Permanent Secretary	Inspectorate General of Government
Richard Ogal	Member, Contracts Committee	Inspectorate General of Government
Jasper Tumuhimbise		Inspectorate General of Government
Robert Bukenya	Senior Assistant Secretary	Inspectorate General of Government
Mathias Tumwesigye	Director of Education and Prevention of Corruption	Inspectorate General of Government
<i>Gashirabake Christopher</i>	<i>Commissioner</i>	<i>Ministry of Justice and Constitutional Affairs</i>
<i>Lawrence Wadada</i>	<i>Deputy Chief Administrative Officer</i>	<i>Nakasongola District Administration</i>
<i>Jonathan Kisitu</i>	<i>Principal Procurement Officer</i>	<i>Ministry of Health</i>
<i>Tushabe</i>	<i>Head, Procurement Unit</i>	<i>Makerere University</i>

Name	Title	Institution/ Company
<i>Engineer Patrick Tuwesigye</i>	<i>Head, Procurement Unit</i>	<i>National Water and Sewerage Corporation,</i>
<i>Jean-Sammy Aupal</i>	<i>Chief Finance Officer</i>	<i>Nakasongola District</i>
<i>Francis Opebun</i>	<i>Internal Auditor</i>	<i>Nakasongola District</i>
<i>William Ssekandi</i>	<i>Ass. Supplies Officer</i>	<i>Nakasongola District</i>
<i>Dr. Arthur R. Mugisha</i>	<i>Executive Director</i>	<i>Uganda Wildlife Authority</i>
<i>Bisereko Kyomuhendo</i>	<i>Ag. Registrar General</i>	<i>Ministry of Justice and Constitutional Affairs</i>
<i>S.H. Kisukiro</i>	<i>Principal Assistant Secretary</i>	<i>Uganda Law reform Commission</i>
<i>P. Elimu Elyetu</i>	<i>Principal Commercial Officer</i>	<i>Ministry of Tourism, Trade & Industry</i>
<i>Silver Ojakol</i>	<i>Principal Commercial Officer</i>	<i>Ministry of Tourism, Trade & Industry</i>
<i>Joseph Kyamanywa</i>	<i>Finance & Administration Manager</i>	<i>National Agricultural Advisory Services, Naads Secretariat</i>
<i>Col. Benon B. Biraaro</i>	<i>Assistant Chief of Staff</i>	<i>Uganda People's Defence Forces</i>
<i>Naome Kibaaju</i>	<i>Under Secretary/Logistics</i>	<i>Ministry of Defence</i>
<i>Peter Ssebugwawo</i>	<i>Assistant Internal Auditor</i>	<i>National Agricultural Advisory Services, Naads Secretariat</i>

14. ANNEX 5 - Checklist comparing National Competitive Bidding Procedures and World Bank Policy

	Yes	No	Bank Policy
1. Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?		X	Not allowed
2. Are there primary boycotts which are established by law?	X		Only primary boycotts are acceptable
3. Are bidding opportunities advertised in the local press?	X		Required
4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?		X (22)	Required
5. Are contractors/suppliers prequalified for large/specialized contracts?	X		Required
6. Are minimum experience, technical and financial requirements (for pre- or post-qualification) explicitly stated in the documents?	X		Required
7. Registration should not be used as a substitute for advertisement when open competition is required. However, when advertising for civil works, borrowers could indicate the required minimum category of contractor specified in the registration system.	X		Required
8. Is an invitation to prequalify advertised for each procurement involving large or complex potential contracts?	X		Required
9. Are joint ventures with local firms required for foreign firms' eligibility?		X	Not allowed
10. Are joint venture partners jointly and severally liable?	X		Required
11. Are there set limitations to the number of firms who can bid for a contract?		X	Not allowed
12. Are parastatals allowed to bid?	X		Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law, and (iii) are independent from borrower and its purchasing/contracting authority.
13. Are bidders required to register with a local or federal authority as a prior condition for bidding?		X	Should be discouraged. Acceptable only if registration criteria, process and cost reasonable/efficient and qualified foreign firms are not precluded from competing.
14. Are extensions to bid validity allowed?	X		Acceptable only if justified by exceptional circumstances.

	Yes	No	Bank Policy
15. Are there restrictions on the means of delivery of bids?	X		Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.
16. Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?	X		Not allowed
17. Are there restrictions on sources of labour and material?		X	Not allowed, except for unskilled labour, if available locally.
18. Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?	X		Required
19. Is a “two envelope” bid opening procedure permitted for procurement of goods or works? ⁶⁶		X	Should be discouraged. Allowed only if (i) domestic law precludes use of one envelope and (ii) provided adequate safeguards against retaining second envelope unopened are incorporated in the two envelope procedures and effective bid protest mechanisms are already in place for the due processing of bid complaints.
20. Is automatic rebidding required if too few bids are received?	X		Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result.
21. Is “bracketing” used in bid evaluations? ⁶⁷		X	Not allowed
Are bid evaluation criteria other than price allowed?	X		Only if quantified in monetary terms
22. Is award made to lowest evaluated qualified and responsive bidder?	X		Required

⁶⁶ All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round.

⁶⁷ Rejection of bids outside a range or “bracket” of bid values.

	Yes	No	Bank Policy
23. Are price negotiations conducted with “winning” bidders prior to contract signature?	X		Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price. (See Guidelines para 2.60)
24. Are price adjustment provisions generally used?	X		Not required, but recommended for works contracts of one year or more in duration when domestic inflation rate is high.
25. Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?	X		Required (to be acceptable they should be balanced, reasonable, and clearly address the most important issues that lead to problems during performance, e.g. risk allocation, payment, inspection, completion/acceptance, insurance, warranties, changes, contract remedies, force majeure, governing law, termination, etc.)
26. Are contract scope/conditions modified during implementation?	X		Acceptable, but the Bank’s approval is required for changes in those contracts that were subject to prior review under the Loan Agreement.

15. ANNEX 6 - Questionnaire on Public Procurement System

Section A - Legal Framework GENERAL FEATURES	
1. Identify predominant legal system (i.e. Common/Civil Law; Socialist; other)	<i>Common Law</i>
2. Identify form of government (i.e. federal or centralized)	<i>Uganda is a republic with centralized government</i>
3. Does the Constitution (if there is one) contain any provision directly bearing on public sector procurement? (If so, describe)	<i>No</i>
4. Is the country a signatory (or planning to become one) to the Agreement on Government Procurement of the World Trade Organization?	<i>No</i>
5. Does the basic contract law contain any provision directly bearing on public sector procurement? (If so, describe)	<i>No</i>
6. Is there a separate body of law which regulates public sector procurement, or is it governed by regulations issued under an organic finance act?	<i>Yes, the Public Procurement Act (2003) with supporting regulations for central government procurement covers all public procurement.</i>
7. Is the system clear, comprehensive and consistent? Does it cover all essential aspects with no unduly complicated, unnecessary, conflicting or outdated regulations? Are rules found in various distinct sources or within a well coordinated legal framework?	<i>Yes, the legal framework is consistent but still lacking local government procurement regulations.</i>
8. Is the hierarchy of the sources of procurement rules well established?	<i>Yes, with the enactment of the new Procurement Act in 2003 previous uncertainties have been removed.</i>
9. What is the scope of coverage for the procurement legal framework? Does it cover sub-national government? Does it include coverage of all government procurement including security and military procurement?	<i>All public procurement is covered by the Act, with the exception of procurement by parastatals not receiving "public funds" and procurement of a sensitive nature by the military and security forces.</i>
10. Are there separate procurement rules established for parastatals? Describe.	<i>No</i>
11. Is the procurement function decentralized? If so, describe basic structure, name the main decentralized procuring entities and indicate their role, rights, and responsibilities.	<i>Yes, the Public Procurement and Disposal Authority only maintains oversight responsibilities while all procurement operations are the responsibility of the contracts committees in each procuring entity.</i>

<p>12. Is there an entity(ies) with oversight responsibilities for procurement functions throughout public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure.</p> <p><i>Yes, the Public Procurement and Disposal Authority is the central policy and monitoring body.</i></p>
<p>13. Is there a Central Tender Board or a similar institution? What are its duties and responsibilities?</p> <p><i>No</i></p>
<p>14. Does the system allow/facilitate the introduction of new and innovative techniques and contracting practices without compromising basic principles?</p> <p><i>Yes, the basic sound principles of proper procurement are enshrined in the Procurement Act. While the CPAR has identified some weaknesses in the Regulations, there is adequate room for adaptation of new techniques within the overall legal framework.</i></p>
<p>15. Are there rules/procedures regarding bidder suspension and debarment?</p> <p><i>Yes, contracts committees can debar bidders based on previous performance/irregularities.</i></p>
<p>16. Is the country a member of regional trade/customs agreements? (If so, specify)</p>
<p>17. Are there primary/secondary boycotts? (Specify)</p> <p><i>No</i></p>
<p>18. Are there provisions regarding preferences for particular categories of suppliers of goods, works and services? (Specify)</p> <p><i>Yes, but only in local government procurement, where preference can be given to local works contractors.</i></p>
<p>19. Are there arbitration rules applicable to procurement contracts? Are they consistent with international rules such as those embodied in the UNCITRAL Model Law on Arbitration? (Highlight major differences)</p> <p><i>Standard terms for public contracts often contain arbitration clauses, but without such specific agreement public contracts are subject to the legal procedures of the courts. An Arbitration Act based on the UNCITRAL Model Law is in place.</i></p>
<p>20. Are there laws or regulations governing policies and procedures for awarding concessions/contracts for private sector provision/operation of power, water or other infrastructure facilities? (BOO, BOT, etc.) Do any general conditions of contract apply as a matter of law or regulation?</p> <p><i>No, the Procurement Act applies.</i></p>
<p>BASIS OF TRANSPARENCY</p>
<p>1. Is there a legal or regulatory requirement for public disclosure of procurement legal texts?</p> <p><i>Yes, legal texts are published in the Government Gazette.</i></p>
<p>2. Are there mandatory requirements for maintaining written records of procurement? To what extent are they available to the general public?</p> <p><i>Yes, a comprehensive “procurement record” is mandatory according to the Procurement Act. The content of the protocol is not available to the public as there is no freedom of information act.</i></p>

<p>3. Are requirements for advertisement of contracting opportunities adequate? Does the country have a national gazette (or other similar publication) published in a timely fashion? Is it easily available to the general public?</p> <p><i>Advertisement is only through newspapers, notice boards and in a few cases web-sites. The Government Gazette does not carry advertisements of procurement opportunities. For large contracts, advertisement in the newspapers is adequate, but the country does not have a centralized media where all procurement opportunities can be accessed.</i></p>
<p>4. Are requirements regarding public bid opening, if any, appropriate?</p> <p><i>Yes, the Procurement Act and Regulations contains adequate rules.</i></p>
<p>5. Are negotiations after bid opening or award selection allowed? Do the rules on negotiated procurement, if any, provide the basis for a fair and transparent process?</p> <p><i>Pre-contract negotiation is allowed as long as they do not “substantially” change the terms of contract. There are no rules on how such negotiation should proceed.</i></p>
<p>6. Are conditions for use of various procurement methods clearly established? Is there an explicit requirement that open competitive bidding is the preferred or default method?</p> <p><i>Yes, competitive bidding is the preferred method, but through the use of registration lists and illegal splitting of tenders, the majority of tenders are restricted to bidders on shortlists</i></p>
<p>7. Is there a requirement for public notice of contract awards?</p> <p><i>Yes, on the notice board of the procuring entity.</i></p>
<p>8. Are there clear and appropriate requirements for bid and contract securities?</p> <p><i>Yes, in the Standard Terms of Contract published as part of the Bidding Documents for Works, by the PPDA. Otherwise no.</i></p>
<p>9. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract?</p> <p><i>Comprehensive and adequate qualification requirements are contained in the standard Bidding Documents for Works, published by the PPDA.</i></p>
<p>10. Do requirements for bid examination and evaluation provide the basis for a rational and fair process?</p> <p><i>Yes</i></p>
<p>11. Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, and names of successful bidders)? If so, describe scope and frequency.</p> <p><i>No</i></p>
<p>12. Does government hold regular meetings with the business community to discuss public procurement issues?</p> <p><i>No</i></p>
<p>13. Is there a conflict of interest policy in effect? (If so, describe its essential features).</p> <p><i>Yes, the Anti-Corruption legislation specifically outlaws decisions made by public employees in conflict of interest.</i></p>

14. Are there laws on bribery of government officials and are they enforced? Do government bidding documents and contracts contain anti-bribery and anti-corruption conditions?

Yes, the Prevention of Corruption Act contains anti-bribery provisions, and these are enforced by the IGG to the extent that resources and expertise allows.

BASIS OF ACCOUNTABILITY

1. Are government employees expected to follow a published code of ethics? If so, describe its basic features.

High level public employees and politicians are required to abide by the Leadership Code, which among other features includes provisions on declaration of assets. Also, the PPDA, Fifth Schedule contains a Code of Ethical Conduct in Business, which applies to public employees involved in tendering processes.

2. Is there an accessible and secure process for bidders to report bribes by others and solicitation/extortion of bribes by government officials?

Instances of bribery or attempts hereto can be reported to the IGG, which also has regional offices, which are easily accessible.

3. Do bidders have adequate access to administrative or judicial review/appeal?

No, even though the PPDA is the designated complaints authority, it does not constitute a credible avenue of complaints. Beyond the PPDA, aggrieved bidders will have to take their complaint to the Court System, however, this is a lengthy and costly process, and is therefore not perceived as a feasible option. Also, the judiciary is known to be one of the most corrupt sectors, which in practice also prevents bidders from taking their complaints to this level.

4. Are there measures/initiatives to curb/control corruption, e.g. anti-corruption statutes and/or bodies, whistle-blower statutes, comprehensive reforms of the civil service/judiciary, regional initiatives, provisions in the criminal law, anti-bribery provisions, etc.? (If so, describe)

A whole body of anti-corruption legislation is pending enactment in Parliament, including the Prevention of Corruption Act, the Whistleblower and Qui Tam Act, and the Freedom of Information Act.

Section B - Trade/Customs Practices

1. Are foreign firms engaged in trade with the country required to use a local agent?

No

2. Is there evidence of any trade malpractice affecting public sector procurement?

Yes there are accounts of over and under invoicing and bribery in trade practices leading to inefficiency and higher prices for public procuring entities.

<p>3. Is inspection conducted according to generally established procedures? Are there indications that the inspection is not effective? <i>Inspection in terms of quality control is very limited. URA Customs inspections are conducted according to procedures but there are substantial anecdotal evidence suggesting flaws in the practices.</i></p>
<p>4. Do preshipment/post-shipment inspection, if any, unduly increase the procurement lead time? <i>No pre-shipment system is in place</i></p>
<p>5. Is counter-trade used? Barter agreements? For what percentage of the country's total trade? <i>No</i></p>
<p>6. Are the ICC's INCOTERMS generally understood and commonly used in the Country? Are other trade terms used? <i>INCOTERMS are generally used but poorly understood by importers, clearing agents and to some extent customs</i></p>
<p>7. Are licensing and customs procedures generally transparent and efficient? <i>Procedures are transparent, but there is a need to communicate these better and to educate clearing agents and importers in the procedures. There are complaints from importers and clearing agent on delays.</i></p>
<p>8. Are "facilitation" payments normally necessary to clear goods through customs, obtain work permits for expatriate labour, process monthly payment certificates/invoices? <i>Yes anecdotal evidence suggests that this is common. However, some payments will not reach customs but stay with the clearing agent that has convinced the importer of the necessity of the payments.</i></p>
<p>9. Are staff familiar with shipping and other trade documents? With documentary credits? <i>Yes.</i></p>
<p>Section C - Financial/Budgetary Framework</p>
<p>1. Are banks capable of issuing Letters of Credit?</p>
<p>2. Are banks generally creditworthy?</p>
<p>3. Can bid, performance and advance payment securities be obtained easily? What formats are permitted? Bank guarantees? Bonds? Other? Provide details on cost, if available.</p>
<p>4. Are the requirements for issuance of bid, performance, and other securities to suppliers/contractors reasonable?</p>
<p>5. Do suppliers/contractors have reasonable access to credit?</p>

- | |
|---|
| 6. Do implementing agencies obtain budgetary authorizations for contract payments falling due beyond the current financial year? |
| 7. Are major projects or programs clearly identified in government budget estimates? |
| 8. What procedures are followed to ensure the procuring entity obtains budget authorization prior to inviting bids? |
| 9. Do procuring entities reliably receive the monies authorized? Or is the budget subject to revision during the year by a restrictive cash release system? |

Section D - Public Sector Procurement of Goods/Works

GENERAL RISK ASSESSMENT

1. Is staff working in public sector procurement area held in high regard?

Up until the enactment of the PPDA, the procurement function was generally not held in high regard, and in most public entities procurement was carried out by stores/supplies officer with little training and experience in actual public procurement. This has changed somewhat with the PPDA, which established the procurement cadre in the civil service system. After initial problems with the deployment of the procurement professionals in the central government entities (lack of office spaces, lack of telephone lines, files, etc), the majority of the procurement officers now seems to be in place and carrying out their functions.

2. Are pay levels for staff working on procurement comparable to that for other public and private sector technical specialists?

3. Does a code of ethics exist that staff working in procurement are expected to follow?

The PPDA contains a Code of Ethical Conduct in Business, which also applies to procurement staff.

4. Are the authorities relating to procurement clearly delegated to the entities carrying out the process? Are the applicable procedures clearly defined?

Yes

5. Are procurement decisions overridden by higher governmental agencies? If so, by whom? To what degree is the procurement decision-making process independent and based on transparent criteria?

There are reports of political influence on the procurement both at central government level and especially at local government level. At local government level, councillors are often directly involved in the procurement process

6. Does the highest level of government encourage/support/enforce compliance with existing procurement regulations? Are violations investigated and procurement/other responsible officials held accountable?

The procurement reform has all along been high on the GoU agenda. However, a major problem is the actual enforcement of the procurement rules. At present, the IGG is the main authority investigating violations of the procurement process, though this is in fact part of the PPDA's mandate and functions. There are several cases/examples of high level corruption in procurement and no convictions. Thus, a great problem is the sense of impunity seemingly flourishing among high level officials and politicians, which in turn sustains the lack of trust in the public procurement system among ordinary citizens and foreign investors.

7. Are there indications suggesting price-fixing in open bidding?

Cartel formation has been identified as one of the major issues by the CPAR team. Until Uganda establishes a competition framework, including a competition body, this problem will remain an issue. Notably, lack of a proper competition framework also poses a major deterrent to foreign investment.

ORGANIZATION

1. Is appropriate information on procurement adequately disseminated (i.e. procurement staff are aware of updated rules and thresholds, and other issues relevant to their assigned responsibilities)?

The PPDA is implementing a comprehensive programme of training and awareness raising on the newly enacted legal framework. However, up until now this has mainly targeted central procurement staff at central government level. It is planned that the PPDA together with the MoLG will extend the training and awareness activities towards local government level

2. Are the procurement and supply management functions clearly distinguished?

Yes – at central government level. At local government level, the procurement cadre still have to be established (by the MPS)

3. Is contracting authority reasonably delegated (i.e. there are no unnecessary levels of approvals or cumbersome procedures)?

Yes

4. **Are the thresholds for contracting authorities regularly updated?**

5. Do procuring entities have internal quality and control mechanisms? Are they regularly audited? <i>Quality control and auditing remains a problem. Very limited procurement audits have been carried out by the PPDA (which commissioned PWC).</i>
6. Is procurement staff experienced in international procurement? <i>No, generally not</i>
7. Do adequate formal and on-the-job training programs exist for entry- and higher-level staff that contribute to proper professional career development? Does knowledge of procurement lead to career advancement? <i>These are measures, which still have to be installed</i>
8. Are there additional training resources in the country that are currently utilized or that could be utilized to complement Government/donor-administered programs (e.g. universities and private institutions)? <i>A few private training institutions exist, however, most of these are not fully conversant with public procurement (focus remains on private sector procurement). The Dutch Embassy in collaboration with the PPDA is currently trying to establish a capacity building program for two Uganda universities. This will include twinning with selected Dutch institutions.</i>
9. Did previous training programs (if any) lead to an obvious improvement in the quality/productivity of procurement work? <i>The training program carried out by the PPDA with support from UNDP has contributed to the improvement of procurement work.</i>
10. Does procurement staff have adequate project/contract management capabilities? <i>No, not generally</i>
11. Are procurement agents used? Under what circumstances? How are they selected? Describe normal basis for compensation and contract duration <i>Yes, often for donor funded tenders and for some government funded complex tenders. Procurement agents are selected according to the rules on selection of consultants on a unit fee basis, typically with a contract duration corresponding with the planned duration of the specific tender to be performed.</i>
12. Is procurement monitoring and administration computerized? How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information? <i>Computerized monitoring is very rare in government funded projects. Generally, recording and filing of information is of low standard.</i>
PROCUREMENT PLANNING
1. Are project implementation units adequately staffed with trained procurement, planning, scheduling, expediting and cost estimating personnel? <i>No, there is a chronic shortage of adequately trained staff with knowledge of the new legal framework.</i>
2. Is overall planning for complex goods, works and other contracts done in sufficient detail to produce realistic project definition, achievable completion schedules, and accurate cost estimates? <i>No, poor quality in all planning stages is a major problem.</i>

3. Is the early technical and financial planning well coordinated so that projects are fully funded when work needs to begin, based on accurate cost estimates? <i>No, lack of accurate information affects quality of planning.</i>
4. Are appropriate methodologies used to plan multiple inter-related procurement activities on large projects (e.g. the critical path method)? <i>Rarely for government funded and run projects.</i>
5. Are project components appropriately packaged for procurement purposes? <i>No, often the packaging does not take into account the structure of the market and the available bidders.</i>
6. Are completion schedules generally met for goods, works and consultant services contracts? If not, what is the major cause for slippage? Is sufficient time generally allowed for external reviews/clearances? <i>No. Delays are often caused by poor planning and specifications. Delays caused by external reviews/clearance are not reported.</i>
7. Do procurement units regularly conduct market surveys to update their knowledge of prevailing prices for goods and works? <i>Generally not, even though some do.</i>
8. Are procedures and methodologies for planning procurement of recurrent items (i.e. inventory control, forecasting of future requirements, classification, coding, accounting/financial management, spare parts management, and delivery systems) adequate? <i>These tasks are handled by Stores Managers and Supplies Managers, but general procurement planning is perceived to be of low quality.</i>
DOCUMENT PREPARATION
1. Do standard documents exist for goods, works and other types of contract? List. Are other international contract formats used? If so, identify. <i>No only for works, The PPDA has issued draft Bidding Documents for Works in 2003. Even though they are drafts they have been issued and are in use. These standard documents are based on World Bank standard documents and until they are disseminated, a number of other standard documents based largely on donor documents are in use.</i>
2. Are these documents, if any, readily adaptable to specific contract situations (i.e. by modifications made through a Bid Data Sheet, Special Conditions of Contract or similar)? <i>Yes, the Bidding Documents for Works allow for adaptation.</i>
3. Are there separate documents for international and national competitive bidding not financed by the Bank? <i>No</i>
4. Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application? <i>No</i>

5. Do they contain other necessary information, such as eligibility requirements, basis of bid, language and currency of bids, common currency for purposes of evaluation, source and date of the exchange rate, etc.? Are sample forms and other appropriate sections of the documents provided? <i>No</i>
6. Are bidders required to provide bid security in an appropriate amount as a condition of responsiveness of their bid? <i>Yes, if the procuring entity desires it.</i>
7. Is pre- or post-qualification provided for? <i>Yes, both options are available.</i>
8. Are qualification criteria appropriate and clearly described? <i>Yes, but only in the draft standard documents, not in the Act or Regulations.</i>
9. Are conditions of contract equitable? Do they provide adequate coverage for most important commercial and legal issues (for the method of procurement, size, nature and type of contract used) and provide adequate protection to the Government, without putting undue risk on bidders? <i>Yes, the standard terms in the draft standard documents appear equitable.</i>
10. Are standard purchase orders used for shopping? <i>Yes</i>
PREQUALIFICATION
1. Is prequalification carried out when appropriate? What types of contracts is it used for? Works? Goods? Other? <i>No, even though the Act provides for prequalification and requires it when appropriate, often prequalification is not carried out.</i>
2. Is the prequalification process fair and transparent? Are decisions made promptly? Are foreign firms allowed to apply? <i>Yes, the described procedures are adequate.</i>
3. Are standard prequalification documents used? Do they clearly and completely describe all the prerequisites for submitting responsive applications for prequalification? Is financial information routinely requested and critically evaluated to assess an applicant's financial capacity to perform? <i>Only the standard prequalification documents included in the draft Bidding Document for Works exist. Entities lack the access to information the adequately assess any financial information.</i>
4. Do procuring entities verify prior to contract award if a successful bidder continues to meet prequalification requirements? <i>No</i>
5. Are suppliers required to have a local agent in order to qualify to bid for goods or services? <i>No</i>

6. Do procuring entities maintain updated lists of qualified suppliers and contractors and updated market information on commonly procured goods, including spares and consumables? Is supplier and contractor performance routinely evaluated and are any standing lists of prequalified suppliers and contractors updated and modified based on this information. Can newcomers readily apply and be qualified?

The majority of procuring entities maintain internal registration lists. There are few common rules for the administration procedures of such lists, especially on the formation short-lists from the registration lists. The quality of the administration and information in this list vary, and as a consequence hereof, the bidders can expect very different levels of treatment from different procuring entities.

7. Is the procedure for registration of domestic contractors fair, providing timely access to the bidding process to all potentially qualified bidders? Are bidders allowed to register by mail and, if the conditions in the country allow, through the internet? Is registration permanently opened to bidders for registration or update, is there a deadline imposed in relation to a specific bidding process? Is the time taken for registration reasonable?

There are no requirements for registration. Since a large proportion of the procurement volume is carried out through short lists developed from the individual registration lists of the entities, in practice the bidders are registered here.

ADVERTISEMENT

1. Are contracts to be awarded by competitive bidding publicly advertised?

Yes, in newspapers.

2. Is sufficient time allowed to obtain documents and prepare bids?

Yes

3. Do the requirements specify use of publications or websites that are readily available to the public and are known to the private sector as sources of information on public procurement opportunities?

Yes, newspapers are well known sources, but there is no central media for procurement information and Internet publication is not used. The Regulations require publication of bid opportunities on the PPDA web-site, but this has not been implemented.

COMMUNICATIONS BETWEEN BIDDERS AND THE PROCURING AGENCY

1. Are requests for clarifications answered promptly and completely in a written form?

Yes, even though reports of delays are frequent.

2. Are clarifications, minutes of the pre-bid conference, if any, and modifications of the documents promptly communicated to all prospective bidders?

Yes, at least in the large projects.

3. Is bidders afforded sufficient time to revise their bids following a modification of the documents?

Yes, that is the general perception.

4. Do procuring entities maintain accurate records of all communications with the bidders (before and after the deadline for submission)? <i>No, record keeping is of poor quality.</i>
RECEIPT OF BIDS AND OPENING
1. Are bids received prior to the deadline securely stored? <i>Yes, according to regulations.</i>
2. Are public bid openings conducted? <i>Yes</i>
3. If so, are they conducted at a specified place closely following the deadline for submission? <i>Yes</i>
4. What information is read out at the opening ceremony? Are minutes kept? <i>Information on name of bidders and bid are read out and recorded in the minutes.</i>
5. Do bid opening procedures differ for goods, works or other types of contracts? If so, how? <i>In two stage procurement of consultants the technical and financial proposals are opened at two separate public occasions. Otherwise procedures are identical.</i>
BID EXAMINATION AND EVALUATION
1. Are evaluations conducted by qualified evaluating committees? <i>Yes, often consultants are employed to do the evaluation</i>
2. Are evaluating committees appointed ad hoc for each evaluation? <i>Yes</i>
3. Is responsiveness determined on the basis of the documentary requirements described in the documents and according to established practice? <i>Yes</i>
4. Are bid evaluations carried out thoroughly and on the basis of the criteria specified in the documents? <i>Often non-advertised criteria are applied due to lack of quality in the bidding documents.</i>
5. Is the successful bidder's qualification to perform the contract determined solely on the basis of the criteria stated in the documents? (See above) If not, what other criteria are considered? <i>No, often non-advertised and non-admissible criteria are applied, such as previous performance.</i>
6. Are evaluations normally completed within the original bid validity period? <i>No, there are widespread complaints of long evaluation and award periods.</i>
7. Are bid evaluation reports prepared containing all essential information (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified)? <i>The rules require such reports, but they are often not completed.</i>

8. Describe any significant differences between goods and works procurement relating to the above.

The issue of non-advertised criteria is even more outspoken for works procurement, where quality in the bidding documents is of high importance.

CONTRACT AWARD AND EFFECTIVENESS

1. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily?

Yes

2. Are negotiations conducted with bidders, before or after selection?

Yes, often pre-contract negotiations are performed due to poor quality in technical specifications or corruption.

3. Are additional Government approvals required before contracts can be made effective?

The Auditor-General must approve all contract terms for contracts with a value above UGSC 50 million.

4. Is performance security required in a reasonable amount and in a reasonable format?

Yes

5. Describe any differences between goods and works relating to the above.

Negotiations are more widespread in works procurement, which often are of a more complex nature than goods procurement.

CONTRACT ADMINISTRATION

1. Are there manual or computerized procurement and/or contract monitoring systems?

No

2. Are suppliers and contractors generally paid on time? What is the normal time lapse from invoice submission to final payment?

No, delays in payment are frequent.

3. Are there appropriate procedures to monitor delivery of goods and services to verify quantity, quality and timeliness?

No general procedures in place. Practices differ from entity to entity.

4. Are contract changes or variations handled promptly in accordance with the contract conditions and established practice (i.e. change/variation orders are given and/or confirmed in writing, constructive change orders are avoided, unit rates in the contract are honoured but the supplier or contractor is allowed to agree to any new unit rates introduced and the completion schedule for each change or variation, etc.)?

Variations are often handled informally without observing contract terms.

5. Do procuring entities normally make a good faith attempt to resolve disagreements through informal negotiations?

Yes

6. If this fails, are the resulting disputes handled in accordance with the contract conditions? <i>No, there is a general tendency to rely on informal negotiations and ignore actual contractual terms.</i>
7. Are supplier and contractor claims handled fairly based on a clear recognition of both parties' obligations under the contract? <i>Yes, but only through negotiations.</i>
8. Are contract managers/administrators skilled in resolving problems in a timely manner and dealing with unforeseen circumstances arising during the life of the contract? Do they adequately document all actions of contractual import taken by the purchase/employer during implementation? <i>No, contract managers are often without knowledge of the legal framework and the basic principles of dispute settlement.</i>
9. Are contractual remedies utilized only when appropriate and in accordance with the contract conditions? <i>Generally contract remedies are not applied.</i>
10. Are contracts generally completed on schedule and within the originally approved contract price? Or are cost and time overruns frequent? If so, in which sectors and for which particular kinds of contracts? Are fair final acceptance procedures used and certificates issued in a timely fashion? <i>Delays are frequent, but are often the result of poor planning and specifications.</i>
11. Are contracts generally administered in a fair and equitable manner (e.g. the purchaser/employer grants extensions of time when delays are attributable to its untimely action, fair compensation is provided to offset additional costs caused by its mistakes, etc.) <i>Yes</i>
12. Are under-inspection, over-inspection and/or improper rejection of goods, materials or methods of carrying out the works a common problem? <i>No</i>
13. Are disruptions of the supplier's or contractor's orderly performance common? <i>No</i>
14. Can any of the improper contract administrative practices identified above, be attributable to a problem identified in the local procurement environment? Specify <i>Yes, the poor quality of planning and technical specifications are often the causes of improper administrative practices and opens opportunities for corruption.</i>
15. Are procurement evaluations/audits conducted? If so, describe scope, frequency, who carries them out, etc. <i>The PPDA are tasked with carrying out procurement audits even though it has only performed few at the central level. Procurement audits are not carried out at the local level.</i>
RECORD KEEPING

<p>1. For contracts to be awarded on the basis of competitive bidding, does the procuring entity maintain a complete record of the process? This would include e.g. copies of all public advertisements, prequalification documents (if used), the prequalification evaluation report documenting any decisions not to pre-qualify certain potential bidders, the bidding documents and any addenda, a record of any pre-bid meetings, the bid opening minutes, the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid, copies of bids, appeals against procedures or award recommendations, a signed copy of the final contract and any performance and advance payment securities issued, etc.</p> <p><i>The Regulations require that a procurement record with all relevant information is maintained. However, this rarely happens, and the requirement is not enforced.</i></p>
<p>2. Are adequate contract administration records maintained? (These would include contractual notices issued by the supplier, contractor, purchaser or employer; a detailed record of all change or variation orders issued affecting the scope, quantities, timing or price of the contract; records of invoices and payments; certificates of inspection, acceptance and completion; records of claims and disputes and their outcome; etc.)</p> <p><i>The Regulations require that a procurement record with all relevant information is maintained. However, this rarely happens, and the requirement is not enforced.</i></p>
<p>3. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items? <i>No, procuring entities conduct ad hoc surveys, which often leads to poor quality in cost assessment.</i></p>
<p>4. Are periodic reports prepared on overall procurement activities? By and for whom? <i>Yes, by the PPDA for the Ministry of Finance.</i></p>
<p>Section E - Public Sector Selection of Consultants</p>
<p>1. Are procuring entities capable of carrying out a professional selection process for consultant services? Do they administer consultant contracts effectively? <i>Yes. The rules are contained in the Regulations on selection and employment of consultants.</i></p>
<p>2. Is the winning consultant firm normally chosen by comparing competitive proposals submitted by a list of qualified firms? Where do implementing agencies obtain the information necessary to develop lists? Specify what other methods are used and when they are used. <i>Short lists are compiled on the basis of expressions of interest following public advertisement.</i></p>
<p>3. Do requests for proposals clearly describe the selection process and evaluation criteria? <i>Yes, this is normally the case.</i></p>
<p>4. Do the Terms of Reference describe the requirements of the assignment clearly and completely, including background, scope and objectives, deliverables, time frame, anticipated staff-time, and government contributions? <i>No on government funded projects there is a general issue of low quality in the description of requirements and specifications.</i></p>
<p>5. Is selection based only on technical considerations or also on price? <i>Normally the split is 80% on the technical criteria and 20% on price.</i></p>

6. Are technical criteria detailed and appropriate and their relative weights reasonable? <i>Yes</i>
7. If price is also a selection factor, are technical evaluations completed before opening and consideration of price proposals? Are the relative weights chosen for each factor appropriate? <i>Yes</i>
8. Are there standard conditions of contract? Are they fair and equitable to the consultant? Do they adequately protect the interests of the client? <i>No, standard donor documents are in use.</i>
9. What form of compensation is used? Unit rates? Lump sum based on milestones? Other? <i>All forms are available, depending on the nature of the contract, but mostly unit rates are used. The Regulations describe lump sum, time based (unit rates), percentage fee, success fee, retainer and framework contracts.</i>
10. Are consultants required to submit proposal, performance and/or advance payment securities? <i>No normally not.</i>
11. Is there a conflict of interest policy provision included in the conditions of contract? (If so, describe) <i>No, only if contained in the conditions of contract applied.</i>
12. Are evaluations conducted by committees with appropriate expertise? <i>Yes, the relevant contracts committee is responsible for appointing the evaluation committee members in accordance with the Regulations.</i>
13. Are general criteria broken down into appropriate detailed criteria agreed by the evaluating committee before conducting the evaluation? <i>Yes, this is normally the case.</i>
14. Are all criteria applied consistently, fairly and impartially by the evaluators? Are the individual score sheets kept as part of the procurement record? <i>Yes, this is normally the case</i>
15. Are evaluations conducted individually by each member of the committee and the results averaged? <i>No, committees reach a common position through negotiations.</i>
16. Are new factors or weights added after the issuance of the request for proposals which are considered during the evaluation? <i>No, this is not the general perception.</i>
17. Are evaluation reports prepared containing essential details of the process, results, and matters to be taken up during contract negotiations? <i>Such reports are mandatory, but are often not available due to poor enforcement of rules and inadequate filing system.</i>
18. Are evaluations normally completed within the time originally requested for the validity of proposals? <i>Yes, but drawn out evaluation and award periods are common.</i>

Section F - Procurement Performance		
STATISTICS		
1. What are the approximate annual values of public procurement for goods, works, and consultant services, respectively? If possible, distinguish between procurement for projects and ongoing programs.		
2. What are the approximate percentages of goods, works, and consultant services financed by external donors?		
3. What percentage of public procurement follows competitive bidding procedures? Other methods?		
4. What percentage of competitively bid procurement is donor financed?		
GENERAL EXPERIENCE		
1. Are government organizations generally perceived by suppliers/contractors/consultants/the public as fair and efficient in their procurement practices? <i>No, there is a perception of widespread corruption in the public service.</i>		
2. Which of the following factors are considered to be problems by persons familiar with public procurement in the country?	Yes	No
Inappropriate or outdated laws and regulations		x
Poor compliance with and enforcement of existing laws	x	
Poor information about procurement needs	x	
Shortage of experienced professional staff	x	
Poor training of procurement staff	x	
Low pay for procurement staff	x	
Poor procurement training	x	
Weak procurement planning	x	
Poor procurement methods and procedures		x
Lack of good standard procurement documents	x	
Poor technical specifications (Goods only? Works?)both	x	
Cumbersome contract approval procedures		x
Lack of clear delegation of contracting authority		x
Interference by higher level officials	x	
Inadequate appeals mechanism	x	
Lack of anti-corruption measures and enforcement	x	
EXPERIENCE WITH WORLD BANK-ASSISTED PROJECTS		

1. How many Bank projects have been completed in the country? Are now underway? In which sectors?
2. Which organizations have been responsible for procurement on these projects?
3. What thresholds for ICB, IS, NS, and prior review for goods, works, and consultant services are currently in effect for ongoing projects? Are they the same for all projects? How long have they been in effect?
4. Do project audits/completion reports/supervision reports indicate significant procurement problems? Have any cases of mis-procurement occurred? Describe.
5. Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe.
6. Does the Bank receive a large number of complaints about procurement procedures, selection decisions in the country?
7. Are contracts generally awarded within the planned, usual time frame that would be required for similar operations by other experienced and efficient organizations?
8. Are there serious problems or conflicts between national and/or local practices and World Bank guidelines which should be addressed on an interim basis pending implementation of recommended long-term action plans?
Section G - Private Sector Procurement
1. Is there a reasonably well-developed private sector which freely trades goods and procures works and other services? <i>Yes, but there is little tradition for professional procurement</i>
2. Does the private sector compete actively in opportunities advertised by the government? Is this evidenced by number of bids/proposals received when open competition is sought? <i>Yes, but cartel formation is present</i>
3. Do private sector companies feel comfortable in exercising their right to complain or seek remedies under the public procurement system (to the extent the system provides for this right)? <i>No</i>
4. What is the performance record of private sector companies on government contracts? (Is there evidence of deliberate underpricing, poor performance on government contracts or excessive price increases after contract award during performance)? <i>There is anecdotal evidence of irregularities in most fields.</i>

<p>5. Is there evidence that private sector companies are aware of requirements and have the capacity to submit acceptable bids/proposals (i.e. understand the system)? Are many bids/proposals rejected for procedural reasons? <i>There is generally poor knowledge of the new Procurement Act and Regulations among private sector bidders. Large companies do have basic knowledge about participating in public procurement, whereas most SMEs do not</i></p>
<p>6. Has there been any experience with private sector contracts for the provision, operation, maintenance of infrastructure for various public services (BOO/BOT/BOOT/etc.)? Describe. <i>The mission has not enquired into this issue</i></p>
<p>7. Do private sector companies have access to commercial loans at a reasonable interest rate? <i>Yes</i></p>
<p>8. Are bonds commonly used? If so, is there a regulatory authority overseeing the activities of bonding companies? Is there a mechanism to suspend companies that have not honoured their obligations to pay or execute bonds? Is there a satisfactory track record of calling of bonds? <i>Yes</i></p>
<p>SECTION H - EMERGING AREAS OF INTEREST</p>
<p>1. Is military expenditure covered by the public procurement systems laws and regulations? Briefly describe coverage and exceptions. <i>Yes, except for procurement of sensitive goods and services. There are presently no guidelines accurately defining the split between sensitive and non-sensitive procurement, but even though the definition of this split is the prerogative of the PPDA, the UDF/MoD have unchallenged been able to define the split.</i></p>
<p>2. Does the public procurement system and accompanying control environment (including the financial accountability system) control the flow of funds so as to ensure that funds budgeted for valid expenditures are not diverted to finance illicit activities (e.g. money laundering, terrorism)?</p>
<p>3. Does the country have policies aimed at promoting environmentally and socially responsible procurement? Briefly describe coverage or initiatives that will contribute to such procurement practices. <i>No specific policies are in place.</i></p>