



THE REPUBLIC OF UGANDA

GOVERNMENT OF UGANDA

MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT

**REPORT ON THE PROCEEDINGS OF THE
PROCUREMENT SECTOR REVIEW MEETING HELD
ON THURSDAY, 15TH AUGUST 2002 AT THE
SHERATON HOTEL, VICTORIA HALL, KAMPALA**

23rd September 2002

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FORWARD

BY THE MINISTER OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT

I would have liked to attend the First Public Procurement Sector Review Meeting but regrettably, I was out of the Country at the time on Government's Business. But from the reports of my Minister for General Duties and the Permanent Secretary/Secretary To The Treasury, I learnt that this event was most successful in terms of its focused agenda and outcomes. My Ministry, under which the jurisdiction in Government for public procurement falls, has been spearheading the restructuring of the public procurement system.

We have put in place the transitional Public Finance (Procurement) Regulations: 2000, which is now fully operational. Shortly, it will be replaced with the Bill, before Parliament, which we hope will be considered and approved by Parliament at its November sitting. This will establish the new Public Procurement and Asset Disposal Authority. Once the Bill in question is passed into law, many of the concerns raised at the First Public Procurement Sector Review Meeting, as captured in the Question and Answer, Annex E of the Proceedings, will be resolved and in the manner indicated in the Summary of the Proceedings, in Section 3 hereto. And in any event, once the Authority becomes established, its mandate will empower it to address any of the residual administrative issues which the Bill and its attendant Regulations would not have resolved. Reforms are always undertaken over the medium term. They are not a once-for-all measure. Therefore, as the Ministry proceeds with the implementation of the reforms, allied wrinkles will emerge, which we hope the Authority once established, will be adequately resourced and will display the resolve, to have them dealt with in an orderly and timely fashion.

Transparent public procurement is a vital plank of the system of accountable governance. It is the resolve of this Government to put in place a sustainable system that offers equal opportunity to all eligible providers, yields value for money to the public, stands up to the acid test of stakeholders scrutiny and is embraced by all the social partners.

I am happy that the response to the first Public Procurement Sector Review Meeting has been so positive. All the stakeholders groups, via their presence and active participation have singularly signaled the importance they attribute to the reforms of the Government and to the establishment of a sound procurement management system.

This Public Procurement Sector Review Meeting has been a very important event and provides an enabling mechanism for all stakeholders to reflect on systemic issues and recommend changes thereto. It has been agreed that the Public Procurement Sector Review Meeting will become established as an annual event, offering all interest groups the opportunity to make orderly inputs on how best the Government may improve the procurement system, through which the bulk of public resources are expended and thereby foster widespread ownership of the new system, both at the local and Central Government level.

Hon. GERALD M. SSENDAULA
Minister of Finance, Planning and Economic Development

ACKNOWLEDGEMENT

The Ministry of Finance, Planning and Economic Development wishes to thank all the participants in the recently concluded, first Public Procurement Sector Review Meeting. Both your attendance and inputs contributed immeasurably to the high level of the exchanges between participants and, the constructive and workable nature of the recommendations put forward.

Notwithstanding the above, I must acknowledge the role of those individuals who played an important part in ensuring that the proceedings of the first Public Procurement Sector Review Meeting was a success. They include the:

(i) Opening Remarks at the Proceedings:

Honourable Mwesigwa-Rukutana, Minister, Ministry of Finance, Planning and Economic Development.

(ii) Chairpersons of the Proceedings:

(a) Honourable Mafabi Nandala Nathan, Chairman, National Economy Committee of Parliament; and

(b) Mr. Robert Blake, Country Director, World Bank.

(iii) Discussant of the Proceedings:

Honourable Kamuntu Ephraim (Prof), Chairman, Finance, Planning and Economic Development Committee of Parliament.

(iv) Presenter at the Proceedings from the Donor Community:

His Excellency, Matthiew Peters, Ambassador, The Royal Netherlands Embassy.

(v) Presenters at the Proceedings from the Procuring Entities:

(a) Mrs. Adah Kabarokole-Muwanga, Commissioner, Human Resources Development, Ministry of Public Service;

(b) Mrs. Dorcas Wagima Okalany, Under Secretary, Ministry of Local Government;

(c) Eng. Samson Bagonza, Commissioner, Quality Assurance, Ministry of Works, Transport and Communication; and

(d) Mr. Pius Bigirimana, Under Secretary, Ministry of Education and Sports.

- (vi) Presenter at the Proceedings from the Oversight Agencies:
Mr. Jotham Tumwesigye, Inspector General of Government.
- (vii) Presenter at the Proceedings from the Contractors Associations:
Eng. G.B. Zaribwende, Chairman, Uganda National Association of Building, Civil Engineering and Contractors.
- (viii) Presenter at the Proceedings from the Non-Governmental Organizations:
Mr. Zie Gariyo, Chairman, Uganda Debt Net Work.
- (ix) Closing Remarks at the Proceedings:
Honourable Miria Matembe, Minister, Ministry of Ethics and Integrity.

Without the informed contribution of our willing colleagues to whom I have referred above, the progress we have made in this first one-day, Public Procurement Sector Review Meeting would not have been possible.

I wish again to thank all the participants for their very professional conduct throughout the proceedings.

C.M. KASSAMI
Permanent Secretary/Secretary To The Treasury

ACRONYMS AND ABBREVIATIONS

AGF	Anti-Corruption Agency Forum
CAO	Chief Administrative Officer
CC	Contracts Committee
CIDB	Construction Industry Development Board
CPAR	Country Procurement Assessment Report
DANIDA	Danish Agency For International Development
DFID	Department for International Development (UK)
FIDIC	Federation Internationale Des Ingenieurs Consols
FUCO	Federation of Ugandan Consultants
GDP	Gross Domestic Product
ICB	International Competitive Bidding
IGG	Inspector General of Government
ITC	International Trade Centre
LCB	Local Competitive Bidding
MOES	Ministry of Education and Sports
MOFPED	Ministry of Finance, Planning and Economic Development
MOLG	Ministry of Local Government
MOPS	Ministry of Public Service
MOWHC	Ministry of Works, Housing and Communications
NCDC	National Curriculum Development Centre
NGO	Non-Government Organization
OAG	Office of the Auditor General
OHSE	Occupational Health, Safety and Environment
PE	Procuring Entity
PRIU	Procurement Reform Implementation Unit
PRSC	Poverty Reduction Support Credit
PS/ST	Permanent Secretary / Secretary to the Treasury
PU	Procurement Unit
RAFU	Road Agency Formation Unit
RCTB	Reformed Central Tender Board
RFQ	Request for Quotations
TPPA	Third Party Procurement Agency
SBP	Standard Bidding Package
SWIPCO	Swiss Procurement Company

UDN	Uganda Debt Network
UN	United Nations
UNABCEC	Uganda National Association of Building and Civil Engineering Contractors
UNEB	Uganda National Examinations Board
U/S	Under Secretary
VFM	Value-For-Money

SECTION ONE:
KEYNOTE SPEECHES

1.1 Opening Remarks

Hon. Mwesigwa -Rukutana, Minister, MOFPED

“Permit me to welcome you, on behalf of the Ministry of Finance, Planning and Economic Development, to what is the first Procurement Sector Review Meeting. The importance of this occasion, in my mind, is two-fold:

- First, it brings all the critical stakeholders in the procurement process under one roof to exchange views on the efforts of the Government to reform institutional structures in order to make them more efficient and accountable to the public.
- Second, it has a significance that transcends the narrow bounds of the event itself. Public procurement is only one of the major planks of the reform programme of the Government in respect of good governance, albeit a critical one.

The Government strongly believes, and has committed itself in action in a most transparent manner that is for all to see, that the reforms in public procurement are only one of the several activities of the Government in promoting good governance.

There are other, equally important activities currently underway in the Governance sector:

- I. The introduction of a new Public Finance and Accountability Bill, 2002, which will significantly augment the powers of the Auditor General;
- II. The significant expansion in the budget of the Inspector General of Government;
- III. The enactment of the Leadership Code Act, 2002; and
- IV. The strengthening of financial accountability in Local Government.

The commitment of the Government to the improvement of governance is an ongoing process, and it is not a hollow commitment. It is true that governance as a sector, receives a small part of the National Budget, but this is changing in a discernable manner. In the previous Financial Year, we allocated Uganda Shillings 4 billion to the public procurement reforms. I am happy to inform you that, in the current Financial Year, the Ministry has set aside Uganda Shillings 5.3 billion to promote the reforms in question, including harmonization of the Local Government procurement policies and practices with those of the Central Government.

The Government has acted in a most expeditious and serious manner in respect of the public procurement reforms. Many of you here will recall the extensive, diagnostic discussions on what was wrong with the old system and the prescriptions required to correct it. Discussions began in 1997 and they resulted in the establishment of a special Task Force by the Ministry in 1998. In 1999, the Task Force made its recommendations,

which were discussed at a gathering like this one, not dissimilar in composition and size. Once the recommendations were agreed upon and received by my Ministry, were reflected upon by Cabinet and, pursuant to Cabinet Decisions, the Ministry immediately commenced implementation.

In 2000, my Ministry promulgated the Public Finance (Procurement) Regulations, which established the framework for all procurement management by public entities. This led, in 2001, to the establishment of Procuring Entities in the line agencies and the creation of the Reformed Central Tender Board. In April 2002, the Ministry laid the Bill before Parliament for the establishment of a Public Procurement and Disposal of Public Assets Authority, a critical feature of which is to create a fully autonomous, decentralized system that separates procurement management from public regulation.

Both the Regulations, which came into force in 2001, and the Bill before Parliament, require procurement to be conducted on a transparent and accountable basis with competition and non-discrimination being the key operational principles, and Value-For-Money being the principal output.

The fact that the reforms in governance in general, and that of public procurement in particular, have proceeded apace is in no small measure due to the generous support we have received to date from the donors (including the World Bank). Also, I do wish to recognize the invaluable financial contribution to the implementation of the procurement reforms made by the Department For International Development (DFID) of the United Kingdom, the Royal Netherlands Government and, likewise, the International Trade Center (ITC) of the UN.

The public procurement reform programme is an extensive and involved one, and we have taken the first critical steps in putting the framework in place. The next key stage is building capacities to ensure the system becomes fully operational. And in this regard we shall have to rely on our good friends, the donor community, to further support the efforts of the Government to make the system fully operational. Hence, we urge our friends who have been supporting the reforms to continue to do so, and likewise, implore our well-wishers to also provide any tangible help they possibly can.

I recognize the critical stakeholders in Government as being all the Procuring Entities with responsibility for the effective and efficient management of their respective procurement budgets. But the critical co-operants, in making the public procurement reform efforts of the Government a success, are the Ministry of Public Service and the Ministry of Local Government. They have been working closely with, and assisting, the Ministry of Finance, Planning and Economic Development in enabling the Government to stick to its tight timetable in what is a most demanding and difficult assignment.

I also wish to acknowledge our crucial partners in the public procurement process, namely, the private sector, and particularly, the associations of the contracting community. I would wish to encourage them to continue their constructive engagement with the Government in its quest to put in place a more transparent and equitable system that has, as an underpinning objective, the building of a sustainable domestic capacity. This will ensure that, over time, a progressively larger share of all public

procurement activities, is undertaken by citizen contractors, on a strictly competitive basis.

The social partnership in promoting good governance has a critical anchor in the Non-Governmental Organizations. The Civil Society Organizations have a central role to play in the public procurement process, and I am happy that they are represented here. This expanding role of theirs, in relation to public procurement, is largely an advocacy and monitoring one. One of their key objectives is to keep the Government focused on how the procurement system is performing in general, and on the conduct of individual Procuring Entities, in particular. NGOs thus play a critical role in the social partnership I referred to earlier, in ensuring that in practice the system offers equitable access to all eligible participants, that it is fair in principle and is just in reality and operation.

I trust that this Public Procurement Review Meeting will become an annual event. It is an excellent mechanism for all stakeholders in the process to exchange views in order to effect systemic improvements and it is a most appropriate vehicle to take the reform efforts of the Government forward and successfully.

Permit me to wish you success in your presentations, deliberations, discussions and recommendations. May I assure you that the Government shall relate to the outcomes of this Meeting with the utmost seriousness.”

End of Speech

1.2 General Background to the Reform & Objectives of the Review

Mr. C.M. Kassami, Permanent Secretary/Secretary To The Treasury, MOFPED

“The Honorable Minister, in his presentation to you, indicated that the efforts of the Government to reform the public procurement system began in 1997. As most of you are aware, it commenced as an initiative of the Ministry of Finance, Planning and Economic Development. The Ministry is vested, under the Public Finance Act, with the responsibility of ensuring that the expenditure of all public funds duly approved by Parliament are utilized effectively, accountably, transparently, and only for the purposes approved.

The mechanism and procedures for the expending of public funds on such unavoidable costs as salaries, utilities, rentals and debt services are met through the public procurement system. Precisely what part of the approved budget should be spent versus what is actually spent annually (via the prescribed procurement procedures) is yet to be determined. But estimates vary on the amount that should be spent and the amount that is actually spent. The International Trade Center (ITC) has put the sum at 70.0% and 60.0%, respectively, of the annual approved budget in the FY 1999-2000. In the ITC analysis, there appears to be some systemic porosity.

How well we spend public funds, i.e., from the point of view of Value-For-Money as against spending according to the correct procedures, is another issue of much concern to the Management of the Ministry, and one which hopefully the reform being undertaken would seek to address fully and in a timely manner.

But the issue that really served as a catalyst to the current public procurement reforms was the widespread, observable and alleged abuses of due procedures in respect of procurement management. This, in turn, had resulted in a dramatic increase in the number of cases of aberration being reported to the competent authorities and began to weaken public confidence in the system of Government.

In fairness, it should be observed that many of the reported cases of wrongdoing were due to systemic weaknesses, antiquated guidelines, lack of competences and high staff turnover, and not to any willful attempts by the inadequately-trained and inexperienced public officials to circumvent the established procurement rules for personal gains. Nevertheless, to rectify the observable and reported abuses, the Task Force on Public Procurement Reforms made several specific recommendations. Among them, were that:

- I. the conduct of public procurement be decentralized to the Procuring Entities;
- II. a statutory body to set rules, monitor performance, review complaints, be established as an autonomous regulatory entity; and

- III. the procurement policies and practices, at both the Central and Local Government levels, be harmonized.

Following discussions of the Task Force's recommendations by Cabinet, and pursuant to its decisions, the Ministry established, in January 2000, the Procurement Reform Implementation Unit (PRIU). It was tasked with the responsibilities of implementing Cabinet Decisions on the recommendations of the Task Force within a given schedule.

The questions are: what progress has the PRIU made to date, in advancing the public procurement reforms of the Government, and how has the PRIU operationalised its mandate?

The approach to the implementation of the reforms has been to:

- I. put in place an overarching, interim, legal framework to govern the management of procurement by individual Procuring Entities; and regulate, via an oversight body, the conduct of the Procuring Entities to ensure they follow the applicable rules in respect of all procurement.

To an extent, both of these have been addressed by the introduction of the Public Finance (Procurement) Regulations, 2000, which came into operation in 2001.

- II. The second step was, at a later date, to enact the draft Bill now before Parliament, which will revoke the Public Finance (Procurement) Regulations, 2000 and, instead, establish an autonomous regulatory authority to set rules, monitor performance, ensure compliance and adjudicate disputes.

Since its Management was put in place about a year ago, in September 2001, the PRIU has been instrumental in promoting the Ministry's procurement reform programme in several key areas. The priority of the PRIU has been focused on a number of related issue areas:

- I. capacity building in the Procuring Entities, embracing both the development and delivery of training modules and the provision of line support and advisory services;
- II. regulatory framework, consisting of the:
 - a. issuing of Guidelines and Forms to amplify specific provisions of the Public Finance (Procurement) Regulations, 2000 and to facilitate documentation and reporting by the Procuring Entities on procurement activities; and
 - b. developing the draft Instructions on the Bill and the attendant draft Regulations in respect of the said Bill. The Bill has been laid in Parliament and is awaiting enactment;
- III. procurement documentation and standards, inclusive of:
 - a. the development, introduction and dissemination of Standardized Bidding Packages in respect of works, services and supplies with variants of these

- suitable for large complex, medium scale and complexity, and small procurement activities, respectively; and
- b. a common specification standard to be used in all procurement activities, where such standards have not been issued by the Uganda Bureau of Standards;

IV. management databases, comprising:

- a. a register of contractors of works, services and supplies based on a classification system using demonstrable capacities, recognized disciplines and proven track record; and
- b. providers' prices and index in respect of the key categories of inputs into works, services and supplies activities.

As can be seen, much remains to be done as the reform programme is a long and involved one. Uppermost in the minds of many of us here, at this Review, is 'Where do we go from here? What is the Government's road map for moving ahead in terms of developing and widening the reforms and accelerating their implementation?'

The answer to this question, in terms of activities, events and outputs, and the sequencing, scheduling and prioritization of these, are contained in the 2002-2003 Work Plan and Budget of the PRIU. But, more importantly, the achievement of these activities, and the pace at which the PRIU is likely to be able to move forward, relies critically on the progress of the Bill before Parliament.

The Bill, which has completed its First Reading, is much wider in scope and coverage than the Public Finance (Procurement) Regulations, 2000, which it will revoke, once it is approved by the National Assembly. The Minister has already referred to the main principles that will govern the new public procurement system, as set out in the Bill.

Hence, I will seek to focus attention on the issue of the objectives of this Review.

Consultative Approach

The first objective of this Review derives from the fact that this Government follows a consultative approach to the reforms in governance. It takes into account, in a structured manner, of the views of all stakeholders before introducing new policies and at key stages in the course of their implementation. This is the approach the Ministry of Finance, Planning and Economic Development has followed in respect of the public procurement reforms. Some of you will recall the Entebbe Forum in December 1997, organized by the Ministry, at which all public entities and both the World Bank and the ITC were invited to participate in charting the way forward.

Implementation of the reforms commenced with the promulgation of the Public Finance (Procurement) Regulations, 2000 in September 2000 and it came into effect in March 2001. Thus, it has been in operation for more than a year. As a result, it is the view of the Ministry that this is a good point at which to stop and reflect on the lessons learnt to date from operationalizing the new system, and to collectively reflect upon the options available to us, should we encounter problems requiring solutions.

Invitation to all Stakeholders

Second, and unlike the Entebbe Workshop, we have taken the view that all stakeholders should participate in this process. Hence, we have invited many interested donors, public oversight agencies, advocacy organizations, the associations of the contractors, all of whom are critical social partners in the public procurement reform process.

Shared Experiences

Third, as the agenda highlights, the range of presentations envisaged is clearly intended to draw upon the specific experience of each stakeholder group, involved in operationalising, supporting, observing and dealing with the fallouts, of the new system. We want you to share your institutional, group or individual experience with us in respect of the emerging system. Any system in transition will have its fair share of teething problems, and we are of the view that these are best collectively defined.

Seeking Solutions to Bottlenecks

Fourth, once we have agreed on the bottlenecks that confront the new system, the Review is so structured to permit us to explore the workable options available to us in terms of implementable solutions and, possibly, should time permit, even to order these on a priority basis.

Putting Forward Recommendations for the Ministry

Fifth, the next step would be for my Ministry to seriously consider the recommendations put forward by the Review, in order to see how best these could be implemented, as part of the public procurement reform programme.

Finally, may I urge you to bear in mind the fact that your Agenda is a tight one. Hence it is imperative that we all stick strictly to the time table before us in order to take full advantage of the opportunity this Review offers us all.”

End of Speech

1.3 Current Issues of the Procurement Reforms

Dr. C. Rajana, Executive Director, RCTB

Background

"In a Report entitled *Improving Public Procurement in Uganda* , dated 20th January 1999, a Task Force of the Ministry of Finance, Planning and Economic Development gave a comprehensive analysis of the weaknesses of the then public procurement system and proposed a set of remedies. These correctives in question, to which the Permanent Secretary/Secretary to the Treasury referred earlier, subsequently found reflection and were amplified in the first Country Procurement Assessment Report (CPAR) of the World Bank in 2000. Thereafter, the Government, in consultation with the donor community, spelt out very clearly, in the Poverty Reduction Support Credit (PRSC), a plan to reform the public procurement system.

Reform Plan

Essentially, the reform plan consisted of four clusters of interrelated activities. These entailed:

- (i) putting in place the appropriate legal framework to govern all public procurement, at both the Local and Central Government levels;
- (ii) decentralization of the procurement executing function to the Procuring Entities and the establishment of an autonomous rules setting, compliance monitoring, reporting and complaints review, regulatory body;
- (iii) building the institutional and manpower capacities of the Procuring Entities and the regulatory body to effectively and efficiently operationalize the new system.
- (iv) introduction of procurement planning, integration of the procurement budget with individual sector expenditure programme and the conduct of mandatory Value-For-Money audits.

While the timetable of the Government for the implementation of the above reforms was not stated in respect of all envisaged activities and outputs, the PRSC Matrix did make specific reference to some. To the extent that the PRSC specified a time frame for particular activities, the Government has, by and large, complied with the schedule contained therein. More importantly, in the year 2000, the Ministry established a Procurement Reform Implementation Unit, and both mandated and resourced it, to implement the reform plan as set out in the PRSC.

The legitimate question thus is what progress has the Government, the Ministry and the PRIU made to date in implementing the agreed reforms? The broad answer to this must be 'Significant'. It is a fact, that on the ground, the achievements are there for all to see.

1. **Legal Framework:** First, in relation to the legal framework, the Public Finance (Procurement) Regulations were promulgated in September 2000 and came into force in March 2001. It governs procurement by all central Government entities.

From the inception, these Regulations were recognized by the Government to be limited in scope in defining the legal framework for public procurement. Conceived as an interim measure, it therefore had to be supplemented, later, by a dedicated Act of Parliament on public procurement. Both the Minister and the Permanent Secretary/Secretary to the Treasury have already given you an update on where the Government is, in respect of the Act, in terms of its legislative agenda.

2. **Decentralization:** Second, in relation to the decentralization of procurement decisions to the Procuring Entities and the establishment of the autonomous regulatory body, notable progress has been recorded and, as is to be expected, there have been a number of hiccups.

All Procuring Entities are currently responsible for the management of their respective procurement budgets, as is required under Regulations 2000, even though their capacities to execute these vary from one to the other. To date, there have been no serious complaints, on the part of the Procuring Entities, that the powers vested in them under the Regulations are being limited – certainly not in relation to works or supplies. In relation to the procurement of services, both professional and commercial, some concerns have been voiced by Accounting Officers that, contrary to the provisions of the Regulations, they have not been free to procure the:

- (i) professional services they require to support their management at the different stages of the procurement cycle in respect of individual procurement activities, in the light of their specific capacity weaknesses; and
- (ii) the commercial services they require, inclusive of travel services.

In both cases, the contention of the Procuring Entities in question seem to be that they have been externally committed to sole sourcing. This violates the principle of competition, and the specific power vested in them by Regulations 2000, in respect of all procurement decisions.

3. **Regulation:** The flip side of decentralisation is, of course, regulation. And here not much progress has been recorded to date. Two factors, both beyond the control of the PRIU, have contributed to this. First, there has to be a legal basis on which regulatory authority is exercised. As such, the conduct of the regulatory function must await the passing of the Bill on Public Procurement, now before Parliament. Second, the PRIU has not the capacity to fulfill its obligations in this regard, both in terms of its establishment structure and its members of staff. A slight design oversight was that specific provisions in the organogram and budget were not made for the conduct of audits, inspections and investigations. But this is presently being remedied.
4. **Capacity Building:** In relation to building capacities, both institutional and human, considerable progress has been made. This is due, in no small

measure, to the constructive role the Ministry of Public Service has played, and continues to play, in the procurement reform process.

The focus on capacity building has been on several levels, as follows:

- (a) analyzing, profiling, and establishing the institutional mechanisms i.e., the Procurement Units, the Contracts Committees and the Accounting Officers;
- (b) assessing available and required manpower needs and making provisions for these;
- (c) developing and introducing a procurement professional stream in the public service;
- (d) preparing, developing and delivering tailor-made training modules;
- (e) providing advisory and line support services; and
- (f) developing institutional linkages and capacities, on the part of selected local training institutions, to support, in a sustainable manner, all training needs.

The extent to which the PRIU was involved in this process, particularly in relation to items (d), (e) and (f), was severely constrained. The limited progress made to date on these fronts was due largely to the external support provided by the British and the Royal Netherlands Governments respectively, through a series of brief interventions.

Training and line support are critical for the development of the institutional capacities of the Procuring Entities, and should be subject to continuous medium-term support. On this count, I am happy to report that the Ministry has approved the principle of having a strategic partner to work co-jointly with capable local institutions to build the required capacities in the Procuring Entities.

5. **Procurement Planning:** In respect of procurement planning and the allied activities covered under this cluster of reform activities, here the PRIU has achieved little progress. The reason for this is rather straightforward. It is due to inadequate resources: simply, the PRIU has been constrained in putting the requisite professional bodies in place to spearhead, support and undertake these activities, as the case might be.
6. **Harmonization:** The harmonization of procurement policies and practices between the Central and the Local Government systems is a key activity. Two prior conditions have to be satisfied before harmonization can take place.
 - The first is the passing of the Procurement Bill by Parliament and the promulgation of the attendant Regulations to the Bill. While the Bill seeks to

provide the legal basis for the harmonization (inclusive of regulatory oversight by the PRIU for systemic performance of the Local Government Procuring Entities), the real burden of harmonization will fall on the attendant Regulations to the Bill. I am happy to inform the Review that the PRIU has already prepared the draft Regulations to the Bill. Also, we have had fruitful discussions with the Ministry of Local Government – which is in possession of copy of the draft Regulations.

- The second relates to the capacities of the Local Government system to operate under the draft Regulations in question under the harmonized system. What are the precise institutional and manpower arrangements and practices in place? Are these adequate, and if not, what corrective measures are required? Should we wait until harmonization becomes imminent before we begin to look into the problems, if any? To await the passing of the Bill could seriously impair the Government's quest to subject public procurement at all levels of Government to standardized best practices at the earliest possible opportunity. Hence, the PRIU is proposing co-jointly with the Ministry of Public Service and the Ministry of Local Government to conduct a rapid result survey to assess the realities on the ground in the local government procurement system as an integral part of its current Work Plan. This will enable the PRIU to establish what types of support may be required to ensure compliance on the part of the Local Government system with the new dispensation, once it comes into place.

7. **Private Sector:** In the design of the reforms, the focus has understandably been, solely on the public entities of Government, based apparently on two assumptions:

- (i) public officials, are deviant in respect of procurement;
- (ii) efficiencies in procurement can only be achieved by improved public performance.

Both of these may be true to some extent. But we must not lose sight of the old adage that, "It takes two to tango". Somehow, in the deliberations on the reforms, we have not taken fully into account the private sector, particularly the associations of the contracting community and the fact that they are the other critical party to all procurement activities. Hence, the extent to which the reforms will succeed in producing Value-For-Money and the benefit of efficiencies and effectiveness, depends invariably on their cooperation in changing the ways in which they do business and by having them adopt higher standards in contracting with the Procuring Entities.

The issue here is 'Where do we start?' In the public domain, information on the market place is limited. We have no database on procurement input prices, be they for works, services or supplies. Moreover, there is very limited information available on the sizes, core competences and performance record of providers. Nor do we have any idea as to which associations represent which contracting

group and how many contractors belong to which associations. The void in market information is a serious handicap in terms of the PRIU developing a constructive dialogue with the private sector in order to come up with an operational plan to improve market information and private sector participation public procurement and in promoting best practices. The development of such a scheme is an important strand of the current PRIU Work Plan. It is envisaged that the focus of the scheme will be on:

- (a) developing a Contractors' Register based on proven capacities, recognized, core competences (disciplines) and objective performance record;
 - (b) preparing a database on providers' prices;
 - (c) working with the Associations of Contractors to develop a code of conduct, have their members adhere to it, and discipline errant contractors for non-compliance;
 - (d) instituting mechanisms for the sharing of information on market conditions and procurement opportunities; and
 - (e) networking institutions capable of providing sustainable training in procurement over the long-term.
8. **Stakeholders:** An issue of much concern to the PRIU, and which constitutes another element of its Work Plan, is stakeholder connectivity. Procurement reform, as with all reforms in the governance sector, has many partners linked to the process, whether:
- (i) directly;
 - (ii) indirectly;
 - (iii) public interest bodies.

Each partner which has a specific role to play in the process. The direct partners are the Procuring Entities and the contractors. The indirect ones fall into three groups:

- (i) the regulatory and oversight bodies, i.e., the IGG and Auditor General and the PRIU;
- (ii) subject entities, i.e. the Ministry of Public Service, the Ministry of Local Government and the PRIU;
- (iii) the donors and the Ministry/regulatory authority (PRIU), the Ministry of Public Service and the Ministry of Local Government.

Finally, there are the public interest groups, largely the Non-Governmental Organizations, which perform a dual role of remote monitoring of procurement performance by Procuring Entities and a direct advocacy role for the adoption

of best practices in public procurement. An efficient and effective system must develop institutional inter-linkages between all interested parties and structured mechanisms for periodic exchange of information on different aspect of systemic performance in order to continuously infuse the system with best practices. The PRIU is working assiduously to put structures in place to take advantage of the synergies such cooperation will invariably offer.

9. **Benchmarks:** The issue of benchmarking performance is another plank in the Work Plan of the PRIU. The key justification for all reforms is that the proposed changes will generate a stream of net benefits, however defined, to the public (in excess of what the old system did). Otherwise there is no need for innovation and change. How are these benefits to be specified in terms of quantifiable outputs and or qualitative improvements and how is progress in achieving them, or otherwise, to be objectively measured and verified from one point to another? And how do we determine the final time horizon for the full delivery of outputs and the intervals for measurements of progress? This is not a simple exercise, even though it will have to be kept as simple as possible, and it will have to be focused on the performance of the Procuring Entities, the PRIU and the contractors. It is an exercise that will require the inputs of many stakeholders groups, not least the oversight agencies, and it is one that will preoccupy the PRIU in the current Financial Year.
10. **The Bill:** Ultimately, the success of the Government in the pursuit of the procurement reforms will hinge critically on the progress it makes in securing the passage of the Bill in Parliament and at the earliest possible opportunity.”

End of Speech

1.4 Donors' Views on the Procurement Reforms

His Excellency Matthieu Peters, Ambassador, The Royal Netherlands Embassy

"I am honoured to be part of this first procurement review since the implementation of the procurement reforms started in 2000. And I am thankful for the opportunity given to me to say a few words about the procurement reforms. I will do so on behalf of other involved donors (mainly World Bank, DANIDA, Ireland Aid and DFID).

A review is the appropriate moment to be open and have constructive discussions on where we are and which next steps ought to be taken. It is also good to have such a variety of stakeholders present at this first review, as it will give us an opportunity to get the experiences and ideas from all sides on the current status of the reforms and the way forward. And this is a very important review, because if the Ugandan Government is really committed to the combat of corruption, today is the proof of the pudding. Sound procurement is the key element in reducing corruption.

When dealing with the issue of procurement, as a donor I have a double interest. First of all, I am a development partner to the Government of Uganda in increasing its capacity and in its combat against corruption. But there is another interest, which has to do with my own accountability. With the budget support on the increase, donors rely more and more on the procurement system of the government. Donors will want to assure themselves, for the sake of their own accountability back home, that taxpayers' money is spent in an accountable manner; and adherence to sound procurement procedures is an important element of that.

Several reports from different organizations have stated that corruption is hampering economic growth in Uganda. Furthermore, it has been estimated that 90% of corruption cases are procurement-related. It is clear that bad procurement erodes efforts to obtain Value-For-Money. Let's make it just a bit more tangible to see what we are talking about. The examples are obvious, and every one of us has heard one or more of these:

- a civil servant takes a payment from a consultant to encourage a preference in the bidding (or to get direct tender);
- a hotel pays a civil servant a bribe to be selected to hold a workshop (and in the end the invoice is 'inflated' to make up for those extra expenses).

In both cases there is no Value-For-Money. There is no conscious choice for the best in terms of quality and price. Besides, the consultant and hotel are spending part of their money unproductively on bribes. These are small-scale examples. I will not go into situations of 'shopping for the highest bribe' or favouring companies that are (directly or indirectly) owned by civil servants or politicians. And let's not forget that Uganda channels about US\$ 700 million a year in domestic and donor funds through the procurement process. That is half of the government's budget.

The World Bank, in its Country Procurement Assessment Report in 2001, mentioned the following weaknesses in procurement in Uganda:

- weak legal framework;
- lack of procurement planning;
- shortage of qualified staff;
- political interference;
- conflict of interest.

The most important aspects in the procurement reforms are summarized in the policy matrix of the PRSC. Let me highlight them for you:

- The setting up of an adequate legal framework (consisting of Procurement Bill, harmonized local and central regulations and instructions for Procurement Entities);
- The enforcement of rules and regulations (through monitoring, auditing and sanctioning);
- Improving capacity of procurement units (training and use of procurement agents);
- Improving procurement planning procedures and practices.

At this first review, of course, a central question is 'How are we doing in terms of progress in implementing the procurement reforms?'

The answer to that question depends on which yardstick you want to use. One yardstick could be to compare Uganda with its neighboring countries. I think in that perspective, Uganda is definitely ahead. From what we see from Kenya and Tanzania in the field of procurement, there is more progress and commitment in Uganda.

Nevertheless, I hope you agree with me to use Uganda's own yardstick, which should be the government's implementation plan for the procurement reforms. If that will be carried out according to plan, Uganda can really – internationally – be seen as an example, and I am sure it would be perceived as a major accomplishment in the combat against corruption.

'Are we as donors happy with the current state of the reform implementation?' I would say 'yes' on the one hand, and 'no' on the other. Let me clarify.

First of all, I don't think there is much discussion needed about the reforms themselves. Everyone will agree that they were necessary. The new procurement system still has to prove itself, but in general it seems adequately designed. If adhered to, it will strongly reduce corruption. The government needs to be commended on the achievement of designing this system.

A key element in the procurement reforms is the Procurement Bill. *On the one hand*, we are very happy that the Procurement Bill is now in Parliament. And initial signals from Members of Parliament indicate that there are no major hesitations against the Bill. *On the other hand*, the formulation period was very long and it has been in Parliament for a few months now. At the moment we have no idea when the debate on this bill will begin. We hope that Ministry of Finance will undertake all necessary efforts to promote the debate and passing of the Bill. Passing of the Bill in the short term is very important, not only because of its content, but also because some major actions have been put on halt pending the endorsement of the Bill by Parliament.

One of these major actions is the full staffing of the Central Tender Board. *On the one hand*, we are satisfied with the way the Reformed Central Tender Board has been established so far. From what we can see, it is equipped with capable core staff. But *on the other hand*, full recruitment of staff was halted, awaiting the passing of the Procurement Bill in Parliament. So the Reformed Central Tender Board cannot yet carry out and/or monitor procurement audits, monitor procurement reports from Procurement Entities or set up a programme for capacity building.

Another major action awaiting approval of the Bill is the selection of Third Party Procurement Agents that can assist procurement entities in more complex or high value procurements. At the beginning of the procurement reforms, it was deemed necessary that – during the initial stages of the implementation – PE with inadequate capacity would contract out all high value procurements to a procurement agent. In June 2001 the Ministry prepared Terms of Reference for such agencies and issued a request for expressions of interest from potential service providers. This process was stopped, however, by the MOFPED, and I understand that this was done because some members of Parliament had raised objections with regard to the legal status of the Reformed Central Tender Board.

Besides the delay in putting in place a shortlist of companies based on framework contracts, it was also decided to extend the contract with the current procurement agent, SWIPCO. SWIPCO is currently contracted to play a dual role:

- (a) direct procurement;
- (b) auditing.

In its first role, SWIPCO acts as a procurement agent by providing advisory services to Contract Committees, assisting in the preparation of procurement documents and in the management of the entire procurement process. In its second role, SWIPCO carries out procurement auditing of all contracts estimated to cost more than US\$ 50,000. We see these two roles as fundamentally conflicting and the need to separate them as soon as possible cannot be overemphasized.

As we see it, the framework contracts will deal with the procurement agency aspect while the auditing role will be played by both the Reformed Central Tender Board and the Auditor General, through regular ex-post audits. We also feel that possible queries on the legal status of the Reformed Central Tender Board should not interfere with the responsibility of the Ministry of Finance to implement this essential part of the procurement reform program.

Another major action awaiting approval of the Procurement Bill is the harmonization of Local and Central Government procurement regulations. Again, *on the one hand*, the approval of the Bill will ensure that both Central and Local Governments fall under the same regime, which is a big step forward in harmonisation. Up until now, procurements by Local Governments was governed under the Local Government Act. *On the other hand*, there can be no real progress without endorsement of the Bill.

There are many rumours about corruption at the local levels, and especially in the field of procurement. We have to realize that through the decentralisation process, procurement of goods and services at the local levels are increasing tremendously.

So far, however, there is no clear picture of the current amount of procurement, existing procurement practices and procedures and capacity at the local levels. Therefore, we fully support the proposed initiative to make an inventory of strengths and weaknesses of procurement at the local level, to be able to address them in an appropriate manner. But my assessment is that the quick decentralisation which is taking place in Uganda, leading to increased procurement at the local levels, in combination with somewhat delayed implementation of the procurement reforms may have temporarily increased the risks for corruption at the local levels. This is not to downplay the risks at the central level, where of course the bulk of the money is still spent.

The last issue I want to address concerns the staffing of Procurement Units, the supporting function of the Contract Committee at each Procurement Entity. We are, *on the one hand*, very satisfied with the recent progress in this area. We understand that the Ministry of Public Service has established and defined the necessary change in structure of the concerned ministries and agencies and has created and provided for more than 100 positions in these Procurement Entities. This is a very important step, not the least because there are quite some Contract Committees out there that have an overload of procurements to deal with. In particular, for those ministries and agencies that manage social programmes and those that directly reduce poverty, such as Health, Education, Water, Roads and Agriculture, there is an urgent need for plenty and qualified staffing. *On the other hand*, now that positions have been created, we hope the Ministry of Public Service will soon recruit the qualified staff.

Let me summarize the donor's view on the current status of the reforms.

1. We cannot overemphasize the significance of the procurement reforms in their ~~its~~ key contribution to the fight against corruption.
2. Significant progress has been made in several areas, let me name a few:
 - Setting up the new Reformed Central Tender Board;
 - Creating positions to staff the Procurement Units;
 - Procurement Bill has passed Cabinet and is now before Parliament;
 - New procurement regulations have been formulated;
 - Some training has been done.

3. But there also have been some delays, especially due to the fact that, after a relatively long formulation period, the Procurement Bill has not been approved by Parliament yet and, as a result, some key actions have not had the progress they needed.
4. However, considering the strong presence of the political leaders and management of the MOFPED and other ministries here, and listening to the previous speakers, I am convinced that commitment to the implementation of the reforms will only have increased after this first review. It also gives new spirit to my hope that Uganda can set an international example; and we will give you our strong support to realize this. If Uganda can set this example, I am sure that perceptions and reality around corruption will improve substantially.

I would like to conclude my contribution with two more general remarks.

First, as I have said before, bad procurement practices often have a link with corruption. One of the problems is, that we know from experience, that corruptive cases are often not easily uncovered and decent proof is hard to find. In this light, there is a great necessity for a strong co-operation between the Reformed Central Tender Board, the Office of the Auditor General (OAG), and the Inspector General of Government (IGG). I know this co-operation is being strengthened, I hope it is taken very seriously and leads to results.

In this light it is also important emphasize the need of follow up in the form of sanctions. It is not enough to find the wrong-doers. It is - for the sake of justice and prevention - just as important to apply sanctions. The question is if enough is being done in this area, and maybe it involves more co-operation than that of the RCTB, the OAG and the IGG.

Last, but not least, I have maybe focused too much on government policies and behavior. Let's not forget the other side of the coin, the role of the suppliers or contractors. As long as companies are willing to pay some extra money under the table, there is an incentive for government officials not to abide by the rules. The reforms are not addressing this, which can be considered a shortcoming. I have no solutions, but maybe at this review we can come up with some constructive ideas on steps to be taken in this respect. It could be in terms of awareness campaigns, maybe 'blacklists' of companies that have proven to be major bribe-payers, or possibly a 'mailbox' or even a 'court' for (maybe anonymous?) reports of alleged corruptive procurements. Or does the IGG cover this issue already adequately? I am very interested in a discussion on this issue, because certainly, 'it takes two to tango'."

End of Speech

SECTION TWO: PRESENTATIONS

2.1 Human Resource Development and the Procurement Reforms

Mrs. A. Kabarokole-Muwanga, Commissioner, Human Resource Development, MOPS

“I want to thank the organizers for giving an opportunity to Ministry of Public Service to be here and discuss issues of human resource management or development in support of the procurement reforms. The background to the procurement reforms has already been highlighted. I do not need to go into that in the spirit of time management. You are also aware that the Ministry of Public Service is charged with a responsibility of establishing management and human resource structures, systems and procedures. So following the procurement reforms that were institutionalized, the Ministry of Public Service undertook a study in Central Government Ministries and Departments with a view to creating Procurement Units and also the Unit.

The outcomes of the study were communicated under the Circular Standing Instruction No. 1 of 2002, whereby the following reformed were institutionalized for this Financial Year 2002/2003.

Contract Committees

Already, Contract Committees have been established in the Ministries, and the Ministries have been cleared to fill the vacancies in the Procurement Units.

Procurement Units

Now, depending on the nature and amount of procurement undertaken, Ministries and Departments were categorized as large, medium and small procurement entities (see **Annex C**). The staff establishment is also based on the three categories of Procurement Entities. The highest officer in all the Ministries is going to be the Principal Procurement Officer.

Abolition of the Supplies Officer Cadre

The Supplies Officer cadre will be abolished with effect from first March 2003. I must point out here that the Stores cadre has not been abolished. This is the supplies officer cadre, where you find people in salary scale U2 and U3; because we thought that if we left them there, there will be a duplication of effort between the Supplies Officers and the new Procurement Officers. Nevertheless, those Supplies Officers who qualify for the procurement post will have an opportunity to fill those posts or they will have an opportunity to fill any other vacant post that may exist in the Ministry or department. This post may exist under Stores or elsewhere within the Ministry or the Department. Of course there will be some retrenchment if they cannot fit anywhere in the structures of the Ministry. We expect that there will be some retrenchments, so those people will be declared redundant.

Professional Development

Dr. Rajana talked about capacity-building, and the Ministry has agreed that professional development for procurement cadre will be the responsibility of the Ministry of Finance, Planning and Economic Development, because we think this procurement falls under that Ministry. But of course MOFPED will liaise with the Ministry of Public Service on matters of Human Resources Development policy.

Sitting Allowance

Concerning the Contract Committees, a sitting allowance of 25,000/- and 20,000/- has been instituted, per sitting, to the chairperson and members of the Contract Committees respectively. It is important to note here that the Procurement Units are not being given any sitting allowance because that will be their day-to-day duty. But the Contract Committees, these are people who have other duties for which they are paid, they do procurement as an additional duty. So these additional duties are remunerated in terms of sitting allowance, and that is provided for in the Government Standing Orders.

Officially, we have had no complaint on the Circular Standing Instruction No.1 of 2002, although looking at the papers that will be presented today; I have seen some complaints about the staffing and the qualification levels from the Ministry of Education and Sports. What I can say here is that really we are happy to take any complaints and we can discuss them further, because when these Circulars come out, it is not that we cannot review them. There is always room for more discussion, because I think this is the good opportunity to highlight these issues so that we go back and discuss them for the good of the Procurement Reform.

Now, which are the outstanding issues in Human Resource Management? Currently, some autonomous and semi-autonomous Bodies are operating in accordance with the Acts or Statutes that brought them into existence. The procurement procedures are also part of those Acts and Statutes. On the other hand, the regulation under Statutory Instrument Number 64 of 2000 demands that “ *all Bodies that draw funding from the Consolidated Fund should follow the new regulation.*” There is need to harmonize the various Regulations because, when the Ministry of Public Service went to some organizations which are autonomous and semi-autonomous to undertake a study with a view to creating Procurement Units, we were not welcomed. We were told that they were operating under different guidelines. So, for the beginning, we focused on Central Government Ministries where we have a sure mandate.

Secondly, there is the issue of availability of persons with the required qualifications. When you look at **Annex C**, most of the procurement posts that have been created require training in procurement and supplies. During the study, which the Ministry undertook, it was evident that there are limited local opportunities for this type of training in the country. This is something that needs to be pursued to ensure that placement and replacement of personnel in the procurement cadre with qualified individuals is adequately catered for. The idea we have is that we should build capacity of local institutions to provide this training. There have been unofficial complaints about the standards set in training requirements for this particular cadre, but at least it is a start. But a lot of training will need to take place. Another issue is the selection of staff of high

integrity to handle procurement. We heard this morning that this area can easily be abused and public procurement takes a lot of our money (60% to 70% of the Budget). So officers handling procurement will need to be persons of high integrity. So the issue is 'What methods shall we use to select such calibre of persons?' You all know that in our Service Commission, most public officers are selected after a 20 minutes' interview. Is that enough to select people with integrity? So we need to think through and really think about what methods are we going to use to select these personnel.

It is evident that some key issues in procurement reform remain unresolved. It will be necessary to iron out the legal contradictions so that all public institutions follow the new procurement regulation, hence the need for an all embracing law. Secondly, in order to ensure availability of professionally qualified procurement personnel, local higher institutions of learning should consider designing appropriate curricula for the required courses to be delivered locally. Thirdly, the issue of integrity is critical in implementation of the procurement reform and these intermediary steps, once taken, will facilitate a successful reform in procurement."

End of Speech

2.2 Procurement Complaints and Investigations

Mr. J. Tumwesigye, Inspector General of Government

Mandate

“The mandate of the Inspectorate of Government to handle cases of corruption and other irregularities detected in the public procurements is derived from Article 255 of the Constitution of the Republic of Uganda. The relevant sub-articles provide that the functions of the IGG shall include:

- to eliminate and foster the elimination of corruption, abuse of authority and of public office;
- to promote fair, efficient and good governance in public offices;
- to investigate any act, omission advice, decision or recommendation by a public officer or any other authority to which this article applies, taken, made, given or done in exercise of administrative functions.

The Inspectorate of Government Act 2002, under Section 8 also clearly empowers the Inspectorate to receive and investigate cases of alleged or suspected corrupt practices and injustices and “*make recommendations for appropriate action*”.

Procurement Reforms

The major reforms made in the public sector procurement in the recent times include:

1. The making/enactment of the Public Finance (Procurement) Regulations, 2000, SI 2000 No. 64 that led to:
 - Disbanding of the old Central Tender Board;
 - The establishment of the Reformed Central Tender Board;
 - The establishment of the Contracts Committees in all Procuring Entities (PEs);
 - The repeal of the Public Finance (Tender Boards) regulations, 1977.

<p>Note: As part of these regulations, a code of business ethics for all public employees engaged in public procurements was made.</p>

2. The making of the Public Procurement and Assets Disposal Authority Bill.

The Reformed Central Tender Board (RCTB)

The Reformed Central Tender {Board Reg. (9)} was given wide-ranging functions. Accordingly, it has been able to prepare the standard documents, has issued guideline/rules to be followed by Procuring Entities, etc. However, the RCTB lack the capacity to be effective in both its supervision and monitoring roles, particularly regarding inspection of records of PEs. The resources open to it are visibly inadequate considering the big number of PEs they are supposed to inspect. It therefore finds itself seriously constrained in its efforts to enforce compliance by the PEs to the set rules and procedures. Nevertheless, in our view it has done fairly well in the short lifetime of its existence.

However, our experience has shown that whereas the Reformed Central Tender Board was assigned all those functions in the Statutory Instrument (SI) above, the SI is silent about its powers to enforce compliance with the regulations. There seems to be no specific sanctions against PEs that do not comply with the regulations or advice of the RCTB.

In one of our investigations, we found that a PE had defied the advice of RCTB and since RCTB is not yet firm on the ground it was not even aware that this PE had ignored their advice.

In addition, remedies for complaints brought under Regulation 46 are not specified. It is not clear, for example, if the RCTB can order re-imbusement of costs and/or expenses to a prospective tenderer if the RCTB establishes that the complainant was cheated.

It would appear that due to these weaknesses, the complainants have tended to seek redress from the Inspectorate of Government, although the office is not specifically empowered by the SI to handle complaints. Therefore, for the reforms to succeed, the powers and capacity of RCTB will have to be strengthened under the proposed Procurement Act so as to enable it be effective in its supervisory and monitoring roles.

We have also noted that, although the laws and regulations mentioned above have been found wanting in some respects, the problems in procurements have largely been due to persistent non-compliance with existing laws, rules, procedures and Regulations by the PEs. This has resulted into loss of colossal sums of public funds and the procurement of goods / services / works that do not meet the intended objectives.

Contracts Committees

One of the major reforms introduced was the setting up of Contract Committees in every PE, to be responsible for controlling contract award decisions. Part-time members man these Committees. Our experience with these Contract Committees is that they have both positive and negative aspects.

Positive side:

On the positive side, these Contract Committees have reduced the time lag between the PEs desire to procure the goods and services and when they finally receive the goods and services. Before the introduction of the Contracts Committees, all PEs had to make submissions to the RCTB for awards. The RCTB used to be overwhelmed by the sheer volume of work and, due to other problems like technical expertise required and facilitation, the awards would normally be delayed, hence impacting negatively on the speed of service delivery.

This problem has been solved to the extent that the Contract Committees are in-house in each PE, and they can be summoned to execute their duties in a shorter time. Technical aspects are also easier to resolve as each PE has a pool of expertise in-house in its own area of operation, for example there are

engineers in the Ministry of Works, Housing and Communications, etc. This means that the process of evaluation is now faster.

Negative side:

(i) Appointment of a Contracts Committee

Under the Regulations and the Bill, the Accounting Officer or Chief Executive Officer of the PE appoints the members of the Contract Committee, including the Chairperson.

Whereas this is good for purposes of ensuring the exercise of powers by the Accounting Officer in his capacity as Accounting Officer, it is not good for the independence of the Contracts Committee. It is not easy under this arrangement for the Contracts Committee to exercise independent judgment in the performance of its functions if, for example, the Accounting Officer has personal interests in the procurements (i.e. conflict of interest). In such situations, the Accounting Officer will appoint members who will serve, or at least not oppose, his interests and these persons may not necessarily be the most competent. This arrangement can therefore make the Contracts Committee into a rubber stamp. The old RCTB was fairly independent of Accounting Officers as members were appointed and facilitated differently.

(ii) Representatives of Internal Audit Department, and Attorney General:

Under the Regulations and the Bill, representatives of Internal Audit Department and Attorney General / Ministry of Justice are permanent members of the Contracts Committee. This permanent membership presents some problems in a number of respects.

Internal Audit:

The traditional role of Internal Audit is to act as a control mechanism by ensuring compliance with regulations. Internal Audit department also carries out pre-payment audits, checking and advises whether those making decisions have followed proper procedures and regulations. Involving this internal audit in decision-making can, therefore, compromise its judgment while conducting pre-payment audits, because this would in effect amount to the internal auditor concerned auditing his own decisions.

Attorney General' representatives:

The Attorney General is responsible for approving / drafting the contract agreements and, later, if there are disputes between the PEs and the bidders, to defend the interests of the PE since most of the PEs are Government Departments. If such an office is again involved in executive decision-making at Contracts Committee, its

independence in exercising the other functions can suffer. The concept of independence is such that the person must not only be independent but must also be seen to be independent.

Despite the fact that the guidelines require that membership to the Contracts Committee should include possession of thorough knowledge of the laws, regulations and guidelines regulating public procurement in Uganda, we are of the view that this requirement of Internal Audit and Attorney General's representative be thoroughly assessed with a view of revisiting it.

- (iii) Appointment to, removal from, and remuneration of Contracts Committee members

Whereas the appointment and removal of members of Contracts Committees was addressed in the regulations and guidelines, the remuneration of the members was not addressed. This therefore means that different PEs are free to remunerate their Contracts Committees depending on their capacities. This is not good, especially when some of the members are representatives of Ministry of Justice and Internal Audit Departments. These representatives may be sitting on several Contracts Committees and could decide to attend only those that are able to pay them.

A worse scenario is if the Contracts Committee members engage in tendering directly or indirectly to create their own pay, resulting into serious conflicts of interest and possible corruption. The remuneration of members should therefore be addressed.

Therefore, for better management of procurements, there is need for re-organization of the Contracts Committees to give them capacity and functional independence to effectively do the work they are set up to handle.

Problems Encountered During Our Investigations

During the process of investigating procurement related cases we have observed various problems as follows:

- (i) Some PEs have been resorting to direct procurement of their needed goods / services / works, instead of following the set regulations which require procurement to be done through open competitive bidding methods. In our view, this is done to avoid the regulations in order to serve selfish interests of the individuals involved. For example, the Electoral Commission in 2001 deliberately avoided the open competitive method of procurement for the ballot papers for the Local Council elections of 2002. As a result, it is estimated that about Ug. Shs. 2 billion was lost through over-invoicing and other malpractices by the sole bidder.

- (ii) Some officials in PEs have been found to leak vital information to their preferred bidders in advance of the advertisement in order to afford them advantage over other prospective bidders in the preparation of their bids. Again a typical case here is where Electoral Commission officials passed on information to M/S Lithotech before they “selectively invited” tenders for the supply of ballot papers for the Local Council elections.
- (iii) Some PEs have been found to have used ambiguously drawn Terms of Reference for procurements. This has the effect of complicating the evaluation of the bids and therefore the system is prone to abuse by the officials who sometimes rig the results in favor of their favorite bidders. As a result, some bidders who would not have qualified end up winning the tender. For example, a PE which had not put up clear qualifying requirements for a tender was forced to select an inexperienced company to do a job that requires a lot of experience. Yet that Government Department has had problems in the past with firms that win tenders without the necessary capacity and end up failing to perform as per specifications.
- (iv) There is a problem with the current system of notification of tender award. Under regulation 36(2), notification of award constitutes the formation of a contract between the parties. This has been a problem area in that if a PE makes errors, or rigs the tender in favor of a particular bidder during the tender process, and hurriedly notifies the award to the beneficiary bidder, the other bidders would have no redress at all.

To begin with, the tender process after opening of the bids is confidential as per regulation 34. Hence the bidders who are being cheated will have no access to the information.

If the aggrieved bidder(s) happen to get information and complains (to IGG, for example) the IGG would be constrained in its investigations of the process if the PE has quickly notified the award to the other party. If the IGG found gross irregularities and/or corruption and ordered the cancellation of the award, the PE (which is normally a Government Department) could be ordered to pay damages for breach of this contract. In the majority of the cases, therefore, you will find no redress to a party being cheated and the not-so-deserving bidder (who may not even have the capacity to execute the contract successfully) is allowed to proceed with the tender for fear of breach of the contract.

This concern seems to have been addressed by Sec. 71 of the Bill, which is a positive development if the necessary law comes into force.

- (v) We have also noticed a problem with the complaints procedure and possible redress. Under Regulation 45, a complaint against an act or commission by the PE is to be submitted to the Accounting Officer of the

PE and, only later if there is inaction or where the complainant is not satisfied with the verdict, can the complaint be referred to RCTB.

In the first place (as already discussed) the Accounting Officer of the PE is the one who appoints the Contracts Committees. So the complainant will in actual effect be asking the Accounting Officer to review his or her own actions or omissions. While we agree with the requirement for the complaint to be submitted to the chairperson for handling, we take the view that the procedure could be strengthened if copies of the complaint are sent to the RCTB and the Inspectorate of Government. This will assure the complainant that justice can be done as the CTB and IGG are not represented on the Contracts Committee and will be seen to be more independent. If the Accounting Officer is made aware that the complaint was copied to the IGG and the RCTB, the Accounting Officer will most probably resolve the complaint with more seriousness and speed.

In addition, under regulation 46(2) the RCTB does not have the power to annul an award or stop the conclusion of a contract. This has had the effect of PEs proceeding without paying much attention to the RCTB's advice because they know that the RCTB is powerless in this area.

The Bill, under Sec. 85(2) redresses these weaknesses, except that the remedies available to the complainant are not specified.

We have however noted that under Section (4) of the Bill, the Authority is required to issue its decisions within 21 working days after receipt of the complaint. Normally complaints of allegations of unfair treatment in tendering process require extensive investigations involving voluminous documentation and may involve parties where the Authority may have no jurisdiction to summon witness as envisaged in Section 8(b), for example when investigating bidders located in foreign countries. When you take into account these considerations, you find that 21 working days may be inadequate to resolve some of the complaints.

Recommendations

Our department would like to make a number of recommendations.

1. There is need to strengthen the legal frame work governing public procurement to plug the holes in the existing laws / rules / regulations and to provide for offences in order to effectively impose sanctions against those who act contrary to the legal frame work in place.
2. There is need to properly provide for notification of awards (that are tentative) and actual awards (that constitute contracts). This will enable successful complainants to get appropriate redress unlike currently when there is no redress for a complainant (who has even been openly cheated) because a formal award has already been communicated.

3. As already pointed out above, there is need to strengthen the RCTB both in terms of powers and capacity in order for it to perform its functions.
4. There is need to reorganize the Contracts Committees to give them the necessary resources and functional independence in order for them to do their work effectively.
5. There is need for routine audits of the procurement system to check and report on compliance with the procurement law / rules / regulations in place.
6. There is need to strengthen and enforce the Code of Ethics for all those involved in procurement as a method of supporting and sustaining the procurement reforms that are being undertaken.”

End of Speech

2.3 Harmonization of the Local and Central Government Procurement Practices

Mrs. D. Wagima Okalany, Under Secretary, MoLG

“Since 1986, Government has steadfastly decentralized power, responsibilities and functions to popularly-elected Local Government Councils in a bid to improve service delivery, alleviate poverty and promote good governance. Today, Local Governments in Uganda are responsible for a broad range of services that have been decentralized to Local Governments, as listed in the Local Governments Act.

The specific objectives of this extensive decentralization of power are to:

- Reduce the load of work on under-resourced central officials by transferring real power to Local Governments;
- Improve accountability and effectiveness by bringing political and administrative control over services to the point of delivery;
- Free local managers from central constraints and allow them to develop organizational structures tailored to local circumstance and needs;
- Improve financial accountability and responsibility by establishing a clear link between payment of taxes and provision of services;
- Improve the capacities of the Councils to plan, finance and manage the delivery of services to their constituents.

Under the decentralized system of Local Governance, the procurement function is a mandate of the District Tender Boards, appointed by the respective District and Urban Councils. Therefore, Local Governments are Procurement Entities, and each District has a District Tender Board, which handles procurement activities for the District and lower Governments. However, Urban Councils are free to establish their own Tender Boards, at their own expense, if they do not want to use the services of a District Tender Board.

The District Tender Boards relate to the centre in a number of ways. Every District Tender Board is expected to publish a quarterly summary of all tenders which they award, and give a copy to all relevant Councils in the District, as well as to the Minister of Local Government, Inspector General of Government and Central Tender Board (now the Reformed Central Tender Board).

In the process of doing their work, the District Tender Boards are expected to conform to the procurement standards and procedures established by the Reformed Central Tender Board for the procurement of goods, services, and works and are guided by the Local Government Financial Regulations. The Reformed Central Tender Board has an advisory / regulatory role to the District Tender Boards.

In addition, the line Miniseries are supposed to provide technical support, supervision and quality assurance to the Local Governments during the procurement process, especially in projects that require specialized skills.

You will note that currently, the Government is implementing a number of development programmes in Local Governments towards the alleviation of poverty. However, in the course of implementing these programmes, procurement has been done centrally in conformity with the conditionalities attached to the various programmes. We believe this arrangement is transitional and that, in the future, Local Governments should procure goods, works and services for all programmes they implement, as the law requires.

I wish to use this forum to inform you that the Ministry of Local Government has developed Local Governments' Tender Regulations, which will be issued after harmonizing them with the Public Procurement and Assets Disposal Authority Act. The Ministry will ensure that consultations with the Reformed Central Tender Board and Sector Ministries are carried out before the Regulations are finally issued."

End of Speech

2.4 Implementation of the Reforms in Respect of Works

Eng. S. Bagonza, Commissioner Quality Assurance & Vice-Chairman, Contracts Committee, MoWHC

“Our presentation is entitled implementation of reforms in respect of works. So I will be mainly concentrating on the works area. In addition, we have a paper that has already been circulated (see **Annex D**).

Introduction to the Ministry of Works

The Ministry of Works is a large Procurement Entity with an annual budget of about Ug. Shs. 200 billion (both recurrent and development) 90% of which is procurement related.

We have two Contracts Committees. We have one at the headquarters in Entebbe, and we have another in our Road Agency Formation Unit (RAFU), which is based here in Kampala. Both of them were appointed in March by the Accounting Officer.

Up to now, we have been running our Procurement Unit with internally borrowed staff. But now that the structures have been approved by the Ministry of Public Service, we shall quickly embark on the recruitment process.

However, on those structures, we have two comments. Looking at the way we are operating our Procurement Units now, that structure is still inadequate for what was approved for the large Procurement Entities. I think it could still be improved by the addition of one more Procurement Officer. Moreover, the pool stenographer could be assisted by an office typist, and there is need for a driver because there is a lot of running around. Some of the members are in Kampala, some are based in Entebbe. So when it comes for a meeting, there is a lot of running around.

Now, the other comment we have is on Supplies Officers. In our set-up, our Supplies Officers are really responsible for stores management. So, we do not see that many of them could be eligible for the positions in the new Procurement Unit. We shall raise this with MOPS because I think our set-up is unique.

In the last 18 months or so, the Headquarters Contracts Committee have approved tenders for goods worth about Ug. Shs. 19 billion, services worth about Ug. Shs. 8 billion, and works worth about Ug. Shs. 90 billion.

The RAFU Contracts Committee have so far approved tenders for the supply of goods worth Ug. Shs, 4.2 million, services worth Ug. Shs. 14.1 billion and works worth about Ug. Shs. 30 billion.

Thresholds

The first area we want to comment on is the thresholds. Our Ministry mainly procures works as you have seen from those figures. Building works and road works tend to be in the range of above Ug. Shs. 100 million (for buildings) to above Ug. Shs. 300 million (for roads).

Now when you look at the present thresholds, we would need to be procuring all these works by open tender, except for in rare cases, where we can justify emergency or where there is limited specialization, by direct procurement or restricted tendering.

We have tried it during the last 18 months, and we have found that open tenders for works tend to attract about 50 competitors who buy the Bidding Documents, of whom about 30 submit bids. It becomes really cumbersome and time consuming to evaluate so many tenders. You will find a tender takes you about 3 months to process and you have so many tenders to process in a year, it is terrible.

We have appealed, and made recommendations about adjusting these thresholds. Some of our recommendations have since been implemented by RCTB in a review of guidelines in July last year. But we still have problems with the restrictive tendering and the open tendering whether local or international.

Another comment we have is that maybe the thresholds could be set such that they apply differently to goods, services and works if they cannot be combined.

Price Variations

Contracts we sign are based on international conditions. I am sure many of you have heard of FIDIC. Now these FIDIC conditions of contracts are recognized, they are accepted by Government, by donors, and that is what we use.

Building and civil engineering works projects based on the FIDIC Conditions of Contract inevitably attract price variations due to inflation, cost related claims, dayworks, etc. Contractor's claims for extension of time, once approved, automatically grant additional payment to the supervising consultant. Contracts Committees need to be properly guided on how price variations on contracts should be controlled within a PE.

Minimum Periods of Notice

We have found the periods of notice (which have been specified in Guideline No. 3) to be satisfactory.

Request for Quotations (RFQ)

This is an area that is being abused. For practical purposes, there should be a minimum period allowed for response to a RFQ. It may be 3 working days, or perhaps 5 working days, but it is an area that we are failing to control because there is nothing in black and white.

Procurement Notice

There is a requirement that when you have a procurement worth more than Ug. Shs. 200 million, you should give 15 days advance procurement notice. Now, the way procurement is done here, there is weakness in planning. So, we are saying, lift this threshold or let it apply maybe to high value procurements, because:

- it is building delays into the process;
- it is very expensive to put these notices in the papers.

Standard Bidding Documents (SBDs)

We know RCTB developed SBDs for goods, and that there is now an effort to develop the others for services and works. But we are proposing that this process should be made faster, because there is currently a tendency to use a variety of documents and it is very confusing. We should develop our own set of documents so that there is some uniformity.

Model Contracts

Again, we really need our own homemade contracts. They could be adapted from other international documents. But let us have our own also since we are becoming very serious on procurement.

Capacity Building of Local Industries

We feel that Guideline No. 15 is still very weak. If I can recall, it says that a PE should encourage the participation of small / medium enterprises by requesting competitors or bidders to specify some percentage of participation by local or small firms, or by sub-contracting to these local or small firms. There are two problems with this.

- We should not leave the decision as to the amount or percentage to be sub-contracted entirely to these big firms (whether foreign or local). I think we should specify the minimum percentage if we are determined to develop our own industries.
- The second area of confusion is in evaluation. The guideline says that, depending on the level of participation of the small/medium enterprise, you have a scale of zero to ten. So, other factors of evaluation take 90%, this sub-contracting takes 10%, which we think is too low.

Unique Procurement

Our Ministry and, I am sure, other PEs, are involved in some unique procurements. We have a procurement we have been using since 1994 for the fix unit rate contracting system. We have been using this in emergencies and also for training and capacity-building of contractors. The way it was operating was that you would have a Register of Contractors and then approved unit rates. So, by doing so, if you had an emergency, you could very quickly write a contract and give it to any person or any contractor on the Register. I know that there is a problem in selecting; but it helped us to increase the number of contractors in this country involved in road works from about 5 in 1994 to 198 this year (because the contractors are sure of a certain quota of work coming in, they are prepared to invest in heavy machinery, training, etc.).

Now the views of our Ministry (which we have discussed with RCTB and are waiting a reply), is that this system should be allowed for maybe another five years to assist in training and capacity-building of local contractors.

Labour-based Contracts

Road gangs were abolished in 1993. We went into a contracting system where we contract men or women living near a section of road to build, say, that section (10 km). Now, if each contract to build a stretch of 10 km road were required to be subject to

RFQ procedures, the job of evaluation would be much too costly in terms of time, money and resources. Secondly, a different procurement system might result in undesirable distribution of the work – it is important to know that the contractor resides near the road he is working on. Finally, at the moment we fix the rates. But if you leave the rates to be market-driven, the costs will rise. Again, we have asked RCTB to reconsider allowing us to retain this method of procurement.

Administrative Review

Regulations No. 44 to 47 prescribe for a system of review. But to date nobody has ever complained to us. Instead the complaints are either taken to the IGG's office or RCTB. The public should be sensitized that there is another route so that the regulations are used, otherwise they seem to be redundant.

Technical Assistance

We have benefited from the technical assistance funded by DFID. But we are saying that was not enough. Our recommendation is that Procurement Specialists are attached to PEs where you feel they are needed. Also the training needs to be continued. There should be this pool of trainers at RCTB for another one or two years, to give the process a kick start.

Third Party Procurement Agents

Our view is that the procurement audits are absolutely essential. They create discipline. When you are preparing documents, you know there is somebody who will look at them. So there is discipline, there is order. But we do not like this monopoly of SWIPCO. That one should be lifted, and there should be open competition. Procurement is an ordinary service. It is not sophisticated, it is simple, I do not see why SWIPCO should have this monopoly. Moreover, their rates are exorbitant: a procurement of Ug. Shs. 20 billion, which will require two professionals for about 3 weeks, will incur a charge from SWIPCO of 1.2% (Ug. Shs. 240 million). Now our question as a Ministry is 'Where is this Value-For-Money required in the regulations?'

Political Interference

The new procurement procedures have moved the procurement decision-making process from the old CTB to the Ministries or PEs. Now, in these PEs we have political leaders. So, depending on the individuals you have, there is a political danger. We have heard some politicians saying 'We are accountable to the public.' So, we feel safer in the old arrangement when we used to evaluate and take to CTB. It needs to be made more clear that procurement is a technical process with minimum political input.

Contracts Committees

The work of Contracts Committees is very demanding. We are appointed for other duties, and the Contracts Committee work is extra - it is not part of our original schedules of duties. In addition to being a Vice Chairman, I am a Commissioner for Quality Assurance, which involves reading many documents and taking very delicate impartial decisions.

Remuneration

If you are handling a tender worth about Ug. Shs. 20 billion, the number of telephone calls you get within that period you are handling that procurement is enormous. This work requires recognition, motivation and facilitation. This allowance of Ug. Shs. 25,000 (for the Chairperson) or Ug. Shs. 20,000 (for the rest of the Committee) needs to be increased.

Conclusion

The new procurement system has improved fairness, transparency and Value-For-Money. There is now a deliberate effort for public officers to get more knowledgeable about procurement and we are sure that, thanks to the courses we have gone through, the seminars we have gone through, we have amassed quite a lot of procurement skills that we did not have in the old system.

Procurements are now faster, the committees are there, departments are there, a meeting can be held any time. So, the delays of the old CTB, lengthy procurement procedures, are past history.

The other advantage is that the Contracts Committees tend to be familiar with the procurement needs of their own PE.

However, as we have raised in our paper, there are some areas that still need some bit of improvement:

- the procurement guidelines;
- some of the unique procurements that may come in some PEs;
- the public sensitization;
- technical assistance;
- the auditing by RCTB;
- opening up for more TPPAs;
- facilitating the Contracts Committee.”

End of Speech

2.5 Implementation of the Reforms in the Education Sector

Mr. P. Bigirimana, Under Secretary, MOES

Commencement of the Regulations and Implementation of the Guidelines

“The Public Finance (Procurement) Regulations came into force on 1st March 2001, introducing a number of reforms in the Public Procurement system. In order to implement these reforms, Procuring Entities were expected to put in place Contracts Committees as well as Procurement Units. Information received by Ministries at the time was that MOFPED was to initiate consultations with MOPS with respect to staffing issues.

One year later, no provisions have been made to enable Ministries to handle this new role, be it in terms of staffing or budgetary allocations. We at MOES had to approach some funding agencies to come to our rescue. Fortunately, the British Government, through DFID, has availed some funding to enable us hire a few staff on contract to form the Procurement Unit. It remains a marvel to us how other Ministries are managing.

MOPS via Circular Standing Instruction No. 1 of 2002 has now approved establishment of Procurement Units. The circular categorizes Procuring Entities into large, medium, and small and make staffing recommendations based on this categorization. However, this raised the following concerns:

1. The three officers proposed for the “large PEs” did not take into consideration procuring needs and requirements of different entities in terms of workload.
2. The person specification prescribed do not address identified needs. For instance, some PEs, that handle big civil works, may require officers with engineering or architectural background. We also felt that officers with legal background should be considered an asset to the Procurement Unit.
3. According to the same guidelines, the Procurement Unit reports directly to the Permanent Secretary. Our opinion is that this is not a desirable reporting arrangement. Procurement is, basically, a function of the department of Finance and Administration. Therefore, this should be reflected in the reporting arrangements.

Contradictions in the Current Regulations

Our Ministry has identified two contradictions between the Regulations.

Post Award Review:

The Regulations require PEs to notify a successful tenderer, before expiry of the tender period, that its tender has been accepted. Regulations 36 (2) states thus: “The Notification of the award shall constitute the formation of a contract between the parties....”

Regulations 44-47 provide for administrative review of a decision even after a contract has been concluded. In the event that such post-award review leads to annulment of the award decision, the tenderer formerly notified may pursue legal redress for “breach of contract”. Our concern, therefore is to what extent are Accounting Officers held responsible for “causing financial loss” in the event that the complainant is awarded damages as compensation?

Role of the IGG:

Although the new Regulations outline the ascending order of Appeals (Accounting Officer, RCTB, Courts of Law), experience has shown that aggrieved bidders may go straight to IGG who, in turn, invokes his wide constitutional powers to halt the procurement process for purposes of investigation or even overturn the decisions of the Procuring Entity. This intervention may lead to serious setbacks in terms of meeting sector targets as well as retarding the input of Development Partners. Our appeal is that the new law addresses this concern and comes out clearly on the roles of the different bodies responsible for good governance.

Government’s Wide Undertakings

Under the Sector-Wide-Approach, Government agrees to certain undertakings within a given time frame. Some of these undertakings have procurement aspects. The procurement methods as set out sometimes may not exactly be in harmony with the PEs undertakings, especially where Donor targets are involved. Procuring Entities are, therefore, in a dilemma as to whether to stick to the Regulations at the expense of missing agreed targets and hence losing Donor support.

It is therefore proposed that compromise modifications be included in the Regulations to cater for some unique situations.

Legal Advice

Procuring Entities are required to seek clearance from Solicitor General for all contracts in excess of Ug. Shs. 50 million, and sometimes seek legal opinion or advice regarding particular contracts. Practical experience has shown that the Office of the Solicitor General is over-stretched regarding provision of legal advice to the existing PEs, let alone the up-coming ones.

It is our considered opinion that it would be beneficial to have resident representatives of the Solicitor General within the PEs, at least large ones which need legal advice from time to time. This arrangement would be similar to the deployment of Internal Auditors by MOFPED, who are constantly available for the pre-audit function.

Delegation of Authority to Departments

A PE like MOES has affiliated semi-autonomous statutory bodies like Uganda National Examinations Board (UNEB), National Curriculum Development Centre (NCDC), etc., which qualify to be PEs under the current Regulations. However, the Permanent Secretary remains the Accounting Officer for these bodies, because their budgets are appropriated within the Ministry’s vote. To what extent is the Permanent Secretary responsible for their decisions in as far as procurement is concerned?

Furthermore, there are categories of institutions like Tertiary Colleges, well spread across the country, and whose volume of procurement needs are independently big and yet difficult for the centralized Contracts Committee to handle promptly. Given that such institutions are under one Accounting Officer, advice is being sought concerning delegation of authority to these institutions.

Role of Third Party Procurement Agencies

The role of TPPAs has been primarily understood as consultancy and audit functions. We therefore seek clarification regarding the following.

1. In cases where direct input services are desired from the agency, like bid documentation and contract administration, how shall the audit function be effected?
2. The new law will make the choice of using a TPPA optional. How are the PEs, RCTB and TPPAs supposed to relate to each other under that arrangement?

Implication of Reform Programmes

It is felt that those who are responsible for implementing various reform programmes in Government do so without cross-referring between themselves. This has sometimes yielded results below the desired output. For example, this very procurement reform was introduced, and Ministries were asked to implement, before a relevant law was in place. Secondly, MOPS, which is responsible for staff establishments, was not yet ready for the reform. This applies to MOFPED, too, which is responsible for budgetary provisions. It is interesting that the Ministry responsible for budgetary provisions is the same Ministry that pushed PES to implement the reforms.

While this Reform Programme has yielded positive results against many odds, it is considered prudent to remember to hold wide consultations, and to conduct thorough inception studies, to facilitate implementation.

It is hereby recommended that a consultancy be procured to evaluate the implementation of these reforms.”

End of Speech

2.6 Contractors' Experiences in Operating Under the Reforms

Eng. G.B. Zaribwende, Chairman, UNABCEC

Introduction

"Since 1986, the Government of Uganda has committed a lot of funding to the development of infrastructure, mainly in Roads under Road Sector Development Programmes, provision of essential public utilities and other social services infrastructure.

The construction industry in Uganda has grown at a rate of 8.5% for the last two years, and contributes 12% of the Gross Domestic Product (GDP), while contributing to about 50% of non-farm employment directly or indirectly.

Government has realized that, for effective implementation of construction projects, private sector involvement is crucial. It has, in consequence, abolished force account in favor of contracting-out jobs.

Over the period, a number of construction firms have sprung up to take advantage of the available opportunities. Many multinationals have also come in the country to participate in project implementation for the Government and private developers.

In 1993, Uganda National Association of Building and Civil Engineering Contractors (UNABCEC) was revived by some committed players in the sector with a mission to collectively lobby and promote a policy environment that would serve the interests of the contractors and develop the sector sustainably, with special emphasis on local capacity building.

It is estimated that 75% of Government expenditure is procurement related and the construction sector takes the bigger part.

How does UNABCEC view procurement?

The primary function of procurement is to add value by looking at the whole supply chain, with the aim of managing the costs and risks through various mechanisms. Well-managed procurement system by Government is therefore of great interest to contractors, since this guarantees fair competition and Value-For-Money for our clients.

Current Status

Currently, the contractors are familiar with the solicitation documents based on the following forms of contracts.

- Federation Internationale Des Ingenieurs Consols (FIDIC) form of contract;
- World Bank conditions of contract;
- East African form of contract.

Note: The FIDIC and World Bank conditions of contract are common with Donor-funded jobs, while the East African form of contracts is used mainly on locally-funded jobs by Government Institutions.

However, contractors have noted that many Government departments have shifted to using FIDIC and World Bank form of contracts. In some cases, Government organizations also came up with other unfamiliar forms of contract that are not specific for works. This complicates life for contractors who do not have time to study and internalize the unfamiliar bidding documents. This, in turn, often leads to submission of non-responsive tenders.

Moreover, the adoption of World Bank conditions of contract for small jobs is increasing financial burden on the contractors due to copying unnecessary tender conditions and irrelevant paper work.

To avoid unfriendly large volumes, simple forms of contracts should be designed for small upcoming contractors, especially at District levels where labor-based contractors are being used, and given the amount of funds handled through District Tender Boards in the decentralized governance mode. The system of “copy and apply” without any amendments to the original text is becoming increasingly common and must be discouraged.

Quality and Cost of Documents

Often, the volumes of tender documents are too big with many irrelevancies. On the other hand, some lack vital information to enable the bidder to put a realistic bid.

The quality of content in the documents is sub-standard in many cases. Documents lack the necessary technical details to enable a bidder put a realistic price for the intended works. Unfortunately this even applies to documents prepared by consultants. The drawings that form part of the Bidding Documents are usually extremely poor because they lack detail.

In almost all cases, the bidders are advised to visit the sites to acquaint themselves with the nature and complexity of the work. This works as an escape route for the sub-standard work done by the specifier (Engineer).

Finally, the cost of the Bid Documents is exaggerated and some departments use the tendering process as a funding exercise for petty cash.

Procurement Methods

Procurement falls into mainly the following categories:

- International Competitive Bidding (ICB);
- Local Competitive Bidding (LCB);
- Selective Bidding;
- Restricted National Tenders;
- Direct Negotiations.

ICB and LCB are normally advertised in the print media, giving a reasonable tender period and basic requirements for eligibility to participate in the tender. ICB is associated with Donor-funded jobs. Where as this system is the most desirable in this competitive and globalized world, the tender conditionalities associated with some of the jobs are not friendly to domestic providers, especially when small and otherwise manageable jobs are bundled up together to form one big contract thereby restricting tenders to large multinationals who have the financial capacity.

This system is anti local capacity building, and undermines national ownership of the infrastructure. This has been attributed to the types of financing agreements negotiated by MOFPED, where funding mechanism negotiated do not take into consideration the component of local capacity building.

Open National Tenders are taking the same trend because of adopting the World Bank guidelines without amendment, even when the funding is local.

Selective National Tenders

Whereas this system is not encouraged because it is susceptible to abuse, if well managed it can save valuable time and resources and also utilize the expertise of the firms with proven performance especially where the job is specialized.

UNABCEC supports this system but also recognizes that it will only work well where the contractors are registered and categorized, and the pre-qualification exercise has been conducted fairly.

General Observations

In all cases of tendering, we propose that there must be a benchmark price, i.e. a reserve estimate to guide the evaluating team. This will reduce bankruptcies and abandonment of projects. In some instances there is insufficient time for preparation and return of bids. This especially is common in districts and local authorities tenders.

Tender Securities

The system is fixing tender securities must be rationalized. We propose that bid guarantees do not exceed 1.5% of the cost estimate since the risk at this stage is minimal, while performance bonds should be a maximum of 10%. It is doubtful whether the current *status quo* of fixing Bid Securities arbitrarily is sustainable. After technical evaluation, the bid securities of firms that are not responsive, should be discharged.

The requirement for powers of attorney should be waived where the tenderers are known. The validity period of 120 days for locally-funded jobs is unnecessarily long. This encourages delays in project implementation by the Contracts Committees.

Experience with Ministry Contract Committees and District Tender Boards

The Ministry Contracts Committees that have taken over the technical role of Central Tender Board (CTB) do not seem to have risen to their challenge.

- They lack procurement planning systems, so there are instances where projects have advertised, and tenders have been received and shelved for lack of finances even after extending the bid securities. This is costly to contractors.
- Failure by Government to release counterpart funding is hindering timely implementation of projects, in some cases the projects are shelved or abandoned.
- Complaints of corruption are still being reported. The creation of Contracts Committees has not increased transparency in comparison to former CTB. In fact, inefficiency has been decentralized. The Committees are young and not professional in procurement. The evaluation process takes unnecessarily long.
- There is a bigger capacity problem at the District level, and training alone may not help. There is need for technical assistance from the RCTB in the short terms.
- The contracting community also needs to be educated about tendering procedures, through seminars conducted nationally, especially at the District level.
- There is a serious communication problem between the Government Ministries and our Association. We have expressed our concerns on some procurement-related matters to some Ministries, but no feedback has been received. There is a serious lack of credible path of complaints.
- There is no feedback system between the Contracts Committees and the tenderers after the contract award, thereby causing a lot of suspicion.
- There is no coordination between the different Contract Committees in the various Ministries. This leads to unfair distribution of jobs and, worse still, the allocation of jobs to contracting companies that are already blacklisted in other Ministries.

Capacity Building for Local Contractors

There are a number of local firms that have invested in the construction industry but who need exposure and opportunities to reinvest in the industry and build local capacity. There is need, therefore, for innovative procurement mechanism such as targeted procurement. Thresholds and the types of jobs must be clearly stated in the Regulations to back the law.

MOFPED should negotiate for relaxed procurement conditionalities with our development partners, and should emphasize the need for pro-active supervision. A balancing act is needed to assist the development of the local construction industry.

In addition a number of institutional problems must be addressed to build local capacity:

- There is need for registration and classification of all contractors for effective training and monitoring.

- There is need for policy on construction industry to regulate and develop the industry. Establishment of the Construction Industry Development Board (CIDB) is long overdue.
- A training levy should be imposed on public works procurements to help in training and skills development.
- Bad practices in Occupational Health, Safety and Environment (OHSE) are impacting negatively on the industry. We propose that the new procurement law take OHSE out of competition.

Challenges to Local Contractors

The success of the procurement system depends on the support from all the stakeholders.

- Contractors must appreciate the value of competition and endeavor to update themselves with the implications of the procurement reforms.
- We must develop a Code of Conduct to inculcate the culture of Good Business Practice in the industry.
- The contractors must stop influence peddling in tender evaluation process and must be held accountable for false accusations following loss of contracts.
- Contractors must guarantee the quality of work by giving realistic offers and employing technically competent workers.
- Contractors must embrace the values of UNABCEC and participate in the Association programmes, especially the OHSE Certification Scheme.
- Continuous improvement through training is a key to success.

Conclusion

The Uganda National Association of Building and Civil Engineering Contractors (UNABCEC) believes in transparency and efficiency in procurement, to correct the current negative image and reputation. We also agree that an effective procurement system manages risks and breeds a win/win relationship with our clients. We wish to thank the Government for the initiative to reform the procurement laws and the intervention measures proposed. These were clearly brought out in the Country Procurement Assessment Report (CPAR). Indeed we shall always support the system that enshrines the basic principles of Good Business Practices and promotion of capacity building in our industry.”

End of Speech

2.7. TRANSPARENCY IN GOVERNMENT PROCUREMENT

Mr. Z. Gariyo, Chairman, Uganda Debt Network (UDN)

Mr. Gariyo did not have a complete, prepared speech. Instead, he extemporized, using the following outline as a base for his address.

Introductory Remarks

- IGG's concern about public procurement – the worst forms of corruption are in public procurement – Central and Local Government.
- The regulations in place for public procurement are routinely abused and little or no punishment is meted out to the culprits.
- Abuse of public procurement rules and regulations is a reflection of the larger issues and problems – public service versus public responsibility – meritorious recruitment and awards, etc.

Concerns

- Public procurement is the most abused public policy process in Uganda.
- Political interference is the worst form of abuse of the public procurement process, i.e. chits, manipulation, pressure, (e.g. classroom construction in Katakwi District).
- Corruption and self-aggrandizement pervades public procurement at all levels (local and central).
- Shoddy contracts - study of contracts badly drafted and against Ugandan interests.

POSSIBLE SOLUTIONS

- Checks and balances – effective tendering system both at local level and central levels, highly qualified persons, vetting and participation of civil society.
- Public Information Act – access of the public to information.
- Open tendering and clear (less rigid) regulations, e.g. guidelines for classroom construction (local construction firms) leading to shoddy work and tendency to award self or friends or political cronies.
- Emphasis on quality and cost effectiveness, e.g. procurement from local suppliers sometimes neither of high quality nor cost-effective – proven regular suppliers (local and international), blacklisting.
- Adhering to contractual obligations – kickbacks suspected!

SECTION THREE:

**THE WAY FORWARD AS
CONVEYED BY PARTICIPANTS**

A Summary by Dr. C. Rajana, Executive Director, RCTB

Mr. Chairman, thank you for permitting me the opportunity to offer a summary of what in my view are the key points emerging out of the several erudite presentations made by various stakeholders groups, the constructive exchanges these have engendered and the conclusions arrived at following the interactions between presenters and participants, and among participants themselves.

The stress in my summary is not to recapture the details of the presentations or the ensuing exchanges – but rather to point to the way forward, as seen by the participants to this first Public Procurement Sector Review Meeting, in promoting the reform initiative of the Government, being spearheaded by the MOFPED.

In taking the broad sweep, I probably will not do justice to all the valuable points, which emerged in the course of the day. Hence, I ask your forgiveness in advance for any omissions and assure you that should such occur, they are not intentional. Further, the ordering of the main points in respect of the way forward reflects, in my opinion, the view points of the participants and not my own.

The Bill: The first issue is the passing of the Bill, which is critical in moving the reforms forward. There are, of course, related issues in respect to the Bill:

- (i) the extent to which different kinds of consultations have taken place;
- (ii) the fact that Parliament (and in particular, Members of the Finance Committee) will have to consult with all stakeholders.

The passing of the Bill is in fact the most critical activity in the public procurement reform initiative. All other activities hinge on its occurrence. In its absence a serious void exists in the system, which established the PEs as operating entities without putting in place the regulatory authority to ensure strict compliance by the PEs with the appropriate procedures in the management of their respective procurement budgets. Hence, there is no strict accountability by PEs on the use of public resources appropriated by Parliament under Regulations 2000, as it now stands.

Related issues were raised in respect of the Bill by participants, especially those representing the associations of the contracting community, such as, on the extent and adequacy of the consultations between the Government and the private sector in the preparation of the Bill. In response, Members of Parliament made it quite clear that the Finance, Planning and Economic Development Committee of Parliament will satisfy itself that all stakeholders groups in the system will be consulted, in order to ensure that the Bill is a representative one; and that as such, it addresses the interests of all the parties concerned in the process of public procurement.

Advisory Services: The issue of the choice of third party procurement services providers (TPPP) by PEs was raised by the PEs themselves, (especially the Ministry of

Works, Housing and Communication, Ministry of Education and Sports and Ministry of Health) and by representatives of the contracting community and specifically the Uganda National Association of Building, Civil Engineering and Contractors, Federation of Ugandan Consultants Organisation and the Uganda Manufacturers Association. A common view emerged, shared equally by both the private and public sector participants, that the existing monopoly arrangement, superimposed by the MOFPED, on the PEs, was costly in terms of fees levels, unnecessary in many cases and conflictual in that the provider is required by Contract to:

- (i) avail technical advice to all PEs at any stage in the procurement cycle;
- (ii) audit the decisions of the Contracts Committee to which it has tendered such advice; and
- (iii) charges the Government mandatorily, as per Contract, irrespective of whether it provides such advice or not, and irrespective of the quality of the audits it undertakes.

A related question raised, to which no one provided any answer, was who monitors the performance and reports on the execution of the Contract, between the Ministry and the Provider and to whom is the report submitted. Further, the point was raised as to how much was being paid for this mandatory service in any given Financial Year, to which again, no satisfactory answer was available.

Participants were unanimous in their view that this monopoly should be ended. More so, because it contravenes the provisions of Regulations 2000, which empowers the PEs to obtain all technical advisory services required competitively and not by administrative decision of any Ministry. Competition, it was felt, would have the benefit of enabling local contractors to provide the services required by the PEs more cost effectively, lower the overall expenditure of the Government on such services and result in greater discipline on the part of the PEs - in not spending on services which they do not require and on building their own capacities. Some participants expressed the view that the early passing of the Bill currently before Parliament, may provide a solution to this problem.

Training: Many participants, particularly the Ministry of Public Service, referred to the importance of capacity building as a critical RCTB input, in respect of its mandate, in transforming the PEs into effective operational entities. In this context, two types of specific training were referred to. One was instructional training, in the classroom environment, on the modules prepared by the RCTB. The other was the hands on, on-the-job training, based on taking individual PEs through the successive stages in dealing with concrete procurement activities.

Many PEs recognised the value of the training provided by the RCTB up to the end of June 2002 and bemoaned the fact that since July 2002, this critical training support to the PEs had come to an end. The RCTB recognised the existence of the void in terms of delivering on this essential element of its mandate. The undertaking was given that the RCTB is exploring, with the Royal Netherlands Government support, the possibility

of an early resumption of its capacity building function and likewise its extension to cover those PEs that have hitherto not benefited from such training, inclusive of the statutory bodies and the District Tender Boards and their affiliates.

Harmonisation: This topic was extensively debated following the presentation of the Ministry of Local Government. Participants stressed the need for the speedy alignment of procurement policies and practices of the Local Government with those of the Central Government in order to reduce the levels of infractions observable in the Local Government system and to improve value for money procurement.

Some participants, particularly the NGOs, drew attention to the practice of the District Executive Council appointing the District Tender Boards as politicising procurement management. Discussants urged that this practice be replaced with what obtains at the Central Government level where the District Tender Board members are technical people and not politicians. Others stressed that to leave procurement in the hands of the CAOs could result in the same level of impropriety. The debates were inconclusive as to what is the way forward in terms of mechanisms for procurement decisions and who should be charged with such decisions in the local Government system.

Almost all participants pointed out to the limited capacities of the District Councils to manage their expanding procurement budgets in terms of:

- (i) a lack of professional staff; and
- (ii) the inadequate technical competence of those in situ.

Both the Ministry of Local Government and the Ministry of Public Service indicated that a Government review of structures were currently underway to determine in part, systemic delivery capacities. Participants felt that a more specific audit to map procurement capacities and requirements and decision-making structures in the District Councils was urgently needed. They felt this ought to be undertaken even before the Bill becomes an Act. This view was premised on the reasoning that the harmonisation drive might not succeed if the capacities were not in place before the District Councils are required to operate under a more demanding set of unfamiliar procedures and processes. It was the overwhelming view that the Ministry of Local Government, the Ministry of Public Service and the RCTB should pool their resources together and urgently undertake such an audit at the earliest opportunity in order to put forward recommendations on capacity building.

Another issue, that was of particular interest to the contractors, was the practice of individual District Councils preferentially awarding bids to district based firms. They showed some understanding of the argument in support of the practice in question being based on empowerment consideration. But they stressed that the practice was not creating jobs or incomes in the measures expected. Moreover, they contended that the cost to the public purse is excessive compared to the benefits as most of the works undertaken by district based contractors were not completed on time, specifications are hardly ever observed and completion are rarely within budgets. They contended that the discriminatory practice of barriers to entry, in procurement at the District Council level,

should be brought to an end. They submitted that it unnecessarily truncates a small market, fragments contracting capacities and cannot achieve value for money. The discussions were inconclusive in respect of the way forward: except that participants called for a revision of the Government policy that is the source of the District Councils practice of favouring district based contractors.

The issue of the quality of the works executed in the districts, which was alluded to above, preoccupied the discussants. Some donor participants, members of the contracting community and NGO representatives felt particularly strongly that there ought to be more effective supervision of contractors by the District Councils, and likewise monitoring by the RCTB, to ensure that awards are executed strictly in accordance with the terms set out in the bid packages. On account of these existing voids, it was felt that district based contractors are simply not delivering on the required outputs.

Terms of Service: Many speakers, particularly those from the PEs, raised the issue repeatedly of the Scheme of Service recently introduced by the Ministry of Public Service for public officials involved in the Contracts Committees and the Procurement Units in terms of the:

- (i) sitting allowances scales in respect of Contracts Committees Members;
- (ii) qualifications for entry and progression in respect of PUs and qualification in relation to CCs; and
- (iii) ceilings in respect of progression grades and scales for officers serving in the PUs.

The representatives of the Ministry of Public Service who responded to these issues as they were raised, indicated that the reforms were new and that a start had to be made in respect of the Scheme of Service. The points raised, Members of Parliament representatives stressed, were in order and would be taken into account jointly with the RCTB, as soon as the opportunity arose for a review of the Scheme of Service.

Authority: Participants expressed the view that the uncertain legal status of the RCTB and the slow progression of the Bill through Parliament, was a major handicap in making the new system work. While the PEs have proceeded to operationalise themselves at a pace to execute their procurement budgets - the contractors and the public were left out on a limb. Contractors have not been able to obtain reviews by the RCTB and requests by the competent authority to disqualify non-performing providers have, by and large, gone unanswered. Similarly, public requests for inspections and investigation by the RCTB have not been heeded either for a lack of capacity or other motivations. Further, it was noted there had been no evidence of the RCTB conducting audits as required by the PRSC or to determine the level of compliance of contractors executing awards, strictly in accordance with the terms of the bid packages, as required by its mandate. Hence, there was a general feeling among participants, that the RCTB was not fulfilling its mandate and, particularly, its key regulatory function in relation to audit, inspection, investigation and review.

Further, the fact that the RCTB, as a regulatory body, had not been able, to date, to project a presence on the districts, was seen as the source of the increased incidents of reported breaches by contractors and the District Tender Boards in the use of public resources. Many participants called upon the RCTB to make good its absence at the districts.

Representatives from the oversight agencies, particularly the IGG and the Auditor General's office, donor representatives, especially the Royal Netherlands Government and DANIDA and the NGOs, inclusive of Uganda Debt Net Work and the Anti-corruption Coalition of Uganda, conveyed the view that the fact that the RCTB was not fully operational places a tremendous burden on the resources of the IGG and the AG, to fill the accountability void created by the RCTB's inability to deliver on its mandate. The shared view was that, this should be remedied immediately as neither the IGG nor the AG has the specialised capacities to fill in for the RCTB in terms of the exercise of its regulatory function.

In addition, it was felt that there ought to be constructive coordination efforts on the part of the IGG, AG and the RCTB in increasing accountability particularly in the specialized area of procurement where there is limited capacity nationally.

Independent Review: The issue of the partiality of the two levels of review, provided for in Regulations 2000, was raised: namely, a first level review of contractors complaints by Accounting Officers and in the event of unsatisfactory outcomes, a second level review by the Authority. Many speakers expressed the view that review by the Accounting Officer and the Authority may not appear ultimately to be fair either by contractors or the PEs, since they are both parties to the setting and operationalising of the rules, allegedly being breached. Hence, it was felt that there was need for a review mechanism, independent of the PEs and the Authority, which would have the full confidence of both the contractors and the PEs. Its decisions, participants felt, would be readily embraced and this would reduce disputes levels, minimise lengthy litigations and provide quick and cost effective answers.

Accounting Officers: Participants raised the issue of the role of the Accounting Officers in respect of the appointment of the Members of the Contracts Committees and the Procurement Units and questioned whether the CCs and the PUs could act independent of the Accounting Officers who appoint them, are responsible for their promotion, training and discipline. Very specific and pointed questions were referred to the IGG on this issue. He, like many other participants, acknowledged that the role of the Accounting officer in the system is problematic. It is a weakness in the system design, which could lead to awkward situations. But at this point, it was felt that there was no effective alternative. Some suggestions were made from the floor on ways around the role of the Accounting Officers. Discussants were assured that their views would be considered, as performance under the system design had to be continuously monitored and periodically reviewed.

The position of the RCTB was that it would be incorrect to prejudge the behaviour of the Accounting Officers. It would be best to come to conclusions based on actual conduct.

Standard Bid Packages (SBPs): The SBDs on works, services (both professional and non professional) and supplies engendered heated debates. There was less angst in respect of the principle of their introduction and mandatory application by PEs. The burning issues were:

- (i) which model document should be selected for adoption and adaption; and
- (ii) the extent of consultations required before they come into effect.

Some PEs referred to the fact that the preparation of SBPs has begun and that the RCTB had only consulted with selected PEs. The RCTB explained that its consultations had been restricted to date in that it did not have a mandate to introduce SBPs and would not until the Bill before Parliament became an Act. Hence, the RCTB contended it would not be proper to embark, at this stage, on a process of comprehensive consultations with the various stakeholders groups on which the SBPs would have a bearing. It had presently embarked on a limited exercise in order to gain some time. Once the Bill is passed, the RCTB intends to commence extensive consultations, inclusive of the organisation of common workshops for all PEs, association of contractors and oversight agencies.

The RCTB was particularly concerned about the observations made by Uganda National Association of Building, Civil Engineering and Contractors (UNABCEC) and Federation of Ugandan Consultants (FUCO) that as part of the reforms, the Government had shifted to a form of contracts unfamiliar to providers without any consultations with the users of the contract forms in question. To date, they contended the Government has offered no training to local contractors on the unnecessarily bulky documents, lacking in clear and simple language. UNABCEC contended that this was a major cause of the high level of contract administration and completion difficulties being encountered by the Government. The RCTB did give the contractors representatives the assurance that their respective concerns would be taken into account through a process of in depth consultation at the appropriate time in relation to the SBDs.

Contractors Registration: Many speakers, not least the representatives of UNABCEC and FUCO expressed the view that all providers to the Government, via the procurement system, should be subject to a common register, which should be maintained in the public domain. There were considerable discussions of the merits of such a register, with the bulk of the participants referring to the limited knowledge of the market place, in terms of the number and structures of legitimate providers, duly registered to contract for works, services and supplies, as a justification for its establishment.

It was the overwhelming view of the participants that such a register should be based on:

- (i) a classification of firms (individuals ?) by
 - (a) capacity or grades, namely, physical size;

- (b) core competences, that is, the disciplines in which they specialise; and
- (c) proven track record, in respect of performance, on contracts executed;
and
- (ii) a cooperative effort of the contractors associations and the PEs under the RCTB's direction.

It was further argued, by several participants, that the Register of Contractors should have a code of professional and ethical conduct and should contractors fail to observe these, they could be struck off the Register of Contractors. Registration of contractors should be a condition *sin qua non*, to be eligible to tender, was the final submission of UNABCEC and FUCO.

Private Sector: Presenters and discussants alike felt that the Government did not take fully into account, the interests of specific parties in the private sector involved in procurement in the reforming of the new system. Reference was made to the Entebbe Workshop as a major event in the reform process at which only Government officials and two donor agencies were present. The private sector was kept out. It was also contended that the consultations on the Bill, while wider in scope, were far from adequate and too narrowly focused. They were assured by the RCTB that the Bill, before Parliament, called for the Introduction of an advisory committee, which was intended as a permanent mechanism for structured consultations, between the private and public sector, to assess systemic performance and to recommend system wide improvements on a regular basis. Also, the presentation of the RCTB's representative was referred to, in which specific proposals were put forward for the progressive and constructive engagement of the private sector in public procurement management. It was also stressed that, without such cooperation, the RCTB would not succeed in its regulatory functions. It had to rely on information from contractors in order to monitor the PEs performance.

Delegation of Authority: This issue attracted much attention. PEs focused on the fact that Regulations 2000 were ambiguous on the issue of delegation of power, in respect of procurement decision-making. The RCTB admitted this to be the case, but pointed out the fact, that the Bill, before Parliament, and more so the Regulations attendant on that Bill, clarified the issue of delegation in simpler terms and in a more satisfactory manner. Participants concurred that the Bill did, to an extent, but could not vouch for the Regulations being referred to as they had, as yet, not seen any. The RCTB stressed that the Regulations in question had no legal standing, since the Bill had not been approved by Parliament. Hence, the Regulations could not anticipate Members of Parliament's amendments to the Bill or whether indeed they would approve the Bill at all. However, the RCTB did assure participants that anyone who wished to peruse the draft, for its completeness on the issue of delegation, was free to do so. RCTB stressed that they clearly set out the limits of delegation, the procedures for delegation, to whom one could delegate, how one could delegate and who, at the end of the day, remained accountable for the exercise of delegated power.

Variation of Contracts: The role of the Contracts Committees in the variation of contracts was raised. It was the view of participants that any variations to the SBPs should be referred to the CCs. Since their award decisions would be based on the integrity of a particular set of specifications and accompanying instructions, any material departures from these should have the Contract Committees' consensus before they were effected. The manner in which this should be operationalised, it was felt by the PEs, should be clearly stated in the new Regulations. The RCTB concurred.

Stakeholders Consultations: Apart from the consultation mechanism for PEs and contractors via the ageis of the Authority provided for in the Bill, the larger question in this genre raised by participants, was how does the Government, intend to promote stakeholders connectivity to better monitor the operations and effectiveness of the new system. Many participants expressed the view that the RCTB should put in place related mechanisms for structured consultations with the various other groups of stakeholders, such as with the oversight agencies and the non-governmental bodies. In respect of the latter, the participants stressed that it would be necessary for the RCTB to work with those NGOs, with both an advisory and monitoring mandate, and others, involved in actual developmental activities in the field, particularly at the district level. In this way, they contended, a constructive partnership could emerge which would help to keep best practices procurement reforms on the front burner and enable the RCTB to learn how systemic infractions were generated and exploited and thus to better appreciate the types of correctives required to prevent their reoccurrence. The RCTB assured the floor that in its Financial Year 2002-2003 Work Plan, provision had been made to engage formally both the oversight agencies and the two groups of NGOs in a constructive dialogue on partnership arrangements and connectivity modalities via structures mechanisms.

Contracting Community: We have already pointed to the several constructive observations made by the representatives of the providers associations in the context of the issues raised above. Among these were the issues of the Government switching to a contract form unfamiliar to local contractors, the bulkiness and complexity of contract forms relative to contract sizes, the need for a contractors' register, e.t.c. UNABCEC and FUCO also raised a number of other relevant issues, which were the subjects of much exchanges on the floor, particularly, between them and the PEs. Some of these issues are captured below as it was felt by participants that they ought to be addressed, one way or another, by the Government in general and or the RCTB, in particular. These included the:

- (i) tendency of some PEs to bundle procurement activities that could otherwise be undertaken by small and medium sized providers;
- (ii) practice of some CCs not being sufficiently transparent on how some award decisions are arrived at and the delays caused by infrequent CCs meetings;
- (iii) need for Government to be more proactive in its supervisions of the execution of contracts; and

- (iv) exercise of self restraint by contractors in not seeking to influence the decisions of CCs and the need for providers to admit accountability for false accusations, following the non-award of contracts.

Other issues: A number of PEs raised issues, which were taken up on the floor and debated by participants. Among them were the:

- (i) issue of the appropriate size of advance inclusive of mobilisation advance (Ministry of Agriculture, Animal Industry and Fisheries);
- (ii) setting of thresholds by the RCTB without appropriate consultations and without regard for the sector in question and its average scale and complexity of works, services and supplies (Ministry of Agriculture, Animal Industry and Fisheries);
- (iii) role of the CC versus the Engineer in variation orders (Ministry of Agriculture, Animal Industry and Fisheries);
- (iv) treatment for the purposes of the Regulations, 2000, of labour based contracts (Ministry of Agriculture, Animal Industry and Fisheries);
- (v) need for each PE to have its own legal council, particularly in the larger PEs (Ministry of Education and Sports);
- (vi) use of fixed unit rates for iterative works (Ministry of Works, Housing and Communication);
- (vii) political interference in the work of the CCs and the PUs (all PEs);
- (viii) appropriate periods for procurement notices under the various procedures (Ministry of Works, Housing and Communication); and
- (ix) leaving of decisions on subcontracting to the choice of the main or principal contractor and to remove any mandatory requirements from the Regulations or Guidelines (Ministry of Water, Lands and Environment).

Ethical Standards: In the closing remarks, the Honourable Miria Matembe, Minister of Ethics and Integrity, whose Ministry coordinates the anti-corruption efforts of the Government, via the Anti-Corruption Agency Forum (AGF) commended the participants for the open and forthright manner in which they discussed all that was wrong with the transitional arrangement governing public procurement. She stressed the urgency of the Bill laid before Parliament and urged her colleagues to speed up consideration and approval of the Bill. This she stressed was vital to get the new authority off the ground so that it could occupy its rightful place alongside other anticorruption agencies fighting to ensure that PEs and contractors alike, operate within the law in the use of public resources.

Issues raised above, the actions to be taken, responsible agencies and the delivery schedule are highlighted in a Matrix as Annex F.

SECTION FOUR:
ANNEXES

ANNEX A: PROGRAMME FOR THE PROCUREMENT SECTOR REVIEW, 15 AUGUST 2002

Chairmen:

Morning Session: Hon. Mafabi Nandala Nathan, (Chairman) National Economy

Afternoon Session: Mr. Robert Blake, Country Director, World Bank

TIME	ACTIVITY	BY
8:30 – 9:00 a.m.	Registration.	Ms. Anne Mpendwaki (Administrations Officer) Mrs. Hilda K. Mwesigwa (Administrative Assistant)
9:00 – 9:15 a.m.	Opening Remarks.	Hon. Mwesigwa-Rukutana, Minister, Ministry of Finance, Planning & Economic Development
9:15 – 9:30 a.m.	General Background to the Reforms and Objectives of the Review.	Mr. C.M. Kassami, Permanent Secretary/Secretary To The Treasury, Ministry of Finance, Planning & Economic Development
9:30 – 10:00 a.m.	Current Issues of the Procurement Reforms	Dr. Cecil Rajana, Executive Director, Reformed Central Tender Board
10:00 – 10:30 a.m.	Donors' Views on the Procurement Reforms.	His Excellency Matthieu Peters Ambassador, The Royal Netherlands Embassy
10:30 – 11:00 a.m.	COFFEE/TEA BREAK:	FOYER: VICTORIA HALL
11:00 – 11:20 a.m.	Human Resource Development and the Procurement Reforms.	Mrs. Adah Kabarokole-Muwanga, Commissioner/Human Resource Development, (Ministry of Public Service)
11:20 – 11:40 a.m.	Procurement Complaints and Investigations	Mr. Jotham Tumwesigye (Inspector General of Government)
11:40 – 12:00 noon.	Harmonization of the Local and Central Government Procurement Practices.	Mrs. Dorcas Wagima Okalany, Under Secretary (Ministry of Local Government)
12:00 – 12:20 p.m.	Implementation of the Reforms in Respect of Works.	Eng. Samson Bagonza, Commissioner/Quality Assurance & Vice-Chairman, Contracts Committee (Ministry of Works, Transport and Communications)
12:20 – 12:40 p.m.	Implementation of the Reforms in the Education Sector.	Mr. Pius Bigirimana, Under Secretary (Ministry of Education and Sports)
12:40 – 2:00 p.m.	BUFFET LUNCH:	CRANE RESTAURANT
2:00 – 3:00 p.m.	Discussions on Presentations.	Discussions on the Presentations
3:00 – 3:30 p.m.	Summary of Discussions and major points of Presentations.	Hon. Kamuntu Ephraim (Prof) (Chairman) Committee on Finance, Planning and Economic Development
3:30 – 3:45 p.m.	Contractors' Experiences in Operating under the Reforms.	Eng. G.B.Zaribwende, (Chairman) Uganda National Association of Building, Civil Engineering and Contractors (UNABCEC)
3:45 – 4:00 p.m.	Transparency in Government Procurement.	Mr. Zie Gariyo (Chairman) Uganda Debt Network
4:00 – 4:20 p.m.	COFFEE/TEA BREAK:	FOYER: VICTORIA HALL
4:20 – 5:20 p.m.	Discussions on Presentations	Hon. Kamuntu Ephraim (Prof)

	from Providers and Advocacy Groups (NGOs).	(Chairman) Committee on Finance, Planning and Economic Development
4:20 – 5:30 p.m.	Summation of Findings and the way Forward.	Dr. Cecil Rajana, Executive Director, Reformed Central Tender Board
5:30 – 5:45 p.m.	Closing Remarks: Procurement and Good Governance.	Hon. Miria Matembe, Minister, Ethics and Integrity
5:45 – 8:00 p.m.	COCKTAIL:	NILE LOUNGE

ANNEX B: REGISTER OF PARTICIPANTS AND CONTACT DETAILS

NO	NAME	NAME OF ORGANIZATION	<u>DESIGNATION</u>	TELEPHONE CONTACT
DONORS				
1.	Excellency Matthieu A. Peters	Netherlands Embassy	Ambassador	346000
2.	Mr. Harman Idema	Netherlands Embassy	Head of Operations	346000
3.	Mr. Robert Blake	World Bank	Country Manager	078-760050
4.	Mr. Rogati Kayani	World Bank	Lead Procurement Specialist	230094
5.	Mr. Robert Olowo	World Bank	Procurement Analyst	230094
6.	Mr. Cormac Gallagher	Embassy of Ireland	Charge de' Affaires	077-744353
7.	Mr. Donald Twikare	Embassy of Ireland	Governance and Legal Advisor	344344
8.	Ms. Bodil Mortensen	Danish Embassy	Financial Controller	077-468250
9.	Mr. Daniel S. Iga	Danish Embassy	Procurement Officer	256783
10.	Ms. Hannah Akuffo	Swedish Embassy	Charge de' Affaires	340970
11.	Mrs. Gloria Mugambe	Swedish Embassy	Economist	340970
12.	Dr. Konstantin Huber	Austrian Embassy	Head of Mission	235103
13.	Dr. N. Mwase	United Nations Development Programme	Senior Economist and Ag. Resident Representative	075-775772 230715
14.	Ms. Grace Kyokunda	African Development Bank	Officer	236167

OVERSIGHT AGENCIES				
15.	Hon. Miria Matembe	Ministry of Ethics and Integrity	Minister	077-483610
16.	Mr. Jotham Tumwesigye	Inspectorate of Government	Inspector General of Government	259723
17.	Mr. G. Singh	Auditor General's Office	Director	345668
18.	Mr. Arinda Sam	IGG	Officer	259723
MINISTRIES				
19.	Mr. C M Kassami	Ministry of Finance, Planning & Economic Development	Permanent Secretary/Secretary to The Treasury	234700
20.	Hon. Mwesigwa Rukutana	Ministry of Finance, Planning & Economic Development	Minister, General Duties	234700
21.	Mr. P. W. Orone Atipo	Ministry of Finance, Planning & Economic Development	Under Secretary/Accounting Officer	343418
22.	Ms. Florence. N. Kuteesa	Ministry of Finance, Planning & Economic Development	Ag. Director Budget	232317
23.	Mr. David Nsubuga	Ministry of Finance, Planning & Economic Development	Advisor to Minister	348307
24.	Mr. David Kabateraine	Ministry of Finance, Planning & Economic Development	Head/Procurement Unit	077-418541
25.	Mr. C. C. Musingo	Ministry of Public Service	Ag Director/PS	345346
26.	Mrs. A. Kabarokole	Ministry of Public Service	Commissioner, HRD	250453

	Muwanga			
27.	Mr. Gabindadde-Musoke	Ministry of Defence	Permanent Secretary	077-700225
28.	Mr. S. O. Omwonya	Ministry of Tourism, Trade & Industry	Under Secretary	077-698534
29.	Mr. Benson Bityo	Ministry of Tourism, Trade & Industry	Procurement Officer	077-700004
30.	Mr. G. P. Kasajja	Ministry of Agriculture, Animal Industry & Fisheries	Under Secretary	077-442336
31.	Mrs. Dorcas Wagima Okalany,	Ministry of Local Government	Under Secretary /FA	077-458020
32.	Mr. Onesmus Mulondo	Decentralization Unit, Ministry of Local Government	Chief of Division Financial Management	077-405696
33.	Mr. Ochieng Sebastian	Urban Authorities Association of Uganda	Executive Secretary	077-448858
34.	Mr. Kikabi David	Ministry of Works, Housing & Communication	IS	320101/9, 077-446094
35.	Mr. Samson Bagonza	Ministry of Works, Housing & Communication	Commissioner/Quality Assurance & Vice-Chairman, Contracts Committee	320629
36.	Mr. Robert Rwanga	Ministry of Works, Housing & Communication	Secretary, Contracts Committee	320415
37.	Ms. Anne F. Luziraa	Ministry of Water, Lands & Environment	US/FA	077-469719
38.	Mr. Callist Tindimugaya	Directorate of Water	Principal Hydrogeologist	077-521413

39.	Mr. Pius Bigirimana	Ministry of Education and Sports	Rep. Permanent Secretary	077-700201
40.	Ms. Josephine Onya	Ministry of Health	Under Secretary	340876
PARLIAMENT				
41.	Hon. Nandala Mafabi Nathan	Parliament of Uganda	Chairman, National Economy	077-220157
42.	Hon. E James Mwanda	Parliament of Uganda	Vice Chairman, Budget Committee	077-220045
43.	Hon. Dr Okulo Epak	Parliament of Uganda	Chairman, Public Accounts Committee	077-664018
44.	Hon. Ephraim Kamuntu	Parliament of Uganda	Chairman, Finance, Planning & Economic Development	077- 774876
PROVIDERS				
45.	Prof. Sam Turya-Muhika	Federation of Ugandan Consultants	Chairman	077-711139/ 236648
46.	Mr. Matanda P	Uganda National Chamber of Commerce and Industry	Secretary	077-670318/ 503024
47.	Ms. Sarah Lubega	Uganda Manufacturers Association	Member	077-664492
48.	Eng. G B Zaribwende	Uganda National Association of Building, Civil Engineering and Contractors	Chairman	077-755011

NGO's				
49.	Mr. Zie Gariyo	Uganda Debt Network	Chairman	
50.	Mr. Tumwebaze Patrick	Uganda Debt Network	Finance Officer	077-421292
51.	Ms. Tusingwire Caroline	Uganda Debt Network	Officer	077-883323
52.	Mr. N Wobusobozi	DWP	Rep. Director	077-506024
53.	Mrs. Charlotte Mwesigye	Anti-Corruption Coalition Uganda	Chairperson	075-692544
54.	Mr. Muloopa B Hassan	Transparency Uganda	National Programme Officer	077-618341
55.	Mr. Nimrod. Waniaala	Private Sector Foundation	Executive Director	230956
<u>TPPAs</u>				
56.	Mr. Cyrille Pernette	Inter-Agency Procurement Services Office (IAPSO)	Account Manager	(45) 354 67000
57.	Mr. Howard Selden	Crown Agents	Project Director	235312
58.	Ms. Caroline Healey	Crown Agents	Managing Director	235312
59.	Ms. Lydia Babinaga	Crown Agents	Procurement Manager	235312
60.	Mr. Kitiinisa J	Charles Kendall	Procurement Assistant	077-502051
61.	Ms. Hannah Schellader	Charles Kendall	Country Manager	077-755889
62.	Mr. Samwiri Kigwana	SWIPCO	Operations Director	077-200097
63.	Ms. Jennifer Bitalabehe	Center For Procurement Training	Executive Director	077-221177
64.	Prof. Bashaija Kazingo	Center for Procurement Training	Senior Principal Consultant	077-402381
65.	Mr. David Kiyingi	CIPS – Uganda	President	077-433230
<u>RCTB</u>				
66.	Dr. Cecil Rajana	Reformed Central Tender Board	Executive Director	230316

67.	Mr. Edgar Agaba	Reformed Central Tender Board	Director Legal & Compliance	230316
68.	Mrs. Mary P. Sozi	Reformed Central Tender Board	Director Finance & Administration	230316
69.	Mr. Milton Tumutegyereize	Reformed Central Tender Board	Director Institutions & HRD	230316
70.	Mr. Opondo Moses	Reformed Central Tender Board	Manager Finance & Administration	345545
71.	Mrs. Hilda K. Mwesigwa	Reformed Central Tender Board	Administrative Assistant	230316
72.	Ms. Anne Mpendwaki	Reformed Central Tender Board	Administrative Officer	230316
73.	Mr. Tony Muluya	Reformed Central Tender Board	Accounts Officer	230316
74.	Mr. Michael Dumba	Reformed Central Tender Board	Driver	230316
75.	Mr. Edward Musisi	Reformed Central Tender Board	Records Officer	230316
76.	Mrs. Patience Turyatemba	Reformed Central Tender Board	Personal Secretary/ED	230316
77.	Mr. Valerius Bibangamba	Reformed Central Tender Board	IT Specialist	230316

ANNEX C: SUPPORTING PAPERS TO THE PRESENTATION BY MRS. A. KABAROKOLE-MUWANGA, COMMISSIONER / HUMAN RESOURCE DEVELOPMENT, MOPS

Mr. Chairman, let me turn to the Appendixes. Appendix number (i) of my paper highlights the duties of Procurement Units and Contracts Committees.

1. The duties of Procurement Units are:
 - providing secretarial duties to the Contracts Committee;
 - preparing Specifications and Bidding Documents;
 - maintaining a Suppliers' List;
 - advertising bids;
 - selling Bidding Documents;
 - receiving bids;
 - evaluation of bids;
 - preparing contract documents;
 - monitoring contract implementation;
 - arranging payments;
 - preparing monthly reports to the Contracts Committee and RCTB;
 - monitoring;
 - keeping procurement records;
 - providing secretarial services to the Contracts Committee;
 - procurement planning, including budgeting, recommending procurement methodologies and coordination of procurement activities of all the departments.

2. The duties of the Contracts Committee are:
 - providing overall guidance of the procurement process in the Procurement Entity;
 - approving procurement methodology;
 - approving Bidding Documents;
 - opening bids;
 - approving Evaluation Reports;
 - authorizing award of contracts;
 - approving contracts documents.

Appendix number (ii) categorizes the Ministries and Departments into small, medium and large Procurement Entities. I must point out here that this was done in liaison with the Ministries, because the study undertaken by the Ministry involved discussion with various Ministries.

In Appendix number (iii), we can see the staffing levels for each category:

- the large Procurement Entities are supposed to have a Principal Procurement Officer, one Senior Procurement Officer, one Procurement Officer, one pool stenographer and one office attendant;

- the medium Procurement Entities are supposed to have a Senior Procurement Officer, a Procurement Officer, Office Typist and Office Attendant;
- the small Procurement Entities are supposed to have a Procurement Officer, an Assistant Procurement Officer and an office typist.

In Appendix (iv), there are four categories of officers. I anticipate that there might be problems recruiting suitable people to the position of Principal Procurement Officer. We are not very, very certain. But this is where we want to go. We think a first degree in Procurement or Purchasing and Supplies, or a first degree in Economics, Business Administration and Commerce with a post-graduate diploma in procurement and supplies, might be appropriate entry-level qualifications. While we may get people with Economics, Business Administration and Commerce, it may not be possible to get people with that and an additional post-graduate diploma. But that is what we are aiming at and, at the beginning, if we find it difficult, we can revisit this issue so that the people who come in can be trained to attain these qualifications. They will also need well-developed inter-personal communication, analytical and report writing skills.

At Principal Procurement Officer level, they will additionally need at least six years experience in procurement management in a public or large private organization. Computer knowledge will be an added advantage.

At Senior Procurement Officer level, it is the same academic qualifications except that the working experience is four years instead of the six years. Then the Procurement Officer is the same qualifications as for Senior Procurement Officer except that this one does not need any working experience because they are just coming in at graduate level. Assistant Procurement Officer shall require a diploma in Procurement and Supplies Management, business studies or a related field, good inter-personal skills. Computer knowledge will be an added advantage and experience in procurement work will also be an added advantage.

DUTIES OF PROCUREMENT UNITS

1. Provide secretarial services to the Contracts Committee
2. Preparation of specifications
3. Preparation of bidding documents
4. Maintaining a supplier list
5. Advertising bids
6. Selling bidding documents
7. Receiving bids
8. Evaluation of bids
9. Preparation of contract documents
10. Monitor contract implementation
11. Arranging payments
12. Preparation of monthly reports for the contracts committee and RCTB
13. Monitor and archiving procurement records
14. Provide secretarial services to the Contracts Committee
15. Procurement Planning including budgeting
16. Recommending procurement methodologies
17. Co-ordination of procurement activities of all departments/Units

DUTIES OF A CONTRACTS COMMITTEE

1. Overall guidance of the procurement process in the Procurement entity.
2. Approving procurement methodology
3. Approving bidding documents.
4. Opening bids.
5. Approval of evaluation reports and authorization of award of contracts.
6. Approval of contract documents.

CATEGORIZATION OF MINISTRIES/DEPARTMENTS/PROCUREMENT ENTITIES

CATEGORY I: LARGE PROCUREMENT ENTITIES

1. Ministry of Education and Sports
2. Ministry of Water, Lands and Environment
3. Ministry of Works, Housing and Communications
4. Ministry of Health
5. Mulago Hospital
6. Ministry of Defence
7. Police Department
8. Office of the Prime Minister
9. Prisons Department
10. Ministry of Agriculture, Animal Industry and Fisheries

CATEGORY II: MEDIUM PROCUREMENT ENTITIES

1. Ministry of Public Service
2. Ministry of Finance, Planning and Economic Development
3. Ministry of Gender, Labour and Social Development
4. Ministry of Internal Affairs
5. Ministry of Energy and Mineral Development
6. Ministry of Local Government
7. Ministry of Justice and Constitutional Affairs
8. Office of the President
9. Ministry of Foreign Affairs
10. Ministry of Trade, Tourism and Industry
11. Judiciary
12. Auditor General
13. Butabika Hospital
14. State House
15. Inspector General of Government

CATEGORY III: SMALL PROCUREMENT ENTITIES

1. Public Service Commission
2. Directorate of Public Prosecutions
3. Education Service Commission
4. Judicial Service Commission
5. Health Service Commission
6. Law Reform Commission
7. Movement Secretariat

STAFF ESTABLISHMENT FOR PROCUREMENT ENTITIES

CATEGORY 1: LARGE PROCUREMENT ENTITIES

NO.	TITLE	SCALE
1	Principal Procurement Officer	U2
1	Senior Procurement Officer	U3
1	Procurement Officer	U5b-4
1	Pool Stenographer	U6
1	Office Attendant	USS3

CATEGORY II: MEDIUM PROCUREMENT ENTITIES

NO.	TITLE	SCALE
1	Senior Procurement Officer	U3
1	Procurement Officer	U5b-4
1	Office Typist	U7
1	Office Attendant	USS3

CATEGORY III: SMALL PROCUREMENT ENTITIES

NO.	TITLE	SCALE
1	Procurement Officer	U5b-4
1	Assistant Procurement Officer	U5c
1	Office Typist	U7

PERSON SPECIFICATIONS

1. PRINCIPAL PROCUREMENT OFFICER

- First degree (Hons.) in Procurement/Purchasing and Supplies OR
- First degree (Hons.) in Economics, Business Administration or Commerce with a post-graduate diploma in Procurement and Supplies.
- Well-developed interpersonal, communication, analytical and report writing skills.
- At least 6 years experience in procurement management in a public or large private organization.
- Computer knowledge, an added advantage.

2. SENIOR PROCUREMENT OFFICER

- First degree (Hons.) in Procurement/Purchasing and Supplies OR
- First degree (Hons.) in Economics, Business Administration or Commerce with a post-graduate diploma in Procurement and Supplies Management.
- Computer knowledge
- Well-developed interpersonal, communication skills
- Working experience of at least 4 years in procurement in a public or large private sector organization.

3. PROCUREMENT OFFICER

- Same qualifications as for the Senior Procurement Officer except that this one does not need any working experience.

4. ASSISTANT PROCUREMENT OFFICER

- Diploma in Procurement and Supplies management, Business Studies or a related field
- Good interpersonal skills
- Computer knowledge is an added advantage
- Experience in Procurement work is an added advantage.

ANNEX D: SUPPORTING DATA AND COMMENTARY TO THE PRESENTATION BY ENG. S. BAGONZA, COMMISSIONER / QUALITY ASSURANCE AND VICE-CHAIRMAN, CONTRACTS COMMITTEE, MOWHC

Introduction

The Ministry of Works, Housing and Communications (MOWHC) is mandated to:

- Plan, develop and maintain an adequate and effective transport infrastructure to facilitate the provision of safe and efficient services by road, rail, water and air;
- Promote an efficient and effective communications system throughout the country;
- Promote and foster sustainable human settlements;
- Manage the construction and maintenance of Government buildings.

To fulfil the above mandate, the Ministry, among other things, procures goods, consultancy services and contractors to execute civil works, e.g. road works, bridge works and building works.

The following are the main procurements carried out by the Ministry:

Procurement of Goods:	Road maintenance materials; materials for building construction and repairs; spare parts for maintenance of plant, equipment and vehicles; spare parts for maintenance of ferries; office furniture and equipment; vehicles; laboratory equipment and chemicals; surveying equipment; drawing office equipment; workshop tools; stationery
Procurement of Services	Consultancy services for studies and designs; consultancy services for supervision of construction work; management consultancy services; technical assistance; cleaning; security; customs clearing; vehicle maintenance
Procurement of Works	Contractors for road construction / maintenance; contractors for bridge construction / maintenance; contractors for building construction / maintenance; contractors for services installations and repair.

The Ministry's budget (both recurrent and development) for this and the last Financial Year has been in the range of Ug. Shs. 200 billion, of which 90% approximately is spent on procurement related transactions. The Ministry, therefore, handles quite a lot of procurement business and as such is categorized as a large Public Procurement Entity.

Staffing Establishment for Large Procurement Unit

The following table gives the recently approved posts for the Procurement Unit as compared to what the Ministry views as the ideal.

Table 1: Staff Establishment for Large Procurement Unit

Position	No. of Posts	
	Approved	Ideal
Principal Procurement Officer	1	1
Sen. Procurement Officer	1	1
Procurement Officer	1	2
Pool Stenographer	1	1
Office Typist	-	1
Office Attendant	1	1
Driver	-	1

Approval of Tenders

The Contracts Committee in the Ministry has so far held 61 meetings, where 678 procurements / tenders have been considered. Out of these, 476 have been approved and 202 either rejected or returned for re-submission. Tables 2 and 3 give a summary of the tenders so far considered in the Ministry. The Committee in RAFU, on the other hand, has held 19 meetings where 42 procurements / tenders have been considered. Out of these 38 have been approved and 4 have either been rejected or returned for re-submission. Table 4 and 5 give the summaries of the tenders considered so far by RAFU and their values respectively.

Table 2: Tenders Considered by the Contracts Committee in the Ministry

Financial Year	Total Tenders	Approved	Rejected / Returned
2000 / 01	146	84	62
2001 / 02	465	337	128
2002 / 03	67	55	12
Total	678	476	202

Table 3: Value of Tenders Approved by the Contracts Committee in the Ministry

Financial Year	Value of Tenders Approved (Ug. Shs. Billion)		
	Goods	Services	Works
2000 / 01	6.0	2.0	14.8
2001 / 02	12.4	5.2	68.2
2002 / 03	0.4	0.6	8.2
Total	18.8	7.8	91.2

Table 4: Tenders Considered by the RAFU Contracts Committee

Financial Year	Total Tenders	Approved	Rejected / Returned
2000 / 01	-	-	-
2001 / 02	33	29	4
2002 / 03	9	9	9
Total	42	38	4

Table 5: Value of Tenders Approved by the RAFU Contracts Committee

Financial Year	Value of Tenders Approved (Ug. Shs. Billion)		
	Goods	Services	Works
2000 / 01	-	-	-
2001 / 02	0.0042	7.9	29.7
2002 / 03	-	6.2	-
Total	0.0042	14.1	29.7

Technical Assistance

The Ministry benefited from the DFID-funded technical assistance during April-December 2001. A Procurement Specialist was attached to the Contracts Committee to advise and give guidance on all matters related to procurement. The Unit received a computer as part of the assistance. The nature of technical assistance changed from January 2002 and is now offered in terms of training workshops. Training workshops covering four procurement modules have so far been held. The workshops have been attended by a total of 40 senior staff.

Procurement Skills Training

The following seminars / workshops have so far been conducted:

- A half-day sensitization seminar on the new procurement procedures was organized for senior staff in July 2001;
- A workshop on the new Public Procurement Regulations and Guidelines was organized for Members of the Contracts Committee, Heads of Department and Heads of Division from 18 - 20 August 2001 at Colline Hotel, Mukono;
- SWIPCO organized a one-week training course on Purchasing and Supplies Management In April 2002 at the Intercontinental Hotel, Nairobi. The course was attended by three officers from the Ministry and RAFU;
- RCTB has this year organized one-day training courses on four procurement modules in Kampala and Entebbe. The courses have been attended by 40 Ministry staff including members of the Contracts Committee, Heads of Department, other senior officers and some RAFU staff.

The training so far conducted in the Ministry is still inadequate. More training courses covering all aspects of the new public procurement regime need to be arranged. Ideally, each course should be attended by members of the Contracts Committee and at least two representatives of each Division in both the Ministry and RAFU.

Reporting

As required by the Public Finance (Procurement) Regulations 2001, the Ministry submits a monthly report on all procurements considered during each month to RCTB. All monthly reports up to July 2002 have been submitted.

On the request of the RCTB, the Ministry also prepared a report of all procurements valued in excess of US\$ 200,000, approved during the period March 2001 – January 2002. The Ministry, however, did not report all direct procurements awarded during the year 2001.

Internally, User Departments have been requested to prepare monthly reports on micro-procurements (i.e. up to Ug. Shs. 2 million) for submission to the Contracts Committee. The response on this is so far not satisfactory.

Auditing

SWIPCO carries out procurement auditing for all procurements valued at US\$ 50,000 and above. RCTB is required under the new Regulations to carry out auditing of procurements handled by PEs. To-date, RCTB has not yet audited the procurements handled by the Ministry since March 2001.

Thresholds

A Stakeholders' Workshop conducted by the Ministry in August, 2001 recommended the thresholds given in Table 6 below for consideration by RCTB.

Table 6: Thresholds for Procurement Procedures

Procurement Method	Existing Threshold Provisions (Ug. Shs.)	Workshop's Recommended Threshold (Ug. Shs.)	Comments
Micro-procurement	Less than 100,000/=	Less than 2m/=	Approved and adopted by RCTB
Direct Procurement	Not Applicable	Not Applicable	Depends on the circumstances
Local Purchase Order (RFQ)	100,000 – 500,000	2m/= - 5m/=	Approved and adopted by RCTB
Small procurement (RFQ)	5m/= - 25m/=	To remain	Remained unchanged
Restricted Tendering	25m/= - 100m/=	25m/= - 400m/=	Revised to 25m/= - 50m/=
Domestic Open Tendering	100m/= - 200m/=	400m/= - 800m/=	No response from RCTB

Domestic Open Tendering (High Value)	More than 200m/=	More than 800m/=	No response from RCTB
International Opening Tendering	100m/= - 200m/=	400m/= - 1b/=	No response from RCTB
International Opening Tendering (High Value)	More than 200m/=	More than 1b/=	No response from RCTB

Standard Tender Documents

During the Stakeholders' Workshop held on 10th August 2001 at the MOWHC Public Works Training Centre, the following recommendations were made:

- That separate volumes should be made for each category of procurement for prequalification or tender documents as follows:
 - (i) For Supply of Goods to have volumes for
 - (a) simple goods;
 - (b) major goods;
 - (c) complex goods.
 - (ii) For Supply of Consultancy Services to have volumes for
 - (a) simple services;
 - (b) major services;
 - (c) complex services.
 - (iii) For Supply of Civil Works to have volumes for
 - (a) simple works
 - (b) major works
 - (c) complex works
- That each of the above volumes should contain appropriately tailored "Invitation Letter, Request for Proposal, General Information, Instructions to Tenderers, Data Sheet, Terms of Reference Format, Sample Contract Forms, Form of Bid, Security Formats, etc., as appropriate.
- That universal equivalents of wording of titles should be used to avoid misunderstanding.

Unfortunately, to date, RCTB has only addressed standard procurement documents for "**Supply of Goods**". For the smooth running of the PEs, the standard procurement documents for Consultancy Services and Civil / Building Works should also be availed. The Ministry is currently reviewing the Civil Works and Building Works Standard Specification documents to address the inadequacies.

Model Contracts

The Stakeholders' Workshop further recommended:

- That forms of contracts for works should address the access to works by the Project Manager or his representative;
- That Occupational Hazards and Safety regulations should be addressed;
- That where local firms lack capacity to handle a project, joint ventures between local firms and foreign firms should be encouraged so as to enhance local capacity building;
- That where joint ventures are formed between local and foreign firms, the local firms should have shareholding of at least 20% for Construction Works and not less than 49% for Consultancy Services;
- That all tenders should be accompanied by tender security (in affordable amounts) whose validity coincides with validity of bid;
- That performance bonds should be reduced proportionately as the work progresses so as to ease the Contractor's cash flow;
- The final versions of procurement documents should be posted to the internet for easy accessibility.

ANNEX E: Discussions, Questions, Concerns, clarifications and the Responses raised during the Stakeholders workshop on Procurement.

The first item on the agenda was the speech of the Minister for Finance, Planning and Economic Development, presented by Hon. Mwesigwa Rukutana, Minister of state for Finance, Planning and Economic Development (General Duties). End of speech. (Applause).

Chairman, Hon. Nandala Mafabi: Thank you Hon. Minister. I want to apologize, I never introduced you, as the programme paper I have had another name. This is Hon. Mwesigwa Rukutana, the one in charge of Finance, Planning and Economic Development (General duties). Ladies and Gentlemen, I think you have heard the good opening remarks. The Uganda taxpayers' and the donors' taxpayers money is going to get value for money. So you have heard the good remarks of the Minister. At this juncture, I want to invite the Permanent Secretary/Secretary to the Treasury, in the Ministry of Finance, Planning and Economic Development, Mr. C.M. Kassami, to give us the general background of the reforms and the objectives of the review.

The speech by the Permanent Secretary/Secretary to the Treasury, in the Ministry of Finance, Planning and Economic Development, Mr. C.M. Kassami, ends. (*Applause*).

Chairman, Hon. Nandala: Thank you PS/Secretary to Treasury. Ladies and Gentlemen, you have heard the good speeches from the Minister and the PS/ST and they have urged us to use this time very efficiently and effectively so that we come up with the best solutions from the emerging system. In addition, the Minister has assured us that all the outcomes, which will come out will be taken with utmost seriousness. Ladies and Gentlemen, if you have questions or comments, you better hold them. In the meantime, I want to invite Dr. Rajana, executive director, Reformed Central Tender Board, to give us current issues to the procurement reforms.

Speech by Dr. Rajana, Executive Director, Reformed Central Tender Board, ends. (*Applause*).

Chairman, Hon. Nandala: Ladies and Gentlemen, again you have heard a good speech from the Director and, of course, what is important is that he is calling on us to have very good procurement entities, to avoid kickbacks and if you eat something, you have eaten a Ugandan, not any other person. Ladies and Gentlemen, in the interest of time, I would like now to call on the next speaker, who will be His Excellency Mathew Peters, Ambassador of the Royal Netherlands Embassy, to give us the donors' view as far as the procurement reforms are concerned.

The speech by His Excellency Mathew Peters, Ambassador of the Royal Netherlands Embassy, ends. (*Applause*).

Chairman, Hon. Nandala: Thank you your Excellency. Ladies and Gentlemen, you have heard those good speeches. Of course he is saying everybody is talking about

weaknesses in the law and they are directing the question to Parliament that they have not passed the Bill into law. I hope they will do it soon and of course anything, which is taken away, is a cost to the taxpayers; both Uganda and the donor community. Of course there is no small sin and big sin. Anything you commit is a sin. So there is no small corruption or big corruption. Everything is wrong if you do it. So at this juncture, maybe, because the Minister is going away and he made remarks, which remarks have not yet been commented on, I will now allow a minimum of four comments or questions before we go for a break, but preferably to the Minister, before he goes away. The Ambassador is around and also the Executive Director, Cecil Rajana, so you should not get worried. It seems the Minister has something to say. I will now allow him some few minutes. Thank you. *(Applause)*.

The Minister of Finance, Planning and Economic Development (General Duties)

Mr. Mwesigwa Rukutana: Mr. Chairman, I will make a specific request because I have to go to Parliament. As you very well know, I had been summoned at 10.00 a.m.; now it is 10.30 a.m. But the PS will address whatever remarks are directed to me. I wish to apologize. I would have loved to be with you throughout but unfortunately I cannot because of the reasons you know. However, one assurance I want to make is that the Ministry of Finance has been pursuing this Bill in Parliament. We shall continue to do so and it is in our interest that it is passed as quickly as possible. With those few words really, I beg to be allowed to leave. Thank you very much. *(Applause)*

Chairman, Hon. Nandala: I think the Minister has been excused. Since we are all coming back and we are on time, I am giving you 26 minutes for break, have a cup of coffee or tea and you should be back by exactly 11.00 a.m. Thank you.

(Meeting adjourned for 26 minutes break)

(Meeting resumed after break and it was called to order)

Chairman, Hon. Nandala: Before I call on the next presenter, I still have here the Executive Director Dr. Cecil, Rajana. If anybody has a few questions that he/she can put across to him, please, I will give a maximum of three. For the PS and the Minister and the Ambassador, I want to apologize, those ones will report in the afternoon because they are not available. So can I call upon the audience to provide at least a maximum of four questions or comments on the presentation of the Executive Director of Reformed Central Tender Board, if any, if none, we go ahead. Silence means you are comfortable. Now the next presenter will be Mrs. Adah Kabarokole-Muwanga – Commissioner/Human Resource Development, Ministry of Public Service, who is going to give us a presentation on Human Resource Development and the procurement reforms. These people are very knowledgeable in that field. Thank you.

End of speech by Mrs. Adah Kabarokole- Muwanga – Commissioner Human Resource Development – Ministry of Public Service (MPS): *(applause)*.

Chairman, Hon. Nandala: Thank you for that very good presentation and I hope everybody has got it as I have. Now, I would allow you five minutes if anyone would like to make comments on the Commissioner's presentation.

Member from the Audience: We need some clarification on the two Prisons and two Police mentioned in Appendix II, madam presenter.

Chairman, Hon. Nandala: Madam commissioner, there are two prisons, do you mean both prisons or one should be a Police? But even the Police is already there, there are two prisons.

Commissioner - HRD, Ministry of Public Service (MoPS): Leave one.

MR. Kasajja Patrick - Under Secretary in the Ministry of Agriculture, Animal Industry and Fisheries -: Mr. Chairman, I would like to start by commending the clear and concise presentation of the Commissioner in charge of Human Resources. Now, mine is just a clarification in terms of those who are going to be responsible for these procurement entities. I note that you have categorized them into; large, medium and small. Now for the small ones, you are saying that you need a person who is going to head that unit, the Procurement Officer, and when we look at the minimum qualification, you are saying that this person can be a person who has just qn can be a person who has just qon or a university, if I have got you well. Now, if you look at procurement, that person who has just qualified from an institution or a university, how will he have the basics of knowing how to handle procurement? Because at least some degree of knowledge or experience needs to be really possessed by that person, if he is going to be in charge of that unit, whether small or not, the principles of procurement are required. Would you like to guide me as to how you envisage this person, who is just beginning, how he is going to handle this issue? I thank you very much.

Mr. Kayani - (Senior Procurement Specialist from the World Bank): My name is Rogati Kayani, from the World Bank. First of all, I also want to join my colleague to congratulate Madam for a very concise presentation. My concern relates to Appendix (IV), on the person's specifications, I will humbly suggest that the academic qualifications that have been specified be less restrictive. There are basically two professions here; procurement and economics, business administration or basically, procurement. I think we all know that we have some very competent people from the legal side, the engineering side; even from history. So I think my suggestion is, just you specify a first degree with appropriate training, of course, if someone has done procurement as his basic degree, then the appropriate training may not be necessary. But I think my suggestion is, we make it less restrictive so that anybody, who has got a good first degree, can decide to join this sector. This is my suggestion. I thank you.

Chairman - Hon. Nandala: Thank you, Mr. Kayani. In fact, there you are very right, because like in Engineering, if I have economics, I might not be able to know the best item to procure. Maybe, in defense like artillery, it will need somebody who knows artillery. So, I think we better look at that.

Dr.Cecil Rajana: Thank you, Mr. Chairman. Mr. Chairman, I want to thank those who sought clarifications for the excellent presentation and I commend it like others. I agree that we should not be restrictive. I think we have to understand the nature of the exercise that the Public Service Commission has to do and MPS is ready to come up with something by way of initial skills and I think observations will be made in respect,

and then a review of the required skills. One suggestion I want to make, to add to what has been put forward, is really that the Public Service Ministry would need to look at the level of Principal Procurement Officer. It is really the highest level one can achieve, particularly in relation to this. If you take this thing like, for example, presiding over an exceedingly large procurement budget, I do not know why one would necessarily put a restriction at the Principal Procurement Officer. That is what it is. I think we need to relax that as we go along. That is what we wanted at some point as the Reformed Central Tender Board. I fully agree that anyone with a degree should in fact be free to pursue employment in procurement profession and indeed it will be serious people in procurement who are probably presented with the background. You will create great problems if you insist on first degree in procurement or purchasing and supplies - That is all I have Mr. Chairman.

Chairman - Hon Nandala: Thank you, Mr. Rajana. I have seen the Attorney General – okay I am going to limit my choice to those two people. I start with the Auditor General

Mr. Singh: Auditor General's Office: Thank you Mr. Chairman. I would like to get two points in connection with appendixes. One is small procurement entity where you have Procurement Officer, Assistant Procurement Officer and office typist. That is Appendix (III). Considering that these entities are really very small. Do you not think having two procurement officers will lead to what we call diminishing returns? I think there are too many; there should be only one person. I do not know, I am just suggesting. And office typist, I do not think that typist will fully be occupied throughout the month. We could use the typist of the Ministry. I think that we review that one. Now, the second one is Movement Secretariat. You have put them as smallest entities. I do not know whether in placing them in category three, you considered their other subsidiaries like the Movement Secretariat; we have a school at Kyankwanzi where they buy a lot of food and all such stuff. Thank you very much.

Chairman, Hon. Nandala: Thank you Auditor General

MR. Ochieng, Urban Authorities Association: Thank you very much, Mr. Chairman. I am called Ochieng Sebastian from Urban Authorities Association in Uganda. I would like to add my voice to the good presentation made by others and I have only one thing to seek clarification on. On page 2 of her paper, she highlighted the need or the importance of selection of staff of high integrity to handle procurement. But on Appendix (IV) regarding personal specification of the people who aspire to become procurement officers, she does not mention any guideline as to how the integrity will be addressed by the Sectoral Committee or the panel interviewing these people. I consider that something should be added on it either on any of the titles; Principal Senior – Thank you very much.

Chairman, Hon. Nandala: Madam Commissioner, I have heard and I think you will notice that these people, I think this is their maximum employment, because for small procurement entity you remain a Procurement Officer until you die (*Laughter*). So, I do not know how we are going to address some of those big issues.

Commissioner - HRD, MPS: Thank you, Mr. Chairman. Let me start by introducing Mr. Muyingo, who is here representing the Permanent Secretary - Ministry of Public Service. I was also invited in my capacity as a Commissioner, Human Resource Department because I led the task force, which undertook the study in Ministries and departments.

Chairman, Hon. Nandala: Mr. Muyingo, you are most welcome on behalf of all members around.

Commissioner - HRD, MPS: So, through you Mr. Chairman, he can really help me to clarify on some of these issues. But as I said, really that this is a great opportunity for us as Ministry of Public Service to review these issues. Mr. Rajana said, these were like first steps, let us test them and see how we come out and we can always improve; and I have got very wonderful suggestions. Like in the most recent, I realized it when Mr. Singh said we like people with integrity. But there is nothing in the job specifications; personal specifications, like you know, honesty and high integrity. We shall add these definitely because they are required. Then, I also want to correct the impression that when you are a Procurement Officer, in a small entity, you die a Procurement Officer. No, that is not true, because our recruitment policy is now based on competition as well as merit. When a post falls vacant, for example, in the Ministry of Public Service, which is a medium PE or another Ministry which is a large one, a person who qualifies from a small entity can apply and if he/she competes very well, he/she can take up that post. So, that one applies to all other posts. You do not have to be in one Ministry until you die.

Mr. Singh talked about small entities, that the staffing establishment was too much. As Ministry of Public Service, we are always happy when we are given a go ahead to cut numbers (*Laughter*). So, I am very, very happy on that and we can revisit it. That is why actually, at entry level, we thought training in procurement and supply was still necessary. Normally at graduate level entrance, we do not need post-graduate training. But in post-graduate training. But in that post-graduate training in procurement and supplies would help this new entrant to have an idea about procurement and supply; and also, that is why we put there an Assistant Procurement Officer, with working experience, to assist that new officer in the small unit. But as Mr. Singh said, this is an area that we should revisit and cut further. Maybe, we shall take both into consideration. Now, on the issue of academic qualifications being less restrictive. Yes, this is something that we have learnt from this forum.

Florence Kuteesa, Acting Director Budget – MOFPED: Mr. Chairman, I was wondering whether there was not going to be growth in the proposed structures of PUs. I see in the structure for large PUs, for example, positions stop at the level of Principal Procurement Officer. Does it mean such a person would die at that level?

Engineer Rwanga – Secretary Contracts Committee, Ministry of Works: My first concern is on Contract Implementation. The user department can do monitoring while arranging payments, of course, that one goes to accounts. My second concern is about the proposed payment for Contracts Committees. You have clearly categorized PEs as large, medium and small. But when it comes to the payment, we have 25,000/- for chairman and 20,000/- for the members. I feel that, that one is also unfairly done.

Maybe, you should have categorized, because this one also, I am talking from experience. Some of the entities, like my entity, at times meetings go beyond the working hours, and at times, take more than one day. These members have really been complaining, considering the fact that they have their own work in their offices. So, those are my two concerns. Thank you very much.

Chairman, Hon. Nandala: Yes, engineer, I could take one more in the gender sensitive. I do not know the names.

Ms. Florence Luzira: I am the Under Secretary - Ministry of Water. My neighbor has addressed my concern; Engineer Rwanga, from Ministry of Works. I was going to raise the same issue. Thank you.

Chairman, Hon. Nandala: I thank you, Madam Luzira. Commissioner, the floor is open.

Commissioner HRD, MPS: Mr. Chairman, on the issue brought up by Acting Director Budget, on the Principal Procurement Officer, where a person will die a Principal Procurement Officer. Earlier on, I said that Ministry of Finance, Planning and Economic Development was the parent Ministry of the Procurement cadre; and we think that procurement should be linked to a main department in the Ministry of Finance, where there will be promotional prospects for these officers, maybe, at either Assistant Commissioner level or Commissioner, and so on. But this is something that we can still discuss with the Ministry of Finance on how these people can progress. But our idea was that, they should be linking up with the main department or directorate in the Ministry of Finance, and that will create some promotional prospects. It is like in the Ministry of Public Service. We have Personnel Officers in all Ministries, up to principal and up to the Assistant Commissioner level. But when you go to commissioner level, you are at the Ministry of public service and Director level; you are not at any other Ministry. So, the promotional outlet is in the Ministry of Public Service, as a parent Ministry. So we thought we would adopt that arrangement with the procurement sector. But this can still be discussed with the Ministry of Finance.

Existing administrative officers taking up these procurement posts, yes; because the personnel regulation allows for re-designation. These administrative officers, more especially that we are now deciding here that we relax the qualification at degree level, the first degree being the main qualification, they can be re-designated because our policies allow re-designating, if the officers apply for this post. After all, they have been doing this procurement since the reforms began. So they have some experience.

The duties on Appendix (I) (numbers 10 and 11), okay, arranging payments, one member said that would be for accounts, yes. That one can be amended as well as monitoring and contract implementation. I do not know what the members here feel. Should the procurement unit not monitor contract implementation, if they are to ensure value for money? Should they leave it just to the user departments only? So, we thought procurement units should also monitor the implementation so that they can be satisfied that what had been approved was what was happening really.

Dr. Rajana: Mr. Chairman, if I may talk about the concerns of representatives from Ministries of Water and Works respectively. This will be in the Regulations; it is not intended to be in the draft Bill. We shall define the respective responsibilities of the Contracts Committees, in detail; the Procurement Units, in detail; the Accounting Officers, in detail; and therefore, what will happen is that those issues, will in fact be brought out clearly and verified to the various levels of individuals in the Contracts Committees, in the Procurement Units and so forth. And when we come to that point, a lot of it, I am sure, will be engaged to the Ministry of Public Service, in relation to this scheme, and I ask for some amendment in light of those specifications of functions for respective individuals in the Procurement Unit, as a whole, and in the Contracts Committee, as a whole, and likewise the Accounting Officer.

Commissioner HRD, MPS: Lastly Mr. Chairman, on the issue of 25,000/- as allowance to the chairperson and 20,000/- to the members. Yes, this is the existing regulation on the Committees in the Public Service, but there are Ministries, which can pay more than this, but there are also Ministries, which are also complaining that they have failed to raise this money. So the wet and dry Ministries, how do we balance them?

Question From the Audience: Which one is wet? (*Laughter*)

Commissioner HRD, MPS: How do we balance them really? So, to be fair, I think we put a modest allowance, which I think, will be afforded by all. But again as I said, if there is anybody who thinks so, he/she can raise it with PS - Public Service, who can take it up. I thank you very much (*Applause*).

Chairman, Hon. Nandala: The Committee has answered very well and I have seen Mr. Kayani, Procurement Specialist from the World Bank, has another burning item. I hope not on items 25 and 20 of the Appendix.

Mr. Kayani: Mr. Chairman, I think they have to be involved. Mr. Chairman, they do not have to work in isolation, they have to be involved in the procurement process and they must involve all the user departments. So, at that stage, they will be using the Finance Department, and at another stage, they will be using the engineering, at another stage they will be using the personnel. So, the procurement unit will actually be involved, right through the process, within the appropriate user department. In some cases, there are common user items, which will be procured, say, for the whole Ministry, and in that case, in fact, they will be even more closely following up the payment. They do not actually do the payment themselves; they just make sure that the payment is done, at the right time, in liaison with the user department. Thank you.

Chairman, Hon Nandala: I think that was a clarification. You have heard it and I have only learnt one thing that there are Ministries, which are wet, and others dry. We may have to get that list so that we may know how to allocate people. Ladies and gentlemen, I want to shift one speaker, who was to be the last, as per the agenda, that is, the Inspector General of Government, to become the second, because he is a man going to steer us in a very interesting session concerning complaints, investigations, how he handles his culprits and how he handles solutions to the complainants. I have

here, a very competent IGG, Mr. Jotham Tumwesigye, who is going to take us through this. Thank you, very much

Presentation by the IGG, Mr. Tumwesigye Jotham, ends.

Chairman, Hon Nandala: Thank you Mr. IGG. I know every member in here has heard your report and before I call on more questions or more comments from the audience, I would like, first of all, to thank Madam Muwanga for her presentation and having given me company here while making the presentation. Now I am inviting one person to come here to prepare, also for her presentation. In the meantime, I will ask the audience to prepare a minimum of five questions and comments. Meanwhile, Madam Dorcas Okalany, you know I like ladies near me. Mrs.D. Okalany should come and take this chair. Mr. IGG, thank you very much, especially for the internal audit you carry out. In the same way, the Auditor General. You have my support 150 percent.

Eng. Owobusobozi: Directorate of Water Development: I would like to commend the IGG for the good report he has made. But looking through it, I do not find anywhere, in his report, the role of SWIPCO; because we have been compelled, by the MOFPED, to submit all procurements, of about 50,000 dollars and above, for review and as members of the Contracts committee, we thought this was good because then they would be auditing our work, as Contracts Committees. So really we would want an emphatic comment from the IGG on that. Thank you.

Chairman, Hon Nandala: Thank you engineer. I will start with those I have not given a chance.

Hon James Mwandha: Vice Chairperson - Parliamentary Budget Committee: I want also to thank the IGG for this report. I went through the Bill some time back. I thought it was a good Bill. I now see that there are a number of areas that need to be re-visited and I am glad that I am here. I agree with the various witnesses that he has highlighted. With regard to the appointment of members of the Contracts Committees, I quite agree that it will be wrong to get the Accounting Officer to appoint them because, otherwise, they will have to do what he wants and at the end of the day, he is the person to make major decisions. Does IGG have some proposals as to how they should be appointed? Maybe he said it somewhere but I did not quite get it. Thank you.

Chairman, Hon Nandala: Thank you Honourable. Ladies and Gentlemen, I want to take a lady first for being gender sensitive or insensitive.

Observation from the Audience: Thank you Mr. Chairman. I just wanted to make a correction on page 9 where the IGG, in his paper, stated that a chairperson of the NTP is appointed, I mean that the Contracts Committee members are appointed by the chairperson. That is not true. Members of the Contracts Committee, including the chairperson, are appointed by the Accounting Officer.

Chairman, Hon Nandala: In short, the IGG is talking about the regulations. I know, as Under Secretary, I am certain you have seen the regulations; what it says. So you better refer. I am well informed the IGG is right.

Mr. Singh, Auditor General's office: Thank you very much. I wanted to add on one of the problems which Auditor General's Office has encountered during its investigation in procurement. What big contractors do, they bid for the work properly and after the work has started, somewhere in between, the Accounting Officer says, oh, we need a small modification. Now, the contractor is already on the job. He has already won the contract and you cannot put some other contractor to do the modification. But the most interesting thing in this modification, which we have discovered, is that when the modification is just small, ten percent, the division in price is almost 100 per cent. Now you sometimes wonder why should a small modification cost so much! That is one of the areas, which I think should be addressed. Maybe it is in the law already because I have not read all of this. Modifications are going to cost more in a certain percentage. Maybe, a re-bidding should be done. But the problems come when the main contractor is already there. Secondly, the IGG was talking about public bidding but the law also allows restricted bidding, where there is an emergency. Now we have discovered that many ministries will always employ the latter than open tendering.

The IGG. Hon. Matembe will agree with me that we pursued this matter vigorously but there are certain interests who have wanted to keep the institution, which is monitoring procurement, under the Ministry of Finance. So that one, I do not have much to add. But my feeling really is that this institution should be as independent as possible. Ministry of Finance itself is a procuring entity and some of the procurements it has done, I do not want to add more. (*Laughter*). So Mr. Chairman, thank you very much.

Hon. Dr. Okullo Epak, Chairman - Public Accounts Committee: Mr. Chairman, I want to thank you and I want to thank the IGG for his concern, in supporting the efforts of the Public Accounts Committee, for the accountability documents to be produced. I am glad to mention that these days, the Accounting Officers have to find the documents. We are not forgetting, we shall not forget.

The only problem is that it delays the work of the Public Accounts Committee. They are producing them. You find cases where Accounting Officers even attempt to manufacture them but documents must be produced. Thank you.

Mr. Harman Idema, First Secretary, Head of Finance & Operations Management – The Netherlands Embassy: Thank you. There are a few points in the report of the IGG, which I want to clarify on. There are a few points I would like to comment on. First of all, he mentioned that they did not provide the data that 90 per cent of the cases investigated are procurement related. We thought it was government's plan to combat corruption. Secondly, I have a few points on SWIPCO. I think there are two issues. One is, I am very happy that we share the opinion, that there is a dual role, right now, with a contract with government. There was also a second issue and that has to do with selection of procurement agents. The idea was that procuring entities, Ministries, should have a choice of several procurement agents, which could help them in more complex and high value procurements. At some point in time, an advertisement was placed in the newspapers. During the process of selection, the whole exercise was stopped, possibly because there was objection from Members of Parliament that legal steps might interfere with this selection process. But in the meantime, the contract of

SWIPCO has been extended several times and we do not think that is a very good idea. So those are the two points.

Chairman, Hon Nandala: Thank you, head of finance, and I think the clarifications have been so clear and you are right. I think this is a very big issue, which should be looked at, and I know the Auditor General is here. I would be very happy to read an audit report saying SWIPCO did two jobs; the procurement and the audited process, which is a conflict of interest. Also, the two billion is too much. In fact for me, that is a budget for a full district. So, if these people could bring back the money, then you can leave them. Otherwise, I feel you should look for more evidence to take them to court.

Hon. Matembe, Minister of State for Ethics and Integrity: Thank you very much. I would like to thank the IGG for his presentation. As a person who is supposed to spearhead the building of ethics and integrity, I want to tell you that we need God himself to come down, on to Ugandans; because it is terrible. You really cannot believe. At times I look at people and say, all these people are thieves now. It is really terrible. People are just walking, robbing this nation; I am telling you. It is terrible and I do not know what will happen. God will look into your hearts. I am serious. When I talk, at times people think I am joking. But who can look into your hearts and know what you do. You do terrible things. The IGG is suffering, I can assure you. He has just been mild as usual. He practices diplomacy, which I love. But there is a question, which was raised by the Commissioner for Budget. There are two questions; how do you gauge and find out the people of integrity in order to appoint? I tell you that is very difficult. You need to do integrity vetting. I had one time been assigned that responsibility, but then my Colleague took it away again. Because I was leaving out the people whom they wanted to appoint. They took it away and said that was she the only one who could vet? We are also Ministers in Charge of –(Laughter). You imagine! We had agreed that I should vet people who are going into these positions and when we vetted, they said after all, each of us has a Ministry. We are responsible for our performance and that kind of thing and the role was taken away. Anyway, you vet, but it is also a long exercise and tedious and needs money and that kind of thing. So, as to how you really know the person of integrity to appoint, that is a very difficult question and it will still have a problem to us although for me I will continue appealing to Ugandans really to love their nation and to start working for it rather than robbing it. But the other one, which the Commissioner Budget raised, was simpler.

Chairman, Hon Nandala: No, she is Acting Director.

Hon. Matembe: I am sorry to demote you Madam. Once you are on the job, how do they know that you have fallen short of integrity? Certainly, as the IGG was saying, once these rules and regulations are in place, deviation from them should point to your wickedness, if that is the right word. Because in view of the fact that I cannot gauge your head and know what is going on in your heart, we shall gauge it against the rules, we have established for you to operate. Why should you depart from these rules? One big criterion is that, once the rules are there, in view of the fact that other things we are failing, at least follow the rules. If you do not follow them, then you are corrupt. Of course you are not corrupt within the meaning of the criminal offence but you should be corrupt within the meaning of people, in order to be dismissed from the job. So that

one, you people who are implementing this thing, for us, me and IGG, when you depart – because you have got these rules for yourselves. You should not depart. When you depart, we should speak to you and unt, we should speak to you and unconvincing reasons, which we do not usually see, you should be punished. I did not intend to stay all this, but somehow when I stand up, things come into my head and when they come, you know God wants you to hear them.

Now the other one, which I wanted to ask the IGG, I heard him talk but he said nothing on political interference. Why did you keep quiet on that? (*Laughter*). Because he is an independent office, you know. He is supposed to inspect our government and he knows what goes on. When all these people have for instance, violated the regulations and he is fixing them, do you know where they go? They appeal to political heavy weights and these political heavy weights come in and some of these political heavy weights are involved in these companies, which are disturbing. Why did you not say that? These are things that we must know and when you go away, you know we hate them. You civil servants, when you appeal to your politicians, we do not like it. We take all of you to be thieves and corrupt. Therefore IGG, you did not mention that. It would have helped me.

Chairman, Hon Nandala: You have done good to mention it. He has got it.

Hon Matembe: You chairperson, know very well you are asking IGG to prosecute the commissioners. But you people, are the very ones who say you should criminalise the leadership code. Once it is a breach of leadership code, you either vacate or whatever. But you cannot go to court to be prosecuted. And if the IGG finds that these people, what they did amounts to breach of leadership code, and therefore it attracts a fine that you put in the leadership code. Thank you very much.

Chairman, Hon Nandala: Thank you Hon. Matembe. I am not saying that they breach the leadership code. Me, I am saying they are criminals. So, if a criminal is a criminal, no leadership code applies. Thank you for talking about political interference. The IGG is happy. It was by slip of pen but it was in his original notes. (*Laughter*). You are right. We must call God to come and help us and I am worried whatever you steal and take now, you will leave it on earth and when you go to God he will ask you, what did you do? You will say I was busy stealing. So you know what will happen.

Ms. Grace Kyokunda - Programme Officer, ADB: My question is on the issue raised by the Auditor General about modification, where a bidder wins and connives with certain agencies to increase the price. There is a provision in the proposed Bill that changes ten per cent. But then I would add that you do not just subject ten per cent. You ought to have reasons for that. For example, if there is a change in site. What causes it? Is it inflation? If it is something that is procured internationally, let us say, you are buying a transformer, you have got to have specifications. So I say that, rather than putting in the regulation, that modification should be restricted, there should be a reason for that change. Thank you very much.

Chairman, Hon Nandala: Thank you very much Madam and that one I think is good.

Ms. Charlotte Mwesigye: Thank you very much. I assume we have successfully prosecuted those who have deviated. Are there any achievements in recovering what we have lost or we have just dismissed and we have gone with what? And where you have a limitation of the burden of proof. Have there been any practical proposals on how we can take care of lack of sufficient evidence or it will be a continuous story until we give up anti-corruption struggle? Then we feel really devastated by the award of 80 million shillings to the out-going Kasujja. What is your comment on that or was that to say thank you, you are a hero?

Chairman, Hon Nandala: IGG, can you comment on this? The rest are okay.

IGG, Mr. Tumwesigye: I think Charlotte was asking, generally, whether we have made any recovery in some of the cases that we have investigated. Yes, we have made a lot of recovery. In fact recently, okay, that one was not a recovery. But we stopped a cheque of 500 million shillings, which was going to be paid to someone. We stopped it and the authorities have since recovered the money. But it was already in a bank to be paid. We said do not pay that money. The total amount in that case would have been 1.5 billion shillings. But in other cases, we have been making recoveries, only that we have not been putting it in any specific account. Really, the money being proposed to be paid to these commissioners; 80 million shillings, I do not think that I have much to say about it because for me, I made my findings and recommendations and everything is in that report. Beyond that, I really do not have much to say. But I wanted to comment on SWIPCO. It is the Ministry of Finance to answer most of these questions on SWIPCO, because they are the ones who are always continually renewing the contract of SWIPCO; and the Ministry of Finance should be the one to address the concerns of the donors and other stakeholders. I think you asked a question about, how can you have evidence to sack but not have enough evidence to prosecute? I think that question can be answered by a lawyer, really and I assume that you are not a lawyer. In any case, we prosecuted a permanent secretary and he was acquitted in the High Court because, according to the High Court, there was not enough evidence. But the Public Service Commission still went ahead and sacked him. So you can have evidence to sack but not have enough evidence to prosecute.

Hon. James Mwandha: On the issue of the independence of the Central Tender Board, I do not think that the IGG should lose heart. I think the chairman can market the idea of the independence of CTB when we are making the law and I am sure we can end up with an independent CTB. But I wanted also to make a proposal with regard to the independence of the contracts committees. Possibly, we could provide for the members on those committees to be nominated by the Accounting Officer. But have somebody else to actually appoint, such as the Secretary to Treasury, who actually appoints the accounting officers. In the same way, if an accounting officer is not happy with a member of the committee, I think the process should also involve the Secretary to the Treasury, so that it becomes a bit more difficult for a person to be fired and therefore independence of the committee can be a little bit guaranteed. On the question of integrity vetting, you know in Parliament, we approve many of these people and I was advocating for public hearings, like it is done in other advanced democracies, but I was advised that there is a shortage of high calibre people and that once you engage in public hearings, then many people will be scared away in accepting appointments at

that level and therefore you will not end up by getting the right people. So, I withdraw my resistance. But I was wondering whether the IGG would have dealt with that; whether in practical, everybody who Parliament clears should not hold public hearing, so that if anybody out there knows that this man Mwandha, who is being proposed to be IGG, actually is a thief and I can come before Parliament and say this man is a thief, so that Parliament can change their mind about the qualification of this individual; whether this will scare, sort of high caliber, people away from accepting public appointments. Thank you. You are thereby giving the public opportunity to give information about the person being appointed. Otherwise these secret appointments, we do not know when they are done and some of the information concerning the lack of integrity of individuals appointed, come after the person has been appointed. So, there is need really to know serious business of integrity vetting by conducting public hearings in big, big appointments. Then in small appointments, you could also do more investigations about the person who is being appointed. At the Inspectorate of Government, we do not appoint a person just anyhow. We have first of all to do research on the person being appointed and then after we have found that he is okay, they give him an appointment letter.

Chairman, Hon Nandala: Thank you Hon. For sure, count on me on the marketing of the independence of the reformed CTB and you are being independent and we are thinking of even having something like a tribunal because, if the thing or institution has offended me, I should appeal somewhere for assistance.

Caroline Healey, Managing Director, Crown Agents (U) Ltd: On page 10, paragraph two, the IGG has said that the regulation 6(2) does not empower RCTB on enforcing ethics . There is need to strengthen and enforce the code of ethics. I want to put forward a suggestion to this workshop to consider and to quote example from neighbouring countries. In Kenya, an Appeals Board has been established. I understand they even have the authority to cancel Awards. Therefore I would like to recommend to this workshop that they recommend, somewhere within the regulatory framework, that consideration is given to empower the rCTB, on behalf of the Government of Uganda, to cancel contracts and that will be a very effective measure against some of the corrupt practices. Thank you very much.

Chairman, Hon Nandala: I think we have to break for lunch. I know in the afternoon, I will also come and join you in the audience. But I want to thank you for your cooperation. I thank you for having respected my office. The chairman for the afternoon session, I saw him around. I look forward that he will control you as I did. Now lunch will be served in Rhino Restaurant. Well, I do not know the directions and it will be a buffet. Pick whatever you like, eat it well but make sure you do not sleep when you come back. Thank you very much. Time for coming back will be – you are going for only 30 minutes.

AFTERNOON SESSION

Chairman, Mr. Robert Blake, Country Director- The World Bank:

1st Presentation by Mrs. Dorcus Okalany - Undersecretary Ministry of Local Government. Presentation ends.

Point of Information from Mrs. Adah Kabarokole- Commisioner HRD-MPS: I wish to use this forum also to inform you that the Ministry of Local Government has developed Local Government Tender Board Regulations, which will be issued after harmonizing them with the Public Procurement and Asset Disposal Authority Act. The Ministry will ensure that it will carry out the consultations with the RCTB and sector Ministries, before we issue the regulations.

I also want to inform you that Ministry of Public Service is aware that we are now revisiting our Local Government Structures and, maybe, through this restructuring, we should address the issue of the Procurement Units for the Local Governments. I once again thank you for this kind attention. Thank you very much, Mr. Chairman.

Chairman, Mr. Robert Blake: I would like now to avail time for a few questions because I know this is an area, which has a lot of interest. But I would not want one to talk for more than five, ten minutes maximum, simply to manage our limited time. So, questions please, on procurement at Local Government level.

Dr. Rajana: I just want to ask you one question in terms of joint efforts of the Ministry of Local Government and Public Service Ministry, in relation to the restructuring review. What is the timeframe on that? That is one. Two, the idea that there perhaps ought to be a study. This is the RCTB thinking and view, that Local Government, together with the Ministry of Public Service, ought to do a capacity assessment study, before the enactment of the Bill into law, because we are of the view that before, indeed, harmonization of procurement practices of the Local government with those of the central government is done, there is need to have some capacity of the persons involved in the procurement cycle. If the Bill is in fact enacted and we say to you, local governments, that please implement now the harmonisation positions, there will still be the question as to whether you can implement that in terms of existing human resources - for people to understand what it means and for them to be able to effectively operationalise it. What do you wish to have on those two ground points?

MRS. Dorcas Okalany, Min of Local Government: I will first of all ask my colleagues from Ministry of Public Service, because since we are working together on restructuring, to give a short brief on the timeframe. We have already had discussions, and workshops; and maybe I call upon Madam Adah to help on that issue.

Mrs. A. Kabarokole, ComMisioner HRD-MPS : Unfortunately, Mr. Muyingo who is directly responsible for restructuring has just left. But what I know is that restructuring of Local Governments is going on and today, they are discussing a report from the

consultants and that is why most of the Permanent Secretaries are not here, and that is why my permanent Secretary was not able to come, because he was chairing this meeting, on restructuring of Local Governments. But one point I am taking immediately, that is tomorrow morning, with him, is about procurement units in Local Governments, to ensure that they are part and parcel of this exercise.

Mrs. Dorcas Okalany - Undersecretary Ministry of Local Government: Maybe to supplement that, we know that we have reached a stage where we want the Local Governments to operate their new structures by the year 2003. So, we are in stages of trying to rap up, and last time we had a workshop, the consultants had given us only three structures and the Local Governments felt that these were a few structures to buy. So, we told them that they should produce for us fifteen structures, which they are discussing today. So, by the year 2003, we should be moving to implementing the new structures.

Mr. Cecil Rajana asked about capacity assessment. Like the central government ministries, of course we lack capacity and that is why we are saying that, in the new structures, we should have this put in place as a structure, then get the people there and train them, and as I was addressing you this morning, I gave some kind of qualifications for each officer. So, we should also have that one in our units so that we get people whom we can train. We want to have people who are trainable, not people who cannot do the work. We have been working with only one officer, as Secretary to the Tender Board, and of course our Tender Boards are, as I told you, they are appointed by district leaders, of course you know, what politics plays there, but for us, in the Local Government Act, we have given them basic qualifications of people who should be on the Tender Board. At least they should be knowing how to read and write, so that the Tender Board becomes the contracts committee at that level. They should have completed S.6, and not read Luganda, as an official language, but be able to interpret the figures and so on, but if we give them a support of a secretariat, which is well versed with procurement, then we know they can do a good job; and of course we have tried to emphasize the issue of independence, and we have also been talking about it, but how independent are they when they are appointed by the political arm? But that is yet to be addressed. It is a challenge to us, but that is what it is in the law. So, may be, we will discuss that one.

Then we talked about harmonization. When the decentralization programme started, I think we ran a little bit too fast for the Central Government, because for us, when we decentralized, all these things were decentralized. The Central Government still had CTB to centralize, but as far as the Local Governments were concerned, we were decentralized.

The other day, we discussed the draft regulations because we are amending the regulations. They are operating within the old regulations, which were not so much apart from the Bill. They were almost similar, but what we are saying is that we should - after the Bill becomes an Act, if there are things which are left out in the Local Government Tender Regulations, then we will put them together and harmonize them. Otherwise their working is decentralized and I think they have picked up the important

standards of the Bill now, but if the Bill removes some of those, then we will lose the good practices they have had before. Thank you.

MR. Kasajja - Undersecretary MAAIF: I want to comment on the last point made by the presenter, that is Under Secretary, Ministry of Local Government. On the harmonization of the procurement regulations or provisions, what harm does it make if we are to look at this current Bill, which has been presented to Parliament, and then we look at those areas which need to be improved and then we rationalize them into this law? I am saying this Mr. Chairman, because as time goes on, more resources are being decentralized or are going to be decentralized to the Local Governments; and if we leave a weakness at that level, I think the government will be losing value for money. So, it is high time now we started looking at these areas, and one of them is actually the qualifications of those members of the District Tender Boards. I have known of some cases of where some of them, though the presenter of the paper says a person has to know how to read and write, okay, of course they will know how to read and write, but they will not know the provisions related to the procurement and at the end of the day, resources are going to be squandered and government will lose. So, I think let us now try not to lose this opportunity. We rationalize, even if it means coming up with a schedule, which is specifically for Local Government Procurement. I think it can help. That is my proposal, Mr. Chairman.

Mrs. Dorcas Okalany - Undersecretary Ministry of Local Government: Thank you for that good question. We were looking at our Local Government Act recently and we are going to take it to Parliament for amendment, we also realized this issue. That is why I have said we have set minimum qualifications, and when we set minimum qualifications, of course we are not saying P.7, in fact we have said S.6 and above or equivalent. Now we have Tender Boards in place, which came in 3, 2 years ago or 4 years ago, and most of them are expiring by December. We hope that our new councils - because we have new councils - will look at the amended Act and abide by the Act; because if they do that, then we have our procurement units coming in with qualification, then we would have upgraded the standards of our Tender Boards; because we told them that they could not just arbitrarily dismiss the Tender Boards. They can take us to court. But since most of them, their terms of office have ended, I think I have an officer here from the Secretariat who can tell you how many have expired, how many are expiring by December so that the next group of Tender Board members are going to be at least of a certain qualification.

Then when he talks about the Regulations. Yes, the RCTB already has the draft regulations, but we talked of developing the local government Regulations. We have not said it is sealed, so it is open for input. Thank you very much.

Chairman, Mr. Robert Blake: last question.

Member from the Audience: The Local Government Tender Board Regulations, will they automatically be nullified by this Act? Finances of the Local Government constitute almost 90 percent of funds transferred from the Consolidated Fund to the districts. I

would like to read to you a section in the new public procurement Bill, or law, that is section 2(l). This Act applies to all public procurement and disposable activities and, in particular, shall apply to all public finances originating from the Consolidated Fund and related special finances, etc. If 90 percent or approximately 90 percent of the Local Government monies are from the consolidated fund, then they cannot use the Local Government Regulations. They have to use this one. I am not a lawyer but I can see something like a contradiction. Lawyers may help us.

Mrs. Dorcas Okalany - Undersecretary Ministry of Local Government: The section reads like that, but I do not think it reads like that and taken in alone as it stands because in the same Bill, under some section, it provides for the Minister, on recommendation of the Authority, to issue regulations for the better carrying out of the objectives and functions of this Act; and it goes on to provide for the Minister of Finance, authority to give the Minister of Local Government that authority to issue the Regulations. So, it does not really wipe out the authority to issue the Regulations. But we are saying the standards should be those agreed principles of procurement.

Chairman, Mr. Robert Blake: I suggest you have to look at this Act in conjunction with the Local Government Finance Act. Okay, and when you put it together, what you discover is the procurement regulations in respective procurement by local entities. All are covered under Local Government Finance Act.

His Excellence Matheu Peters, Ambassador - The Netherlands Embassy: Thank you. I think it is clear what you are saying Mr. Blake, it is correct. But there are in fact some provisions in the Bill, even though I cannot lay my hands on them, which are, let us say, sort of in relation to Local Government, that they will continue to operate on the respective applicable Act, but that they will take in the Regulations, which the Minister will then communicate, in terms of the basic practices, that will be in the regulations attendant to the Bill; and that that is why I had earlier said this morning, that the burden of harmonisation in relation to Local Government, that they will fall upon the Regulations attendant to the new Bill. In those Regulations, we spelt out very clearly what basic practices are, and those Regulations are intended to apply. So, I do not think that there are cross-practices.

Well, every one of you has burning questions; we can go to the major ones. But I want to give you a full account of the issues for reference and then you can do that bit of digging and researching subsequently.

Chairman, Mr. Robert Blake: I would like to call on Engineer, Samson Bagonza, from the Ministry of Works, and then I will give you the same injunction. So please go ahead.

Presentation, by Engineer Samson Bagonza, ends.

Chairman, Mr. Robert Blake: Thank you engineer Bagonza. Again, a few questions 5 to 10 minutes maximum.

MR. Kasajja: I would like, Mr. Chairman, to commend the elaborate presentation of the officer from Ministry of Works. He has taken us through the procedures and methods of procurement. Now, I will just be commenting on some of the issues that he has raised because of the relevance they have with the performance of the contracts committees. I will start with SWIPCO.

Now SWIPCO, I think the issue he is raising is the non-existence of competition, that this organization is actually a monopolist and therefore, when you are a monopolist, you decide your price, that is true. But now I think we should also look at the value that they have given us. Among the issues you have raised are some interferences and one of them is the political interference, which I hope some of us face, because I am a chairman of a finance committee, like some of my colleagues who are here. Definitely these interferences are always there. But I think what is important is to adhere to the regulations so that, whatever interference comes, you can be insulated.

Now for SWIPCO, for me, as a case in point in the Ministry of Agriculture, I think there has been a source of assistance on a number of times because where you are blaming the contracts committee that it is not performing and you have gone through the regulations, at least you have a third party, whom you can always refer to that it has done this and it has to do it, because there is no way you can rush a third party. You do not have powers. So, for SWIPCO, Mr. Chairman, the issue we should now be looking at is how to expedite the procurement of a list of those who can provide such service.

Now, Mr. chairman, the other comment which I have is also in relation to - when the presenter was talking about the contract that the Ministry has, he talked of a contracts committee for the Ministry and RAFU, which is a semi autonomous unit. Now if this a semi autonomous unit in Ministry of works, is it a legal entity? Now, if it is not a legal entity, how are you having two procurement units? Do you not think this can cause a problem?

ENG. BAGONZA: No.

MR. KASAJJA: Well, if it is a legal entity, then there may be no problem. Mr. Chairman, since the paper was long, where I was marking, I have to be so fast to make the comments.

Now, Mr. Chairman, the other issue is in relation with, okay, I will go back to the technical assistance. I think for the technical assistance, I concur with him. You know, that RCTB or Ministry of Finance, had given us, after categorising the Ministries into two: small and large units. They had given the big Ministries experts. I used to have an expert called David Hauting and he really assisted me to develop the contracts committee. But the gentleman left without us being informed and I thought *-(Laughter)-* I thought really we needed to have really some privilege of being informed because the man was doing a good job, and one thing which we should really appreciate is that though we are chairmen of these contracts committees, we are not trained in those areas. Actually we are learning on the job, and so we appreciated, I think, the assistance that we got from this man. So, the issue I am raising is that I think the officer is right, the one who is presenting, that let there be a parallel system of providing

technical assistance. Have an expert there for a period and then train them. I think that one, I would like to concur with you a hundred percent.

The last point, Mr. Chairman, is the labour - based contracts. On the labour - based contracts, maybe I am the one who did not follow what he was saying. I need to be informed. Were you talking of the gangs, now how were you relating this? Of course I wanted to be more informed because, may be, some of us, when we go to the rural areas, we can assist some of the districts. How does this operate? Mr. Chairman, those are some of the issues that I wanted. I thank you very much for taking more of your time.

ENG. BAGONZA: My response is that the people were supplementing or accepting what I had viewed. But I will respond to RAFU and then the labour - based contracts. With RAFU, at first the view was that since this was a special unit within the Ministry it should not have its own committee. But this was discussed with Ministry of Justice, I think at length, and later on, it was agreed that they can have their own contracts committee because they are a unit implementing a special programme. Their procurements tend to be specialized. I mean for services and works that are donor funded. So, there was a feeling that they can have their own committee, and it was agreed with Justice, so they went ahead. I do not have more information other than that.

Member from the Audience: Here is an executive agency and we are drafting a law to protect executive agencies, to have their own procurement arrangement. So, I don't see why the concern.

ENG. BAGONZA: Yes, but I think he had a point because up to now, they are not an agency yet. They are still regarded as a unit within the Ministry.

Member from the Audience: You are around the right track?

ENG. BAGONZA: Yes.

Member from the Audience: Thank you very much chairperson. When my colleague was presenting his paper, he mentioned certain things they are carrying out in the Ministry to provide the services to the people down there. My concerns are with procurement at the center, being implemented in the Local Governments, supposedly to be supervised by the center, which has given the contract. But the supervision is not carried out. How are we going to ensure that what you have given to the road gangs will limit tenders or contractors and are properly supervised? This, I am raising because recently when we faced PAC and our committee, they asked us that we have heard of your Local Governments, they call them ours *-(laughter)-* but, we have heard of your Local Governments building schools which are falling, making roads which are breaking up within a short period of time. How are we, as the center, now I am talking as the centre going to assist our Local Governments in low various sector Ministries so that you are able to give them the capacity to survive what you contract as the center, if they do not even know the specifications you have put? So, I want to know what you have done as works and especially the service Ministries of Water, Education, Works, and

Health? What have you done about these? Because for us in Local Governments, we co-ordinate. But when you ask us these questions, we cannot answer the technicalities.

Eng Rwanga: Eng. Bagonza knows very well that Ministry of works, the services under Ministry of Works, have never been decentralised. What I was talking about are the national roads, the 10,000 kilometres. The feeder roads we come in to monitor, to give guidance, to set standards in the budgeting process, but the responsibility for implementation is down there. Well, there might be a weakness in whatever we are doing but our responsibility is to just support, guide, set standards and help them in the planning processes and budgeting processes. But the actual implementation of the road programmes on district and urban roads and community access roads is entirely the Local Governments, lower Local Governments. But with us, if you looked at our road network, because this road network also is in the villages. Now, the way we supervise them is that we have upcountry stations of our own which are not decentralised. In fact our pay roll sheets, for staff in those stations, was decentralised and it caused a very big problem. We have since withdrawn, we want to pay our staff now through the headquarters. But what we do is like this, we know that these roads are actually physically in the villages, in the rural areas. So, in addition to the oversight by our district stations, we have what they call road committees, we have established road committees at LC.III in some areas. There are some areas which have not yet considered road committees. So, these committees are given information about these contracts and they see what is happening. Secondly, the LC.III, the LC.II and the CAOs are involved in the approval of process of who does what, the contractors. When somebody is applying, he goes through this system. Now, finally when we are paying, the cheque is signed by our district engineer at the station and the CAO. So, if there are any local complaints and somebody is not performing, the CAO would hold this cheque and would not release it. So, that is the mechanism we have on the contracts on the national roads. Well if the CAO lets us down, then we have a problem.

A member from the Audience: This is about the contracts drawn by Ministry of Works, do you know who gives you the technical advice on these contracts, because your contracts are almost standard. The first clause would say a contractor will get an advance, which you call mobilisation fee of 30 percent, and as you have already mentioned, your contracts have big values, you see, if your contract is 200 million or 500 million, 30 percent is quite a big figure. But after that, in the same contract, you state that after the contractor has given you a bid bond, you can accept to give the advance. However, this advance you are giving these contractors, what you call mobilisation fee, does not attract any interest, government does not get interest from that, you do not put that in the contract. It is an interest free loan, sort of.

Now in your contract when you go down in the flow of payment, it states that because of delays in payment, the employer will pay interest. This is stated in almost all standard contracts. And so after receiving their interim certificate, after 21 days or something, normally it is 21 days, and payment is not made, then it attracts interest of, may be, 22 or 30 percent. Now, you know very well that it takes government a long time to pay and you should always put it into consideration, a period for delays. Now, these delays of payments sometimes are not as a result of government not having the money that very financial year. The delays in payment start, by the way, from the project engineer.

Sometimes it takes the project engineer more than 3 months to certify an interim certificate and by the time it goes to another engineer up to the Ministry of Works headquarters, the financial year has ended and that money is frozen. Then interest comes and even if you keep on paying in the principal amount, the interest will continue. Sometimes the interest becomes even more than the principal amount, and this delay starts from the project engineer and we have, as I speak now, I do not want to give the figure, but in non payment of interest now, the claims are over billions of shillings, for certain contractors, and after they are paid, they again charge interest for interest - (Laughter)- and that is one problem we have in this contract. I do not know who gives you the technical advice on that one and why you should give contractors mobilisation money. If they have interest for the contract, they must have their own capital, so that is one problem.

The second comment I would like to make is on the threshold you are talking about, that the threshold should be increased to 100 million or use selected laws to such contracts. I think the figure is just too big. You yourselves said that we should give local contractors, thanks. So if you put a big threshold like that, the competition is not there, yourself you are feeling competition, though you are going to select three contractors who are well known to the Ministry of Works, then you ask for advice as to who should approve the interim certificate, should it be the contracts committee or the engineer? I think their roles are totally different. The contracts committee is only supposed to help you select the contractor, then after, the role of approving payments does not go back to the contracts committee. It should be the engineer and so on.

Now the last point is on remuneration. Since this morning, everybody has been talking about remuneration, we want more remuneration and now you have mentioned that you need even much more remuneration. Suppose we go back, should we not be paid any remuneration? Why? This is because you are looking at the documents during office hours - (Laughter)- for which you are appointed and for which you are getting a salary. So, why do you need another remuneration? I would recommend that you get remuneration for only work done after 5.00 O'clock. When we are looking at these documents during office hours, there is no need for remuneration. Why should we pay you another remuneration? Thank you very much.

ENG. BAGONZA: Thanks for those comments. Now, one who gives us the technical advice when we are drawing the contracts. As I said, our contracts are standard, based on mainly FIDIC documents. But when we are processing, they are normally approved through the Ministry of Justice. So, the consultants prepare them based on a standard document. But before you sign, they are approved and there is very little we can do on that. That is why I was emphasizing that if there is any way we can develop our own local documents here, well and good.

Now, mobilisation of payments: The practice is, we advance 10 to 20 percent. We rarely advance 30 percent, rarely; but I know there are some cases where we have advanced 30 percent, maybe, because the financial year is running out and you fear the money might be returned. Those cases might be there. But this, as you correctly observed, does not attract interest. Yes, that is a correct observation. But it is guaranteed. However big it is, the contractor must bring a bank guarantee to guarantee

this payment and our contractors. They should have been submitted to us before anything can be done, but it may not be done like that all the time.

Now the issue of delegation, which my colleague has raised, the way I understand delegating authority in procurement, is that if it is a statutory body and it is set up by law, that one is empowered to have a contracts committee. So it appoints the people and they do the work. Like now for me, I will give you the example of NAADS. NAADS, before the law was formed, their services were under us. But the moment Parliament passed the law, then, and in here the examples you are giving, if I remember well, I think Uganda National Examinations Board must be a legal entity and Curriculum Development Centre. So, I think these ones here, do not be over-burdened, let them do what is statutorily allowed.

Then the last point, Mr. Chairman, is the issue of remuneration. Again I want to talk to my colleague. It is true that when you are employed as a civil servant (*Interruption*)

THE CHAIRMAN: You people, I know where your position is.

MEMBER: Yes, but Mr. Chairman, I think the issue is that when we are working on these committees, we always work beyond government hours.

PROF. TURHAMUHIKA- Thank you Mr. Chairman. Since I am speaking for the first time, let me introduce myself. Sam Turyamuhika is my name and I am here as chairman of the Federation of Ugandan Consultants. I want to stress two points. One is need for consultation. It is clear that this process has brought all the stakeholders on board and we in fact, in the consultancy industry, are here in this kind of forum for the first time. Last year we were enabled to cite the Regulations 2000 for the first time after Parliament had passed it. It affects us directly. This time round, we are here but there is a draft Bill before Parliament. So I do not know whether what we are discussing here is largely to affect the Bill as currently drafted. I would like to be guided on that because we do have some reservations on the Bill itself as it is. I will not bore you with that. But if there is a channel, I want to be educated that it is a channel for doing it. In particular, there are issues to do with the contracts committee, under the administrative review within procurement, which we have some comments. The contracts committees were not properly institutionalized. This is where the problem is coming from either by function. Otherwise there is no proper institutional study. What is the competence profile of the procurement officer? Do we have that? If we had it, then we would be able to grade the post appropriately. So it is very useless just picking an existing officer in the Ministry of Works and say you be on this committee and pay him an allowance. It should be an established post properly competence profiled and job evaluated. So that is our concern. And on administrative reviews, the IGG also pointed it out in his presentation; because, if a bidder is aggrieved by a decision over a committee, to appeal to it really does not help. Sometimes things, which are done, are done deliberately and they are known to please some of the members. So I agree with the Minister for Ethics and Integrity. At least she is of the view that most bidders, when they are aggrieved, they go to IGG as independent arbiter, as it were. Let me give you two bits of information. If I am wrong, I stand to be corrected. First of all RAFU. RAFU in full stands for Road Agency Formation Unit and when we restructured the government

in 1997/98, it was supposed to be a transition unit towards the National Road Agency. Now what is going wrong is that a transitional unit has begun to act as an executive agency without any enabling Act or law and without a supervising oversight board and is now awarding contracts. If this is the road agency, then let us have the law for it and a board to supervise it so that within the body, there is some kind of oversight.

The second piece of information is in relation to value for money. SWIPCO is wrong to levy a standard charge by percentage on the growth as a fee. There should be a cut off point, there should be a ceiling or there should be a graduated scale. Let us say, one percent of anything. Value does not increase by mere fact of increasing the value. Thank you very much.

Member from the Audience: Thank you. Mine is to do with a comment made by engineer Bagonza regarding standard contracts and what have you. Is there a possibility that they can be reviewed to suit the situation on the ground? Is it possible that you can revisit that rather than keep saying that you have standard contracts? Thank you.

Dr. Rajana: Thank you Mr. Chairman. Mr. Chairman, I do not think there were a couple of questions. Actually there was a couple of comments, some of them appreciating my reservation –(Laughter). Others are reminding me that IGG is independent, is autonomous and so he has to intervene at anytime. The undertaking is that we should always agree with the donors on what to do within the time framework. So I have taken those points. I do not have to answer.

Thank you very much Hon. Matembe. But you will note that at the beginning, these undertakings were taken to be sort of **cut in stone**; where undertakings can only be turned round at the review so that if there is any fault with one review to the other, then it may be very difficult for you to convince them that the undertaking has not been made. You will recall some of you who were very keen following education, last year in April, funds were being - they had closed the door until when we had to use some means of convincing them that we are real partners and they said okay that is a warning. So these undertakings, we do not take them very lightly. But I have taken note of your advice.

Then on the issue of Patrick, the under secretary in Agriculture. I think he was also supporting my comments and he mentioned about delegation. There has been a correction on that number. Actually I amended these statutory institutions to other institutions like, secondary schools, PTCs and so on and so forth. So the question still remains, how would we delegate to these institutions, which look at us as the accounting unit? So that one still remains. I would like to be advised on how to delegate on this.

Prof. Turyamuhika, yes, it is true, due consultation is needed and that is how we end up like this having a lot of problems. I let the cat before the horse and that is true. Let us not put the cat before the horse. Let us plan. Hon. Matembe talks of planning for Ministry of Education. Let us plan for this nation and the government as Cabinet. Let us plan for this nation and have our plans proper before we embark on delegation. So I

agree with you much as you agree with me that Cabinet also should be foresighted and help us to plan properly. I think that is all unless I have forgotten any other question.

Member from the Audience: Thank you very much Mr. Chairman. Mine are two simple reactions. There was a point raised on RAFU. Yes, RAFU is still a transitional unit up to today. It was supposed to run from September 1998 up to June last year. However, we have lost one year. It should have been an agency. It is still a transitional unit. I think in the language that is commonly used here, RAFU is really a project implementation unit for our rolling ten-year road sector program. That is what it is in simple terms. But as you may be aware, a road agency study has been concluded. We now know the form the agency will take, we know how it will be funded. We are now in a process of transforming those recommendations of that study so that we transform the unit into an agency. It will probably fit in the umbrella Executive Agencies Act and we are trying to fit it there. So I must admit that the process has been slow but as of now, RAFU is still a transitional unit.

Now with Grace on the standard contracts, I think we can develop our own standard contract documents as long as they are respected by all the parties involved; donors, government, consultants, contractors. So, when we are developing our own standard contract documents, we must know that we should use expertise that will make sure that what we produce is acceptable. But we can get away, out of these contract documents, and make ours as long as they are acceptable. I know in South Africa, they use their own documents and they have been using them for a long time and they are respected. So they must be acceptable documents but we can do our own. That is why I was advocating that, if RCTB could assist us in this area and develop these standard documents that are really favourable to our situation, that really address the situation we are operating in, that would be the best, other than copying and find difficulties in some areas. Thank you.

Dr. Rajana: On consultations, Mr. Chairman, about 20 associations of contractors are currently there. Mr. Agaba was responsible for the exercise. We have had rooms in Africana and spent millions of shillings on this exercise. So it is a step to take on board, whatever constructive comments you may have in relation to the bill and in relation to the Regulations. Most importantly in this particular gathering, you have key Members of different Parliamentary committees in whose hands that Bill is and I am sure they are listening to you. Competence profile: in relation to members of the contracts committee, in relation to procurement, all these have been specified in details in the regulations and in the Bill. But as I said, because the Bill is still in a draft form, we cannot release the regulations. If you want it, you contact Mr. Agaba at RCTB. I thank you.

Commissioner, MPS: Mr. Chairman, very briefly, I would like to comment on the issue brought up by the presenter from Ministry of Education that Ministry of Public Service was not ready with staff establishment in the staffing provision for procurement reform. I want to inform the presenter that according to the PRSC, that is, the Poverty Reduction Support Program, Action Matrix or Benchmarks, the procurement officers are supposed to be in place by March, 2003. I think the RCTB can bear me out. That is the benchmark. However, there have been interim arrangements put in place where the

accounting officer was required to nominate from his or her staff officers to handle procurement and this has been provided with basic training from RCTB. Secondly Mr. Chairman, I would like to comment on the point that was brought up by the presenter from Ministry of Education about the procurement unit reporting directly to the permanent secretary or the accounting officer. We thought that the procurement unit, which is handling a lot of funds, should report to the accounting officer. The accounting officer should be directly interested in this area because it takes a lot of money from the Ministry. So we think it should report directly to the accounting officer. If the accounting officer really also bothers and does not want to see himself or herself to jail, he should be directly interested in this area. In the regulations, it is up to the accounting officer to identify a department, for example, in Ministry of Works, from his wisdom, the PS thinks the department of quality assurance should handle it. So we left the permanent secretaries or accounting officers, to manage their Ministries. Lastly Mr. Chairman, I want to correct the impression given by the presenter, from the Ministry of Education, that Ministry of Public Service did not consult when we were setting up procurement Units. I want to assure him that we went round all Ministries and my neighbour here from Ministry of Health, we even wrote and I also have questionnaires which were filled from all Ministries. I know my colleague there is a very busy person. They may not have reached him personally. But I think in research methodology, sampling is allowed. Thank you.

Mr. KIGWANA, Operations Director - SWIPCO: Mr. Chairman, engineer Bagonza and Prof. Turyamuhika talked about the fees by third parties. I would like to say that the fees in our case, we started at 1.8, then 1.4 and sometimes 1%. Sometimes we have even left percentages and said, “what do you have which we could use to do some work for you?” So the impression that we come and determine the fees is wrong, Mr. Chairman. There can even be negotiation. Our ideas are negotiable. There is no conflict in our roles. Somebody from Netherlands was saying there is a conflict. There is what we call in-process auditing. So in-process auditing, we work together with the procuring entity and look at the documents. With the other one, we look at the process after they have done the work. This is when they say they are in a hurry because you donors are asking them to speed up. Lastly, when we do direct procurement, we do not turn around and audit ourselves. I think I will challenge anybody to bring that one up. Finally, we have been giving free training. We even beg Kampala City Council; “please bring your people”. From the fees your Ministries pay us, we provide free training. Lastly, we have got a good data bank. If you follow the people engineer Bagonza was talking about that you can get a consultant – was it for 20,000/= or something like that. He may not be able to have the capacity and a data, which he can use much later on. We have the capacity, you can come to us for information and you will find that we deliver. Thank you Mr. Chairman.

Ms. Sarah Lubega from UMA: I am from UMA and I am representing the chairman of UMA. Now that the executive director of the Central Tender Board has talked about our private sector, I really have to come in. The private sector is always forgotten and it is always contacted at the last minute when they cannot do anything. They were talking that it takes two to tangle. When I listened to what was going on here, I found out that

actually there are about four people tangling in here. There is a government; there are donors, politicians and then the private sector. The private sector is the smallest woman of the women tangling here. We cannot talk, we want to make money and we cannot make money unless we give ten percent. We cannot control the ten percent. It is from the government, it is from wherever, and we cannot control it. So maybe, the private sector is fed up. Even when you talk about training or awareness, you do not even consider the private sector. You were talking about training staff for such and such a Ministry, sensitizing them. Nobody has mentioned the private sector and yet when you mentioned the tangling, private sector is part of the tangling. I cannot tell you in two minutes. I have to stop here but I just want you to know that without the private sector, nothing is going to move. You will continue and pass the Bill and whatever, but if it is not pro-private sector a bit, nothing is going to move. Thank you very much Mr. Chairman.

CHAIRMAN: I propose that we move straight forward to the discussions from the contractors' side and then from civil society side and how we agree on.

Further Presentations by Eng. Zaribwende of the contractors' community and **Zie Gariyo** from Uganda Debt Network, end.

CHAIRMAN - Dr. Rajana: I think we are back on schedule, we can open up for a few questions and then I would like to take it from there.

Member from the Audience: Thank you, Mr. Chairman, the presenters have emphasized the point of quality delivery and I would like to congratulate them on their presentation. Allow me Sir to emphasize two points, which were made by the first presenter. It is on the issue of legislation, classification and I would add regulation. I know regulation is an ugly word these days, but lack of regulation can lead to anarchy and I think both presenters have shown you that construction industry is in the state of anarchy and I would like to add, in a similar fashion, the consultancy industry is headed in the same way.

Chairman: Can you repeat so that we can hear the statement?

Comment Continued: I am here along with the consultant, because there are cases where a brief case consultant colludes with a public servant, he is awarded a contract, he cannot execute it and the public servant actually writes a report. There are many cases there with facts, figures and many others on both sides. In this aspect, what I would like to emphasize is the system in place, you see in our industry, deliverables are normally indicated in terms of reference (TOR). If they are X, then they become X plus one; then those, which do not have X plus 1, are none responsive. So I think the emphasis should be on the other side, on those who demanded the deliverables that they remain X if they are stated in the terms of reference as X, they do not certainly become X plus 1. So, that is one. It is very important that both industries must be managed and there must be a public effort that those who are able are known and can be counted, and those who are engaged in malpractices or unqualified are de-registered.

Number two is the issue of code of conduct. Whenever I hear that emphasis is on ethics, I think we also have to put some emphasis on standard so that it would include both practices and ability; or it should be a code of conduct and standards. That is what we really want in order to up lift both industries and the consultants; and the contractors and I agree with Mr. Gariyo. This fragmentation of the country into the usually exclusive procurement zone *-(Laughter)-* It is not desirable. It is very inefficient, you know, of public funds. Whether it is implicit or explicit, it should be destroyed and I think this one here will be in vain if this is sustained especially with centralisation. Thank you very much.

Ms. Charlotte Mwesigye, Chairperson-Anti-corruption Coalition, Uganda: Mine is just to emphasize civil society concerns and we are calling for those who are in authority and power to develop for us favourable policies, specifically for local capacity building, more than recommending multi-nationals if we are to break the vicious gap of the dependent syndrome, and if we could have at least like a right proposal, a public information Act, maybe, which would facilitate what we would propose like an independent affiliation of engineers that would be given room to come in and verify before certificates of completion are served so that they can really give expert quantity surveyors who would verify quality and quantity in the interest of the 22 million people, and not just the moneys that are in Ministries and the contractors. I think it would help us here, and like you were saying, the forms are not applicable. You should propose forms that you can agree to, that can work for you. Yes, we depend on donors, they are partners, we welcome them, but we must remember that not all donor funds are grants, they have a cost implication, and we must agree to agree or agree to disagree. Let us chew something that will help us break the vicious cycle of poverty if we are to make a realistic and genuine partnership. Thank you.

Chairman, Dr. Rajana: Excuse me, your name?

Mr. TUMWESIGYE: Chairperson, Thank you very much. I would like to thank the presenters. Although I came in late, I captured some of the points they made. I have just listened to one of the contributors who said the 56 procurement entities should be scrapped. I think it was a Government Policy that we decentralize and if we accept that decentralisation is a policy reform, which is under all the reforms, then, we should not talk like that. We should only talk of improving procurement in the Local Government. We have just noticed, they told us, they do shoddy work and Mr. Gariyo's recommendation classification and even the other presenter, confirms that. I am wondering what they are going to do as line Ministries works, for example in construction, to try and build capacities of local contractors, because under Poverty Alleviation, I think we would encourage our local contractors, who have the ability, to really construct these classrooms, these health centers; but we should also look at standards, because sometimes they award tenders and if the award of the tender is from the centre, the supervision is not there. Of course you know the local councilors cannot supervise and they do not know the technicalities and you, with this organisation of yours of construction, what are you doing, because some of those people who win these contracts are engineers and they do the shoddy work. What are you doing in your organisation to make sure that you create a positive image?

Now, I want also to appeal to the new RCTB that we have now known that you need to train, not only the technical staff, but even the councils to appreciate the role of procurement in service delivery, because it is very important that they know they should not interfere. First of all you talked of political interference; two, they should also know that they are accountable to the people, because this shoddy work, which is done, maybe a councilor has become a contractor, it is because sometimes they do not know that they are not supposed to do it, and even if they were entrepreneurs, they should employ the correct people to do the job. So, I think we should look at the problems as challenges and we find solutions to them, because we are not happy that we have these shoddy works in the Local Government. Thank you, very much.

From the Audience: Thank you very much. From the presentations of the private sector and the public sector this morning, it is now very clear that both the public sector and private sector are partners in corruption and inefficiency (*Laughter*). Now, for the public sector, Government has established machinery, as watchdogs and something is being done to the public officers who are partners in this business. My question is, the private sector, what have you done? Have you established some sort of mechanism, or so, to help Government, because what is happening now is the civil servants are being punished for their wrongdoing and the people who built the classrooms which have collapsed are just laughing with the cheques in the bank. So, what has the private sector done to help the public sector scrap corruption? Without the private sector, the public sector cannot be corrupt.

From the Audience: Thank you, very much. Mr. Chairman I will be very brief. Mine is to do with Gariyo. Gariyo raised an issue of coordination. He was saying that the Contracts Committees are lacking a mechanism to coordinate and I think he is right. We as members or chairpersons of contracts committees, I think we should strengthen a coordination mechanism so that the wrong doers of the suppliers and contractors are exposed; because I may be having one contractor who has done a wrong thing and then he goes to another one. I think that is a good point. Recently Mr. Chairman, I had a case of one contractor, I am not going to mention his name, but I will be communicating to the RCTB, who was threatening that if we do not, we people are going to lose jobs and yet we had done a very good job and then when it went to the RCTB we were even pats. So such a person, if he is a contractor, should be short-listed and black-listed (*Laughter*). Thank you very much.

Chairman: Okay, one, two, three, we begin from here.

Pius Bigirimana, Undersecretary MOES: Mr. Chairman, thank you very much for the opportunity. I want to make one comment on classroom construction. The school facilities grant, as commonly known, is a Government Policy and this is a Government Policy which was agreed upon by Cabinet and it is in an effort to alleviate poverty. So, the system is not going to change until such a time that Cabinet will pick on this that the system is totally wrong. You see, what you have been seeing in newspapers, it is true there have been some sub-standard work done in some districts, but I can assure you, this does not constitute more than 20 percent of the constructions going on. There is some good work, which is being done in some districts, which the newspapers do not

want to publish. So, what we should be looking at is to see how we can improve and build capacity to districts and as a way of response, Ministry of Education and Sports should make some arrangements with local governments. We hired engineering assistants, now who are centred in the districts, and who are actually doing the work. Where they have found sub-standard work, they have destroyed buildings at the contractors' expense. So, do not lose heart, not everything is being, you know, left unattended to; there is something being done. We have established some mechanisms for checking what is happening in the districts. Thank you, Mr. Chairman.

Hon NANDALA: Thank you, Mr. Chairman. I remember, in the morning, the Ambassador said, as long as companies are willing to pay some extra money under the table, there is an incentive for government officials not to abide by the rules. So, this one goes to Godfrey, Mr. chairman. If you are still willing to pay these extra procurement officials, are you not going to continue to build sub-standard classrooms? That is one. When you say that the increase of construction has risen from 8.5 percent in the two years and it contributes 12 percent, what statistics did you use? Are you meaning the collapsing buildings or the existing wrong buildings? Thank you, Mr. Chairman.

Chairman: Last question.

Mr. Kigwana – Operations Director, SWIPCO : Mr. Chairman, we have been to all the 56 districts of Uganda, on behalf of the Ministry of Education, for ordinary classrooms to be constructed. Whereas what is on ground in many districts including Iganga, Pallisa, Kamuli and some others, is not satisfactory, we have been to districts like Ntungamo, where the classrooms are much better; the building blocks are very good. The intention was poverty alleviation not for the contractors alone, but even the people living in those particular areas. So, if we criticise the local people who are building, it is as if we are saying, take the bread from these people and put it in the hands of the contractors. Some of the contractors even bring their own labourers so that no money actually remains in the villages. So, when we look at this programme, it is important to remember that capacity is also being built in the villages, we are leaving some money in the villages and when they participate in the construction of the classrooms, they will be proud of what they have done. Thank you, Mr. Chairman.

MR. RAJANA: Thank you. Next.

COMMISSIONER: Thank you very much, Mr. Chairman. My comment goes towards the previous speaker and I want to disagree with him, because if it is a matter of giving money to the local people so that there is money, then we do not know what they want. It is not a matter of dishing the money out. If that is the way, then I think Government should have a system of giving money out free, because I think the intention is to really have a good service delivered; and if the contractors think they can use local labour, which is qualified to do the work, fine; but just a matter of having people to construct falling classrooms, I do not think it is fair. Thank you very much.

Chairman: This is done in any such discussion. I would like to give the presenters opportunity to respond and then I will finish with Prof. Kamuntu.

Eng. Zaribwende: Professor Turyamuhika was really supporting me, so I do not think I have to dwell on that. Registration and classification is what we want, code of conduct, we are developing it and we are being assisted by Ministry of Works. Charlotte talked about the civil society concern, about the favourable policy, I mean. I have talked about it and unless you have got a policy, which favours capacity building in construction, you have problems. You will not have long lasting infrastructure. That seems to be in direct contradiction with the will of this gentleman from SWIPCO. I think it would have been cheaper for the Government to distribute money to people rather than really giving in to scrupulous characters to build classrooms. I hope it is not SWIPCO's deals really. *(Interruption)*- whichever it is anyway, I think that we must identify people who are technically competent and they have the basic investment to put so that they have something at stake. If you just bring every Tom, Dick and Hurry to get involved in construction of classrooms and medical facilities, you will end up having more problems in the long run.

Dorcus was talking of building capacity and what our association is doing about it. First of all, our association is a voluntary association; it is not accredited, it is not that every contractor must belong to it, people are free to associate or disassociate with it. Until we are accredited and become mandatory for every contractor, operating in the country, to belong to this association, our hands will be tied, we will not be able to discipline people who are not members of our family. But again we are working with Ministry of Works, we think after the mandatory registration of all contractors in Uganda, then probably they will also be told to belong to our association, and we can therefore train and try to teach them how to do things so that we become a proud trade association. I think we are partners in corruption and inefficiency *(Laughter)*. I am not going to deny *(Laughter)*. That was a very intriguing observation, certainly we plead guilty, some of our members are doing bad things, but I think that is for Hon. Matembe, it increases her job, she has a lot of work to do, it is about ethics and integrity, people are greedy, and it is more of wants than needs and we are driven by greed, but slowly I think, with a number of checks and balances put in place, we shall phase out that system and I think that is what we are here to do.

Pius, yes, alleviation of poverty, it is a Cabinet decision, but the Cabinet also has to be warned that they should not rush to take decisions, because I think we are losing a lot of resources and even credibility, because the donors do not get happy, I think they want to see standing classrooms rather than, you know, they will appreciate better when they see standing classrooms; because if money goes into peoples pockets, they may not really know, because that is not the primary intention. So, I think they have to be guided that we should move consciously because a classroom could fall on people and they die.

Hon. Mafabi, under hand dealing, I think that one is related to Singh's problem. As long as people are driven by wants more than needs, people are greedy, it will continue to happen but again I want to pray that with checks and balances put in place, all this will

reduce. I think I will leave the rest to my colleague because apparently our presentations were related.

Member from the Audience: Thank you. I just have a couple of comments really. I think it was good we had this session, it energised people and I think that we are on course towards finding solutions. Every time somebody talks about decentralisation policy, I get another feeling that there is a hidden agenda behind decentralisation policy, because I have combed the Act and I do not remember seeing there decentralising corruption. I do not remember seeing it there that corruption now has been decentralised from the central level, where the IGG Mr. Tumwesigye was fighting very hard, they took it away from him and sent it to the lower officials and we have put it there for you, if you want you can follow them there, if you have no capacity, you stay in Kampala with these big shorts and then the other ones do a better job there. I think that is where the problem lies. Sincerely, by saying we decentralised Government Policy, we also said the Local Officials should take responsibility for things happening and those things, developmental issues, metal processes happening in their areas; and I think what has happened subsequently has been misinterpretation, because one of the district officials was saying that when they are appointing the Members of the Tender Committee, they are actually appointing those members who supported them in the campaign and he said you cannot appoint somebody who is going to give you trouble. Now, that obviously means a number of things. So, it is high time we reformed decentralisation policy and take away certain aspects of decentralisation policy that actually those fellows are not supposed to exercise. For instance, some of the money for school facilities grants. The issue of UPE is a Central Government Policy; I do not remember any Law of Government, which said we want UPE. Definitely it was not there and therefore the accompanying element was to construct classrooms. That money comes directly from Central Government. I do not remember that it was provided for, for Decentralisation Policy or for Local Government and that is, I think, where Cabinet went wrong. So cabinet should go back and say, we now bring back our money and we shall do A,B,C,D to make sure that we have standard quality classrooms for our children for the next 25 to 30 years. Not a classroom that breaks down within a few months or a few weeks, after it has been constructed, not a classroom that is going to fall on our children and kill these innocent kids. I think it is very pathetic if that was meant to happen like that; and I think the 20 percent is an exception. Actually, the 20 percent are those who are actually doing it; and the other day I heard announcement by Ministry of Education. They were calling some 30 or so districts and calling only Ntungamo because it was the only one, which had done it very well. So, why had you called these bad performers with one district, because that one district was supposed to be acting as a resource person to tell the others how they are doing it, and I do not remember that we put there the word "spreading money" to the local communities. I think we emphasised the issue of building the capacity of poor people, to increase their income. I do not know whether increasing income is taking money from the Central Government, giving it to a shoddy contractor who employs shoddy workmen to do a shoddy work, and then they have spread the money and they are happy. I do not know how happy they would be when that school breaks down and kills some people. I think one time there was a system of spreading some money around and somebody pointed the word "*Entandikwa*" and said, you give it to them and whether they pay or they do not pay, that is a different matter. Why did we not increase the intake in "*Entandikwa*" if that was to

spread money around because, the first time it was the chiefs and the local officials, this time it could have been the local poor people through “*Entandikwa.*” So I do not believe that that is a serious Policy. If it was at least for SWIPCO, maybe that was an interpretation again of the Policy, but we need to re-read the Act and see whether that is also provided for. Thank you, very much.

Chairman: The Ministry of Finance has been all along on my mind. I think let us hear from David.

David Nsubuga- Personal Assistant to the Minister of Finance: Yes, I think from the time I came in, I wanted to make two comments; one, I have heard voices from the Private Sector saying that the Bill, the way it stands now, they were not involved and probably they may not want to have an input on this. I want to recommend to the organisers of this workshop that, maybe, an opportunity be availed to the private sector to have an input in this Bill, because it is not too late for the Minister to move Amendments, even on the Floor, as long as it helps in streamlining the procurement procedures. Two, on the comment made by the gentleman from SWIPCO, I think we have got some programmes in Government that are intended to improve peoples income and there is a lot of literature on this, and since SWIPCO actually goes in the field, you are better off being equipped with this information than probably saying what you have said. You see, because when you go to the field and give this message, I think these people will misunderstand you and they might take it as Government Policy. So I encourage you, maybe, we can have an interaction so that, maybe, I give you some of this information. Thank you.

Chairman: You are the last, Honourable.

Hon. Nandala Mafabi: Mr. Chairman, what this gentleman from Finance has said, he is a bit right. There is a booklet, which has been written from Ministry of Education, which says, SFG or classroom completion must be done by the locals from that area. So, I am sorry for you who is saying you are going to give me a literature when you are not yourself literature enough. Thank you. (*Laughter*).

MR. RAJANA: No, to be fair, Honourable.

Hon. Prof. Kamuntu, Chairman – Parliamentary Committee on Finance: Mr. Chairman, I want to thank you and I want to make three comments relating to the Public Procurement and Disposal of Public Assets, Bill. First of all, the Bill has been submitted to the Committee of Parliament, the Finance Committee, for which I am the Chairman, and the Committee has not considered and it has not written its Report to Parliament, and therefore, the Private Sector interests, which are still very predominant, you still have a chance to provide it, because we normally call affected parties for evidence and hearing before we make our Report to Parliament for enactment of Law. So, you have not lost out yet, because the Bill is still, it is not yet enacted. I should also mention that by procedure, the Public Procurement and Disposal of Public Assets Bill, is normally gazetted to draw interest to the general public that anybody who has a comment affecting or relevant to the enactment of the Bill can make it known before the Bill is made an Act.

So specifically, Mr. Chairman, if there is so much public interest on this Bill, and we indeed thank the organisers for this workshop. I should also mention that we have heard two workshops on this Bill and comments have been taken, which will be incorporated in our discussion when it comes to writing our Report for debate on the Floor of the House. Anyway, I just want to thank you, chairman, for chairing these meetings and we want to thank the organisers for bringing together as I look around the room, very key players in the procurement sector and therefore, really, as affected persons, I believe your comments are not taken in vain, we shall make a good Law.

I also recognise the central role of procurement, I have been listening to Zaribwende here, he mentioned that 70 percent of Government expenditure is procurement related. So, if you can imagine total Government revenue and 70 percent of the total revenue is related to procurement, you really recognise how central this exercise is all about, which also leads me to a point of private sector. If the private sector contributes more than 80 percent of Government Revenue, contributes more than 80 percent of employment, contributes more than 80 percent of GDP; invariably, private sector, you should play a very key role in implementing this Procurement Bill. I really submit, anyway, you would have a very keen ear to hear what you have to say precisely because Members of Parliament, most of them come from the private sector, anyway.

Now, on specific issues of importance, since you invited me in my capacity as chairman of the Parliamentary Sessional Committee on Finance, Planning and Economic Development, we have more than 10 Bills coming from the Ministry of Finance, and I am sharing this information to you so that you know which button to press. The Ministry of Finance must indicate to us what its priorities are, for us to rank in order how the Bills are going to be presented to the House. We have Financial Institutions Statute Amendment 2002, we have Micro-Finance Statements Institutions Bill, Collective Investments Bill, we have this Bill, we have a series of Bills relating to Finance Bill and all of those must be debated, and the way we work, we work as a Committee of Parliament, since the Sector Ministry is the Ministry of Finance. The Ministry of Finance indicates to us that according to their legislative programme, this is more important, this is relatively less and so on and then we schedule our work accordingly. In this regard, if I propose, David is here, I can see Ministry of Finance is here. If you pressure Ministry of Finance so that they put this Bill as the first on their list of Bills they would want Parliament to debate, we will do exactly that. *(Interruption)*- yes, it is with us now. *(Interruption)*- exactly, thank you very much, you can put it more clearly.

I have a number of observations, myself, relating to the debates. One is the question of corruption. Uganda of course, unfortunately, is ranked very high on corruption index, but I would like to believe Ugandans are not inherently corrupt. What I strongly believe in is that, if you make the enabling Law, if you make checks and balances, if you really establish standards, standards which must be respected, not only standards of conduct but also standards in quality of work. For instance, this argument that has been on the Floor regarding classroom construction. I have no doubt in my own mind, if the Ministry of Education formulates standards in accordance, to which classes should be constructed and put a monitoring, evaluation and enforcement machinery in place, these classes you are talking about, can be constructed by local people according to

standards. But if the standards are not there, people are also trying to use their judgement and sometimes their judgement is below your standards; but the standards are not articulated, are not inculcated in regards to taking the job. I also agree that decentralisation is not decentralising decision, but it must also decentralise resource allocation, and I submit to you Hon. Members, distinguished participants, decentralising construction of classrooms does not necessarily mean inferiority of work. You can decentralise work and you can have quality work. I submit to you, it is just a question of how you are going to be doing it right from the centre. I also strongly feel that capacity building, because ultimately when you think about development, whether it is developing countries in their relation to their partners in development world, or the capital in relation to the districts, the question of capacity building will remain a central issue, because capacities can be built and why we get technical assistance, even as a country, is precisely because we lack capacity. So, how can you, as a country, ask for technical assistance from abroad and when it comes to capacity building at the district, you want to withdraw the responsibilities you have given to them. This would be counterproductive. This is my submission to you. Instead of going out to build capacities in the districts, their lack of capacity should not be an excuse for you not to want to do anything or not to want to give everyone responsibilities. Incidentally, again, philosophically, if people are never given a chance to try and make an error and correct the error, they will never learn it. Do not be shocked, chairman, if you find some mistakes initially in the implementation of decentralised policies. The policy is correct.

Also, I think Singh raised the issue of partnership of corruption between public and private. It is true; corruption is a two-way traffic, the guy getting it and the guy giving it; but some of us from the private sector, there is why the private sector sometimes pays the bribe, it comes as a result of realization that if you do it straight, you will never get a deal from Government. So, the corrupt guys get the contract, the honest guys do not get it, and if you are in a private sector and you realize that you can only get a contract if you corrupt somebody, then this is a crucial issue, then it becomes a real dilemma for you, whether you will close because you cannot get that business or whether you should corrupt in order for you to remain in this business. That dilemma must be resolved. The dilemma must be resolved. An honest private sector business person, refraining from bribing public officers, realizes that only when he corrupts can he get a business deal and when you take it into account that 70 percent of the entire Government revenue is spent in procurement related activities and you are excluded because of your honesty, do you see the temptation? Do you see the dilemma of the private operator? If you are honest, you will not get a government contract. So, what choice do you make? That is really a dilemma.

Mr. Chairman, there is also an issue since I have two – there is a question of political interference as a worst form of abuse in public procurement processes. Maybe, well, we have been on both sides of the country. The civil servants as a group, are the most political group you will ever deal with. I will tell you, if politics deals with resource allocation, the group that allocates resources in the machinery of Government, I can tell you, they are civil servants. You come to a Permanent secretary or Under Secretary, Pius, the resources these people allocate, no Minister will come anywhere near, but if you have seen the British, there is a film, Mr. Minister, if you have ever seen that film you realize how really the Ministers, you can compare them, the Ministers are like a

head and the civil servants are a neck, the neck turns the head. Where the Minister is going to really see, is the function of how the civil servant turns on, the preparation he makes, the documents he analyses, the things he presents to you; your decisions are almost already made by the time you make them.

Therefore, on resource allocation, I can tell you that resource allocation in Ministries is largely done by the civil servants. The Ministers simply, more or less, make decisions based on alternatives presented to them. So, you are the Minister, the permanent secretary has brought to your desk bidders and said, this bidder is blah, blah, and the other one is bidder blah, blah, but this one would be the best bidder, so Mr. Minister choose; *-(Laughter)-* and you choose; and when you choose because you have chosen, you take responsibility, but practically the guy who has really made the decision is the guy who has prepared the options presented to your table. Therefore, what I am mentioning here, the political interference, in the form of abuse, is perhaps a shared responsibility. The political leaders, yes, they can interfere, maybe, what we should do is, we should say, undue interference; because when you say political interference, it exonerates those others who also interfere, but are not politicians. I would submit to you, Mr. Gariyo, that instead of saying political interference is a worse abuse, you say undue interference is the worst abuse, which means you and everybody who interferes in the normal procedures. Clearly he is abusing the procedure and makes it non operative.

My final comment, Mr. Chairman, and I will call on the organisers to do the job I should have done, which was to make a summary of the discussions. My final comment is an apology because Parliament is in Session and as Chairman of these Parliament Committees, it is very difficult to attend workshops and seminars when Parliament is in Session. So, this morning I could not come, much as you had invited me, precisely because we were having our own meeting preparing for Reports to submit to the House, so i could not come; but I clearly wanted to come, principally because of the importance of the subject and also the value we attach to professionals when they prepare these debates. I want you to take heart that at least I can speak on behalf of the Finance Committee. It is our intention to consult on every view we submit to Parliament, to those who are affected by its implications, and therefore on the principle of the affected persons as it were, we will be consulting members of the public, private sector, civil society representatives, whenever a Law, which affects their interest, is being considered in Parliament. Once again, Mr. Chairman, I really thank you very much and I thank the presenters for the candid manner in which they made the presentation. Thank you *(Applause)*.

His Excellence Mattheu Peters, Ambassador of the Netherlands Embassy: Before I pass on to Dr. Rajana, I would like to speak on one of the points raised. One member pointed on the dilemma the private sector has. When dealing with Government effectively, the only way so far you can be sure, is to try to deal with this dilemma. I think that the answer is that what you do is to have clear, transparent rules and you must have, in them, such trust and confidence, that they will be adhered to, and that is the same thing what you should try to do with procurement. Okay, the same rules may be manipulated – but with your assistance in country building, and with your confidence in such rules, as a contractor, that whatever the rules are, the same will be consistently

referred to, and I take the point that as a politician, the national political current affairs, you now raised some concern, I am a poor civil servant myself, so I can hang over wherever I speak, but I think the issue is not political – other than an economic affair. There is (Inaudible)- and then you know as a contractor that if you try according to the laws you win, if you win and you (Inaudible)- and that everybody will be treated accordingly; and I think as I said, this is the objective of procurement requirement, precisely for the transparent laws and assistance of a country building such that you are confident of those laws will be adhered to and anything that is outside that framework is any kind of interference and your mind precisely creates the dilemma that you have. Thank you.

Summary from Dr. Rajana, Executive Director RCTB: Mr. Chairman, thank you. I am going to be very brief, I am very mindful of time. Mr. Chairman, I am going to summarize, very briefly, what I thought were the main points that emerged in the course of discussions/debate, particularly, in terms of the presentation and, likewise, from the discussions that ensued on the presentation. In so doing, I probably will not do justice to all the critical points that we make in the course of the day; but if I should say and not mention key issues, you will forgive me, for sort of not doing the duty of avoiding concerns that I simply attempt to recall the main issues. The first issues that came out of the very key presentations this morning, including that of the Minister and the Permanent Secretary/Secretary to the Treasury, and subsequently the papers and presentations of speakers, was the importance of the Bill, that is before Parliament. The passing of that Bill is in fact the critical milestone in moving the reforms forward. Critical activities in relation to the Reform programme, as reflected in the PRSC, hinges on the passing of the Bill, and I think that that point ought to be dealt with very, very clearly. There are of course related issues in respect to the Bill, the extent to which kind of consultations have taken place and the fact that Parliament and, in particular, Members of the Finance Committee, will have to consult with all stakeholders to ensure that the Bill is as representative and that it addresses the interests of all the parties concerned in the process of public procurement.

The second issue relates to competition in relation to provision of advisory services. The question was raised by a number of speakers and it has been reported on by one speaker, as to whether it would not make more sense to open up to competition, the services that are provided to procuring entities when they need to have specific advice on different stages of the procurement cycle in relation to procurement activity; and I thought that the view was unanimous that there ought to be competition. That, may be, to have monopoly in relation to provision of that particular service, is in contradiction of the existing Regulations, 2000, and they will certainly flout the Bill when that comes into effect.

So, the third issue, I would go on to, is the need for the continuation of the quality training that had been provided and, likewise, line support that the Ministry of Finance, more specifically, had in fact been offering and had lent, in terms of line support, to key procuring entities of Government. The key procuring entities even indicate in fact how helpful the training has been and, likewise, the line support that have been provided. The technical assistance was from the British Government and the Government of Netherlands.

The fourth issue that, sort of, seems to have permeated the discussion, is the issue of harmonisation. The question of when the local government systems will be aligned with the procurement policies and practices with those in Central Government. This has been ably answered by the Ministry of Local Government, which has made it very clear that nothing can be done until the Bill is passed and thereafter the issue of harmonisation can be effectively done. Once the Bill comes into place, harmonisation takes effect in order to ensure that the system of Local Government, particularly the procuring entities, have the capacity in place to deliver effectively on the requirements of the new regulations that they will have to abide by. There were a number of issues in respect to harmonisation, but I do not think we need to go into those at this point.

The fifth issue which came out very clearly, was the issue of which the Ministry of Public Service is responsible, was that of manpower institutions, and then the issue was raised in relation to a circular issued by the same Ministry as the first attempt by the Ministry to institute a stream in public procurement, but they might have got certain details in relation to that scheme correct. One related to the sealing in respect to posts and another one was the issue of the sitting allowances, qualifications for entry, etc, there were a number of issues and all of those are very, very important in the establishment process of getting the procuring entities to have the capacities, to build the capacities and to make those capacities operational in procurement entities.

The sixth issue relates to the empowerment of the RCTB, particularly to get the capacity to execute mandatory reporting and enforcement functions; and many speakers felt that this was in fact urgently necessary and has got to be done as quickly as possible.

The seventh issue that rose, particularly, in the discussions and, likewise, into presentations, was the issue of standardized bidding documents inclusive of –local contracts. There was an issue of enough consultations have been done on these documents and I had indicated in response to a particular speaker, I think the head of the engineering consulting organizations, as to whether adequate consultations are taking place? The answer to that is no. Nothing in respect with the standardized bidding documents. The only people we have consulted so far, on the standardized bidding documents, have been the key procuring entities of Government. The reason for this is really that we are acting out of term. We should really not embark on this exercise until the Bill is in place, but we are really waiting until the Bill is in place, we expect that Parliament, without pre-judging the action of Parliament, that the Bill will be passed in due course and we would like by then to have these documents; but we do not want to go out and have open discussions on them, which will be inculcated on the assumption that Parliament will pass a Bill which will empower this new Authority to introduce the mandatory debate, standardized bidding packages, which all procuring entities shall have to use. So we are ready to keep on in abeyance for the time being, the reason why consultations have not been extensive on this one. But there is a key item on the work time of my colleague, Mr. Agaba, who is in charge of legal compliance in the RCTB, to ensure that maximum consultation takes place on these standardized bidding documents. The Standardized bidding documents as I said will cover works, services, both professional and non professional and the supplies of goods.

Eight, the contractors register, it has become abundantly clear that we ought to put a registration system in place, but my view is that the registration system should be based on a classification of firms by capacity namely, size, the core competencies, that is, the disciplines in which they operate, and the proven track record. But that register should be done in conjunction with all the associations of contractors, and more importantly, there was the issue of regulation raised again by the professor in respect of the trend, and they must have a very strict code, they must have strict standards of performance and they must bear to those members who do not abide, and should be kicked out.

Another issue, which came out, was mechanics laundering and continuing competition between stakeholders, that will have to be an issue that will have to be addressed in a very constructive way that ensures continuous efforts between all the stakeholders who are in the process of public procurement and that will have to be done.

Another issue which came up was the issue of the role of accounting officers in appointing members of the contracts committees and procurement Units, and whether there is not a conflict of interests there, and I think a very specific and point question was put to the IGG on that particular one, who like many others including myself, recognise this part that it has some conflict, has some weakness and could lend itself to a comfortable situation, but at this point, we really do not have a very effective alternative. I know some suggestions were made, particularly, by a Parliamentarian and how we may handle this, that will be taken on board, we will have to keep this as you want, review it and we will have to continue for a better solution.

The question of the review mechanisms and effectiveness of those mechanisms have been raised. I do not feel that at this point it may make much sense to go into this in a very extensive manner, we were told, for example, by the Crown Agents of a particular alternative, which exists for a quick and speedy solution of disputes in another country, which may have some lessons to offer. We have been told to review in respect of a procuring entity exercising that function and regulations 2000 has not been as effective as it could. Certainly the RCTB lacks a capacity, at this point, to effectively discharge its part of the overall government obligation to provide an effective review mechanism on the account of capacity.

Another issue, which was raised was variation of contracts and that thing too generated a lot of steam somehow on the way issues involved in dealing with variations and who should build the variations, the interface between the time throughout this entity, whatever you call him, out in the field, be it a consulting firm performing the role of the engineer or one of you called him an architecture, whoever it is, and the interface of that person and contracts committee in light of the contracts committee's duty on the regulations to make awards on the specific conditions and its role, then after to observe that those conditions have been complied with. This is an issue we should have to give some thought to. Obviously there is going to be an excess of kind somewhere along the line, but we will need to think about that a little bit.

Delegation of authority, seems also to be a burning issue on the part of some of us here. It was a political concern, to the Ministry of Education, as to how they will

exercise that. We have indicated, in the course of response to those concerns, how that issue may be addressed.

As we said, the Bill has very specific positions in respect to delegation, but the attendant regulations, which are now in position, and the copy of which may be obtained from Mr. Agaba, at the Central Tender Board, clearly sets out the limits of delegation, the procedures for delegation, to whom you may delegate, how you may delegate and who remains accountable, that is the key. Who remains accountable?

I think I really have to stop on this point because I can go on endlessly and I know Minister Matembe who has been in and out of the room is getting anxious to let you have a peace of mind must *-(Laughter)-* must be waiting in vain very anxiously. Mr. Chairman, I sort of bring my summary to an end at this point. There is a lot more to say, but I will end here- *(Applause)*.

END

**MATRIX OF THE ACTIVITIES, ACTION AGENCIES AND IMPLEMENTATION
SCHEDULE AS AGREED BY PARTICIPANTS**

No	Activity	Implementing Agency	Date	Assumptions
1.	Passing of the Bill	MFPED and Parliament	31 st Dec 2002	MFPED to use its good office
2.	Preparation of draft Regulations, Guidelines and Reporting Forms	RCTB	End of February 2003	Bill Assented to
3.	Standardisation of Bid Documents	RCTB	June 2003	Bill Assented to
4.	Creation of CCs and PUs	MPS	End of 2002	MPS ability to Work to Schedule
5.	Staffing of PUs	MPS and PSC	End of Feb 2003	MPS ability to Work to Schedule
6.	Selection of Third Party Procurement Providers (TPPPs)	MFPED	End of 2002	MFPED's Decision to Proceed
7.	End of the SWIPCO Contract	MFPED	End of 2002	MFPED's Decision to Proceed
8.	Improving Capacity of PUs and CCs i.e., Training and Line Support to PEs	RCTB and MPS	March 2003	Contracting of a Strategic Partner
9.	Conduct of Monitoring and Audits	RCTB	March 2003	Bill Assented to
10.	Staffing of the RCTB	MFPED	Feb 2003	Bill Assented to
11.	Improving Procurement Planning Procedures and linking Procurement Budget with Sector Expenditure Programme	PEs	March 2003	MFPED's Decision to Proceed Assistance from the RCTB
12.	Harmonisation of Procurement Regulations and Practices of LGs with those of the CG	RCTB, MPS and MoLG	June 2003	Bill Assented to Regulations in Place
13.	Assessment of Capacities at the LG level	RCTB, MPS and MoLG	March 2003	Funding being Available
14.	Developing a Providers' Register	RCTB	End of 2003	Bill Assented to
15.	Preparation of a Database on the Providers' Prices	RCTB	Dec 2003	Bill Assented to

16.	Development of a code of conduct for the providers	Associations of Providers	Before end of March 2003	Efforts of Associations of Providers
17.	Benchmarking Performance	RCTB	June 2003	Bill Assented to
18.	Enforcement of the Procurement Rules and Regulations	RCTB	June 2003	Bill Assented to
19.	Formation of a Common Forum for CCs	Chairmen of CCs	June 2003	Cooperation of Accounting Officers
20.	Reduction of Political Interference in the procurement process	All stakeholders but donors	Dec 2003	Political will is available
21.	Begin remuneration of CCs	AOs	Dec 2003	Money being Available