



TANZANIA
COUNTRY PROCUREMENT
ASSESSMENT REPORT
(CPAR)

VOLUME I
MAIN FINDINGS AND RECOMMENDATIONS

April 30, 2003

Operational Quality and Knowledge Services
Africa Region

PREFACE

1. This report, which updates the CPAR of September 1996, presents the findings and recommendations of two World Bank missions: a preliminary mission from July 8-12 and August 5-9, 2002; and a main mission¹ from November 19 to December 6, 2002. Concurrently with the CPAR exercise, an Independent Procurement Review (IPR) was being carried out by Global Procurement Consultants Limited (GPCL) of India as a sub-consultant to PLS RAMBOLL Management A/S, the main consultants of this CPAR. The IPR has provided direct input to this report. To assist and guide the CPAR, the Government of Tanzania established a Task Force comprising several ministries, local government representatives, parastatals, the private sector, as well as a representative from the Government of Zanzibar. The Task Force is chaired by the Secretary of the Central Tender Board (CTB) Mr. N.S.D. Nkinga.

ACKNOWLEDGEMENTS

2. The mission is grateful for the cooperation it received from the Governments of Tanzania and Zanzibar and all organisations visited. In particular, the mission would like to thank members of the Task Force for their full and proactive commitment to the CPAR mission, participation in key meetings and, in particular, for their contribution to the discussion on the issues and the development of the recommendations presented in this report. In addition, the mission would like to thank the Danish Government Trust Fund for financing parts of the mission and the AfDB, DFID, JICA, USAID, SDC, DANIDA, SIDA, and the EU for providing valuable contribution at various stages of the CPAR process.

¹ The mission was led by Mr. Rogati Kayani (Lead Procurement Specialist), and included representatives from the Government of Tanzania, Mr. Pascal Tegwa (Senior Procurement Specialist) from the World Bank Tanzania Country Office as well as a consultant team from PLS RAMBOLL Management A/S of Denmark lead by Mrs. Mette S. Lassen (Procurement organisation, procurement capacity, and anti-corruption) and consisting of Mr. Søren Staugaard Nielsen (Legal framework, procedures and practices) and Mr. Claus Thomsen (Trade and private sector). In addition a group of local consultants were engaged: Dr. Laurent Shirima (Legal framework, procedures and practices), Mr. Oltesh Thobias (Trade and private sector), and Professor Awadhi Mawenya (Anti-corruption).

CURRENCY EQUIVALENTS

(Exchange Rate on April 15, 2003)

Currency Unit = Tanzanian Shilling (Tshs)

USD 1 = 1,050.00 Tshs

FISCAL YEAR

July 1 – June 30

ABBREVIATIONS AND ACRONYMS

AfDB	African Development Bank
ATIP	Accountability, Transparency and Integrity Program
BoT	Bank of Tanzania
CAS	Country Assistance Strategy
CED	Chief Executive Director
CFAA	Country Financial Accountability Assessment
GS	Government Stores
CSD	Civil Service Department
CTB	Central Tender Board
CTBA	Central Tender Board Act
DI	Destination Inspection
DIS	District Administrative Secretary
EOI	Expression of Interest
EU	European Union
EUD	EU Procurement Directives
FY	Financial Year
GDP	Gross Domestic Product
GGCU	Good Governance Coordination Unit
IBRD	International Bank for Reconstruction and Development
ICB	International Competitive Bidding
ICS	Integrated Controller System of the World Bank
IDA	International Development Association
IFMAP	Integrated Financial Management Accountability Project
IMS	Information Management System
IMWG	Inter-Ministerial Working Group
IPR	Independent Procurement Review
JICA	Japanese International Cooperation Agency
LCC	Local Cost Compensation
LGFA	Local Government Finance Act
LGRP	Local Government Reform Programme
MBA	Master of Business Administration
MDA	Ministries, Departments, and Agencies
MSD	Medical Stores Department
MoF	Ministry of Finance

MSA	Medical Stores Department Act
NACSAP	National Anti-Corruption Strategy and Action Plan
NAO	National Audit Office
NBMM	National Board for Materials Management
NBMMA	National Board for Materials Management Act
NCB	National Competitive Bidding
NCC	National Construction Council
NGO	Non-Governmental Organisation
OPP	Office for Public Procurement
OWI	Oversight and Watchdog Institutions
PCB	Prevention of Corruption
PEA	Post Entry Audit
PER	Public Expenditure Review
PFMRP	Public Financial Management Reform Programme
PIF	Performance Improvement Fund
PMUs	Procurement Management Units
PPA	Public Procurement Act
PPAA	Public Procurement Appeals Authority
PPB	Procurement Professionals Body
PPTS	Public Procurement Training Strategy
PQ	Pre-Qualification
PRS	Poverty Reduction Strategy
PRSC	Poverty Reduction Support Credit
PS	Permanent Secretary
PSI	Pre-shipment Inspection
PSRP	Public Service Reform Programme
QCBS	Quality and Cost Based Selection
RA	The Regulatory Authority
RAS	Regional Administrative Secretary
RFQ	Request for Quotation
SASE	Selective Accelerated Salary Enhancement
SME	Small and Medium Sized Enterprises
SBDs	Standard Bidding Document
TAP	Tax Administration Project
TB	Tender Board
TI	Transparency International
TNA	Training Needs Assessment
ToT	Training of Trainers
TRA	Tanzania Revenue Authority
UML	United Nations Model Law for procurement
UNCITRAL	United Nations Commission for International Trade Law
VAT	Value Added Tax
WB	World Bank
WBG	World Bank Guidelines
WTO	World Trade Organisation

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MAIN FINDINGS AND RECOMMENDATIONS

1. LEGAL AND REGULATORY FRAMEWORK

Existing legal and regulatory framework

1. The United Republic of Tanzania is a union of two countries, mainland Tanganyika and Zanzibar (consisting of the islands of Zanzibar and Pemba). Tanzania has two governments, the Union Government and the Zanzibar Government. The mainland is wholly governed by the Union Government, while Zanzibar is mainly governed by the Zanzibar Government with the Union Government taking care of some government affairs including security and foreign affairs. Procurement in the mainland is governed by the 2001 Procurement Act and Regulations while Zanzibar is governed by its own Rules and Regulations. The CPAR will review the two systems separately.

2. The Public Finance Act (2001) forms the legal basis for public expenditure. The following main legal instruments govern public procurement in Tanzania:

- **Public Procurement Act (PPA) and Regulations:** The PPA was enacted in 2001 replacing all previous procurement legislation. In July 2001, the Regulations were issued in two parts: 1) Procurement of Goods and Works Regulations, and 2) Public Procurement (Selection and Employment of Consultants). In mid-November 2002, the Central Tender Board (CTB) issued a set of standard documents and guidelines. The PPA covers procurement carried out by both central government and local authorities, though for the latter case, specific Local Government Regulations are to be issued under the Local Government Finances Act.
- **Anti-Corruption Legislation:** The Prevention of Corruption Act (1971) with subsequent changes and amendments serves together with the Organized Crime Control Act (1984) as the basis for the establishment of the Prevention of Corruption Bureau (PCB) in 1990 with authority for monitoring and prosecuting malpractice in public procurement.
- **Public Service Act:** The Public Service Act (2002) with subsequent amendments and the supporting Employment Ordinance and Security of Employment Act establish the Public Service Commission responsible for human resource management in the public sector.

Local Government authorities (district, town, municipal, and city councils) are placed outside the line ministries under the control of the Local Government Authority under The President's Office. The line ministries simultaneously maintain their own representation at local level.

Legal Framework Issues

3. **Application of procurement rules – entities subject to regulation.** The PPA aims to cover all procuring entities that use public funds, however, parastatals are covered by the PPA only if mentioned by name in the regulations and if they receive government subsidy. A parastatal organised as a private company, but with the government as a majority shareholder, would thus fall outside this category. This leaves open the possibility of a part of the public administration, or a public utility,

being branched out and thus outside the coverage of the PPA, even though the public, through government ownership of shares, still remains in control of the activity. This is an issue that especially affects a country such as Tanzania, which historically has had a very large public sector, but now is deregulating and developing the private sector as a key player in society.

4. **Methods of procurement and their conditions for use.** The PPA operates with competitive tendering as the main method for procurement of goods, works and services. Guided by the thresholds published as part of the Regulations, the procuring entity can use International Competitive Bidding (ICB), National Competitive Bidding (NCB), Restricted Tendering, Competitive Quotations, Single Source Procurement, and Minor Value Procurement. The present procurement methods are in line with international standards and the thresholds for their application appear balanced. However, the Regulations Article 80(4) allows for the procuring entity to “select an appropriate alternative method of procurement” in “any case where tendering would not be the most economic and efficient method of procurement...” The alternatives available are single source, direct contracting (goods and works) and force account, all with specific conditions attached. While the approach of offering different procurement methods for different types and sizes of contracts provides for an efficient system, the provision that allows the procuring officer, at his discretion, to apply the alternatives opens an avenue of non-transparency and potential abuse. Such delegation of authority does put increased demand on the quality of the oversight authority.

5. **Publicity in procurement - advertisement of tenders and time for bid preparation.** The PPA requires a procuring entity to prepare and advertise a tender notice before carrying out any of the open tendering procedures available. However, there is no requirement for publication of notices in the Government Gazette, nor is there a procurement journal or any other consolidated collection of current procurement notices. Bidders are thus forced to seek their information through a number of different sources, including different regional newspapers, notice boards and personal contacts. Contract awards are mandatory to publish in the Gazette, with the name of the successful tenderer, the contract amount and the date on which the contract was awarded. A recommendation concerning the establishment of a procurement journal is contained in the Procedures and Practices section.

6. **Pre-qualification and qualitative criteria.** The PPA does not have a provision calling for mandatory pre-qualification, but only states that a procuring entity “may engage in pre-qualification proceedings”. The Regulations call for the procuring entity to “consider pre-qualifying” and describes the factors to be considered if pre-qualification is carried out. The newly issued “Standard tendering documents on procurement of goods” provide some guidance on eligibility criteria while leaving qualitative selection at the discretion of the procuring officer. Also, the standard bidding documents (SBDs) recently issued by the CTB include a “Standard Pre-qualification Document” for procurement of works through international competitive tendering which does contain examples of eligible qualification criteria. Furthermore, the Standard Pre-qualification Documents contain list of advantages and disadvantages of pre-qualification to assist the procurement officer in making the right decision. The lack of general mandatory qualification criteria does, however, provide opportunity for the application of non-transparent local criteria.

7. **Registration Lists.** According to the PPA, bidders in works, goods, services and consultant tenders, must all be registered with an “appropriate current professional body”. This system of registration lists applies fully to all domestic bidders while international bidders are allowed post-register, pending award of a contract. The mandatory registration lists leads to bidders being evaluated twice by qualitative criteria, first by the board that administers the list and later during the actual tender. Although a system of mandatory registration seeks to ensure the quality and capacity of the bidders, it also creates a barrier to market access for new suppliers and upholds an unnecessary double

qualification procedure. In addition, the registration system may: (i) limit competition; and (ii) be a source of rents. It should however be recognized that procuring entities with low capacity to perform proper pre-qualification are relying on the registration as their main method of assessing the qualifications of potential bidders. However, from discussions with both the public and private sector, it appeared that the different classes of registration, indicating different levels of capacity, tend to be inefficient and inflexible.

8. **Tender Documents – SBDs.** The PPA requires the procuring entities to use the “appropriate standard model in tender documents”. A set of SBDs was only issued in mid- November 2002 by the CTB. The SBDs issued by the CTB comprise of:

- Procurement of Goods through international competitive bidding
- Procurement of Health Sector Goods
- Standard Requests for Proposals (Consultants)
- Standard Pre-qualification Document for Procurement of Works
- Procurement of Works through National Competitive Bidding
- Procurement of Works – Smaller Contracts.

9. Since the SBDs issued by the CTB are mandatory they will replace all previously issued documents issued by the National Construction Council and will prohibit the use of donor documents on government-funded projects. A review of the newly issued SBDs reveals their close similarity with Donor SBDs on which they are in part based. The internationally recognized essential features of SBDs are all there. The primary concern is whether the procuring entities have the capacity to utilize these quite comprehensive documents.

10. **Filing system.** According to the PPA, a procurement protocol for each tender must be kept for a 5-year period by both the procuring entity and the approving tender board. The Regulations contains a comprehensive list of information and documents that must be included in the protocol. The mandatory information to be recorded includes names of bidders, qualifications and evaluations of bidders and bids and any exceptions to the general provisions that have been applied. The procurement protocol in its present form is a powerful prerequisite for proper enforcement of the rules, provided that maintaining of the protocol itself is enforced.

11. **Bid submission and opening.** The existing rules on bid submission and opening are largely in accordance with international standards. Hence, the PPA and Regulations list a number of specific mandatory demands for the bid submission and opening process. The most important are:

- A locked tender box must be used for storing tenders until opening
- Tenders received late must be rejected
- Tenders must be opened immediately after the deadline for submission
- Tenders must be opened in public
- Tenderers’ names and prices shall be announced at the opening session
- Attempts of wrongful influence must result in rejection.

12. **Time limits.** The given time for preparing bids is described in the PPA and the Regulations as “sufficient time”, yet the Regulations call for a minimum tender period of 45 calendar days increasing to 90 calendar days for complex works tenders. A period of 45 days for preparation of a shopping bid seems to defy one of the main purposes of using this method, which is speed. The time limits, however, appear only as guidelines for procurement planning without foundation in the PPA itself. Lack of mandatory time limits, such as a limit on the period between bid submission and award of contract, before re-tendering is called for, opens opportunity for collusion and corruption. A limit on award of contract of, say, 60 days from submission, before specific approval for extension must be sought from the CTB, would target the issue of drawn out award processes that the mission identified

as a general problem. Otherwise the limits contained in the Regulations appear balanced and should be made mandatory.

13. **Contract award procedure and criteria.** The PPA specifies that the procuring entity must ensure equal treatment of bidders in processing bids and awarding the contract. The PPA does not specify eligible award criteria other than “evaluated cost” for goods and works procurement. On consultant procurement the procuring entity can choose between criteria based on cost, technical quality or a combination. Adequate guidance on use of the evaluated cost criteria and rules of calculation can be found in the Regulations and in the SBDs issued by the CTB. Bracketing, by banning bids with a value below or above a certain amount is not permitted. The terms of contract must be approved by the Attorney General before the procuring entity is authorized to enter into such contract. The available award criteria are adequate and in line with international practices, and are supported with guidelines on their application.

14. **Domestic and other Preferences.** The PPA allows the procuring entity to apply a margin of preference in awarding contract to Tanzanian bidders. This domestic preference can be maximum 10% for ICB of works and requires a number of conditions to be met, mainly to ensure that foreigners do not misuse this rule through ownership or joint ventures with local companies. For goods and services ICB, the maximum margin of preference is 15% for locally manufactured goods and related services. For consultancy services contracts, the PPA permits that the shortlist comprise entirely Tanzanian consultants if the value is below a certain threshold, there is sufficient local competition and foreign participation is “prima facie” not justified. For procurement of goods, works and services that are exclusively funded by the government and under a threshold, the PPA furthermore demands that bidding is reserved for “local persons or firms”. The Regulations give a wide access for the procuring entity to change and adapt the procurement procedures and give preference to local communities, if this is “in the interest of project sustainability, or to achieve certain specific social objectives”. There are no specified thresholds for access to this discretionary preference system. While domestic preference arguably supports capacity building at the local levels, a more efficient method of building capacity is through the design of tender packages so that they appeal to local suppliers. Such packages would for instance have bid securities which are affordable to the local contractors and the minimum qualifying criteria such as annual gross turnover could be set to a level at which local bidders are able to participate.

15. **Negotiations: pre- and post contract negotiations.** Negotiations between bid submission and contract award are allowed as long as they do not “substantially alter the original terms of reference or the terms of the contract”. A total ban on negotiations forms one of the cornerstones in the principle of equal treatment of bidders. In the light of this, conditional access to negotiations in the PPA hinders effective enforcement of the ban, and creates confusion as to the limits of the ban on negotiations. Negotiations after contract award leading to alterations and amendments are banned according to PPA, unless the alteration is to the benefit of the Government or the alteration has been endorsed by the approving authority. The PPA in this respect fails to recognize the issue of equal treatment of bidders. A substantial alteration in an already signed contract is in its substance comparable to pre-contract negotiations. If collusion between staff of the procuring entity and bidder takes place, it is very difficult to discern whether a post-contract alteration is in fact a result of illegal pre-contract negotiations.

16. **Complaints and administrative review.** Access to a complaints review mechanism is available to bidders and other parties in the procurement process, but not to the general public. The

PPA establishes a three-tier system of administrative review for aggrieved bidders with the Public Procurement Appeals Authority (PPAA) as the final tier. The PPAA was, at the time of writing (April 2003) not yet established in practice. Once a contract has entered into force, the procuring entity is barred from entertaining complaints regarding the tender that led to that contract. Remedies available to the PPAA range from a declaration of the applicable rules to suspension of proceedings, annulment of any decisions, and termination of proceedings. A very significant exemption to this rule is the fact that a contract that has entered into force cannot be annulled. This leaves the entire complaints procedure without its most potent remedy, namely that of annulment and forced re-tendering. A whistleblower facility entrenched in the Regulations, would allow the public to initiate investigations into procurement cases and should enable both bidders and the general public to initiate such investigations anonymously. To prevent misuse however, the filing of complaints should incur a modest fee and be limited to entities or persons with a substantiated legal interest in the case. This subject is covered in more detail in paragraphs 29 and 30.

17. **Local Government Procurement.** With the enactment of the PPA, the sections in the former Financial Memorandum issued under the Local Government Finance Act (LGFA) governing procurement in the local government, was revoked. While the PPA calls for specific local government procurement regulations to be issued under the LGFA, such regulations have just been gazetted (March 12, 2003). The PPA is therefore presently directly applicable to local government procurement. The local government regulations are supported by a draft Procurement Manual for Local Government Authorities. The regulations are in two volumes: (i) The Local Government (Procurement of goods and works) regulations, and (ii) The Local Government (Selection and employment of consultants) regulations. The main procurement methods and processes in the Regulations are very similar to those in the regulations governing central administration and parastatals. Until the new regulations were issued the composition of the local authority tender boards was in accordance with the now void Financial Memorandum, according to which the politically elected councillors were members of the tender board. However, the new regulations have entirely removed the councillors from the procurement process.

18. **National Board for Materials Management Act vs. Public Procurement Act.** With the enactment of the PPA the procurement function has now gained a legal framework of its own and this has raised questions as to the relationship between the National Board for Materials Management Act (NBMMA) and the PPA. It has been the view of the National Board of Materials Management (NBMMA), that the NBMMA on certain issues, such as procurement being exclusively reserved for supplies professionals, would supersede the PPA. It is however clear from the PPA Article 76 that it renders void all previous rules on procurement that are in contradiction to the PPA. As a consequence, the procurement professionals mentioned in the PPA are not by law required to be supplies officers, but as recommended in this report should be replaced with certified procurement professionals.

19. **Defence and security Procurement.** The PPA contains a special exception for “military equipment and supplies for the Defence Forces” and “equipment and supplies of arms and ammunition” for the intelligence and security services, the police and prison authorities. The exception of sensitive procurements from the general procurement rules is a common feature of most procurement regimes, and is accepted under the UNCITRAL Model Law. Even though the PPA could be more precise on its description of the differences between the two types of procurements, this weakness could be corrected by simple guidance by the CTB. The Ministry of Defence have established two tender boards, in principle dealing with respectively sensitive and non-sensitive procurement. The sensitive procurement is carried out by a tender board under the Defence and Security Committee and the non-sensitive procurement is carried out by the Military Tender Board. Even though the Military Tender Board is by virtue of its non-sensitive operations covered by the PPA, it has not been included in the schedule to the Regulations listing all entities with tender boards.

Thus a state of confusion exists as to the status of the Military Tender Board and to some degree also regarding the correct splitting of procurement between sensitive and non-sensitive articles.

Main Recommendations on Legal Framework

Short term

- The rules regarding application of the PPA on parastatals should be clarified by amending the PPA to cover all parastatals
- Disseminate the new Local Government Authority Regulations
- Support the distribution and enforcement of the newly developed Standard Documents issued by the CTB.
- Establish the Public Procurement Appeals Authority.
- Introduce necessary amendments to the PPA to establish a Regulatory Authority (from the Organisation and Resources section)

Long term

- Introduce a whistleblower facility in the law
- Subject non-sensitive defence procurement to the PPA.
- Ensure adequate remedies for misprocurement.
- Establish mandatory time limits for the main steps in the procurement process and review existing time limits
- Introduce an effective ban on both pre- and post-contract negotiations

2. PROCEDURES AND PRACTICES

20. **Procurement Planning.** Procurement planning is essential for public procurement to achieve one of its major goals of providing value for money. Without proper planning, tenders fail to meet the real requirements of the public, timeframes are missed, costs increase and opportunities for economy of scale are missed. The Regulations contain a detailed list of mandatory requirements for procurement planning before tenders are floated. The Local Government Procurement Manual contains a similar requirement for procurement planning. The general practice witnessed by the mission was that besides minimal budgeting exercises, no actual procurement planning is taking place for government funded projects. However, the quarterly release² of funds that is common makes it very difficult for the procuring entities to plan beyond the next quarter, in practice crippling all attempts of effective procurement planning³.

21. **Procurement Methods.** Some of the major procurers, notably the Ministry of Works (including TANROADS) and the Ministry of Education, are well aware of the PPA and its principle of selection of procurement method based in part on the value of the contract. This certainly also applies to the tenders being brought before the CTB which is seen as a strong enforcer of the PPA. It is however still a widespread practice to base the choice of procurement method on whichever seems appropriate, on the discretion of the accounting officer. This practice often leads to use of the competitive quotation or single source methods, even for procurements with a value above the set thresholds. The local government administration still uses the procurement rules in the void Financial Memorandum. Based on these now defunct rules the district tender boards often apply the "request for quotations" method with open tendering being almost exclusively used on donor funded projects where this is a donor requirement. The splitting of tenders to avoid having to seek the approval of the CTB, which is regarded as a cumbersome and time-consuming process, is common, despite the outright ban on this practice in the PPA. To a certain degree the splitting of tenders is also a result of the present budgetary process and the uneven disbursement of funds.

22. When using the competitive quotation (shopping) method, procuring entities often pick the three minimum bidders from an internally maintained list of potential bidders or directly from the lists maintained by the registration boards. None of the procurement units visited by the mission was able to provide any explanation as to how the three invited bidders are chosen from amongst all the potential bidders on the list. This practice is contrary to the Regulations on use of restricted tendering and provides ample opportunity for abuse. Nevertheless this practice is widespread.

23. **Publicity and transparency in procurement - advertisement of tenders and awards.** Open tender procedures are advertised as stipulated, except in local government procurement where for cost reasons advertising in newspapers is often not practical. Instead notices are posted on the tender notice board maintained by each tender board. Though the Regulations require that international community is notified through their respective embassies and trade commissions, tender advertisements are often restricted to local newspapers and East African papers, which might explain why the same set of contractors (including foreign) have been participating in most of the works contracts.

² A Budget Ceiling Committee, chaired by the Permanent Secretary of MoF, comprising the Divisional Commissioners, Accountant General, the TRA and Bank of Tanzania (BoT), determines the release of funds.

³ According to the CFAA (2001) "Improvements in resource programming have meant that variance between budget allocations and outturns has been reduced across government, and releases to priority sectors are now broadly consistent with the expenditure programme. However, non-priority sectors continue to experience shortfalls in releases, particularly at the beginning of the fiscal year."

24. As there is no central media for advertisement of tender or award notices the practices are scattered and the requirement for advertisement difficult to enforce. By introducing a Procurement Journal, the bidders would gain access to a central source of information and the costs of advertisement could be brought down. Contract award notices are very seldom published, even though this is a requirement in the PPA. The procuring entities cite lack of knowledge of the rules and excessive cost for advertising as reasons for this practice.

25. **Pre-qualification and qualitative criteria.** Pre-qualification is not mandatory, but its use relies on the professional judgment of the procurement officer. Because of low capacity to utilize the rather complex rules, this often leads to pre-qualification not being carried out, even in complex works tenders where the importance of its application is paramount. In many cases, specifically in works procurement, the procuring entity relies solely on the bidders' registration status with one of the registration boards for its assessment of the bidders qualifications. In such cases the bidders are not qualified according to their specific qualifications for the project tendered, but only on more vague general qualifications.

26. **Tender Documents – Standard Bidding Documents (SBDs).** The SBDs in use can roughly be divided into two groups: (i) those based on donor SBDs, especially World Bank; and (ii) those issued by the NCC for works procurement. Bidding documents are often very poorly prepared and fail to reflect the actual needs of the procuring entity. The main reason for this is the low capacity in the procurement units and lack of knowledge of the new legal instruments. This again leads to poor quality of technical specifications and the need for negotiations, which again opens an opportunity for collusion and breach of the principle of equal treatment of bidders.

27. **Bid submission and opening.** The rules and procedures for submission and bid opening are generally adhered to. However, the mission was informed of several instances of breaches of confidentiality and collusion between the procuring entity and bidders, leading to competitors' bids being revealed before the official opening and bidders being allowed to replace their own bids based on that information. These practices are all in blatant conflict with existing rules, and underlines the urgent need for an authority to effectively enforce the rules.

28. **Contract award procedure and criteria.** Evaluation reports are generally of poor quality. In many cases award criteria other than those listed in the bidding documents are applied.

29. **Complaints and administrative review.** It is the impression that bidders very rarely complain over discrepancies in the procurement process. Given the gap that presently exists between the legal framework and the actual practices, the reason for the lack of complaints is certainly not that procurement is carried out by the book, but rather that the bidders find it unfruitful to complain. This is true for complaints directed against the procuring entity itself, but also for complaints directed at the CTB, of which there are very few. Based on information from the private sector the major reasons for this situation are:

- *Unclear procedures of complaint:* Even though the PPA is quite clear as to the process of complaint the act is not widely known, and the consensus seems to be that personal relations with people tend to create more results.
- *Lack of enforcement:* Despite huge discrepancies between the law and actual practices, a relaxed attitude towards the enforcement of existing rules prevails. Monitoring and review of procurement process is only done upon receipt of a complaint, which again very rarely happens. The lack of enforcement cannot help but give the bidders the impression that complaining has no real consequence or impact, regardless of the formal outcome of the complaint.

- *Lack of adequate remedies:* As the law does not provide the option of annulment of the procurement contract once it is in force, the aggrieved bidder is left to seek economic damages.

30. The PPA requires all bidders determined to have been involved in corrupt practices to be registered by the CTB and banned from participating in public tenders for a period of ten years. The CTB does currently not have such a list. Official blacklists are not in use, but several of the procuring entities interviewed, especially amongst local government, expressed clearly that contract award in part was based on their previous experience with the bidders, without this being indicated in the tender documents.

Main Recommendations on Procedures and Practices

Short term

- Enforce the requirement for advertisement of tenders in generally available media with an aim to increase market access and transparency until the procurement journal is operational.
- Enforce existing rules on application of pre-qualification to ensure that accounting officers realistically consider the advantages that pre-qualification provides.
- Enforce the integrity of the bid opening process in accordance with existing rules by stepping up the number of audits targeted at the physical and organisational measures that the procuring entities have taken to ensure proper handling of the bid-opening process.
- Enforce correct use of award criteria through audits and strengthening of the quality of evaluation reports.
- Introduce credible complaints mechanism, by strengthening the complaints handling ability of the CTB (and then RA) and establishing the PPAA to provide a functioning avenue of complaints for bidders.

Medium term

- Strengthen the general quality of procurement planning through monitoring and capacity building, with the aim to bring procurement plans up to the standards required by existing rules.
- Issue Guidelines for selection of bidders for quotations to strengthen enforcement of the existing rules of equal treatment of bidders.
- Establish a government-funded, monthly-issued, procurement journal. The journal should be paper-based but also available through the Internet.

Long term

- Consider mandatory pre-qualification for certain tenders to enforce the proper use of pre-qualification.

Monitoring and Contract Management

31. **Record-keeping.** Even though the PPA clearly stipulates a demand for proper and comprehensive record keeping, files are generally missing and incomplete. This does not seem to be an issue confined to the procurement files, but is rather the result of generally poor filing systems in the public sector. The enforcement of the already existing rules on proper record keeping is lax, and it seems without any real consequence to the accounting officer that a file, or parts of it, can go missing. In the local government, the problem seems to be partly caused by lack of resources leading to necessary copies for the file not being made.

32. **Variations and post-contract negotiations.** Generally variations are not a frequent occurrence, with the exception being local government procurement where variations are often negotiated, resulting in material differences from the original specifications, without this leading to re-tendering. The procurement units themselves cite poor planning, poor specifications and the time/cost consuming tender process as the main reason for this situation. The Auditor-General reported some cases of variations, especially in large roads projects, leading to substantially larger payments than budgeted. These cases were allegedly not caused by lack of knowledge of the rules, but were clear cases of corruption, which were allowed to flourish due to lack of monitoring by the responsible authority.

33. **Enforcement and monitoring compliance.** On all major steps of the procurement process, the mission witnessed a gap between the existing legal framework and the practices followed. The reasons for this are multiple, but it is a common feature of all procurement entities visited, that monitoring and enforcement of existing rules is almost non-existent. This is the case for procurement on both central and local level, as well as in the parastatals.

Main Recommendations on Monitoring and Contract Management**Short term**

- Enforce existing rules on proper record keeping
- Increase quality in specifications to reduce need for variations
- Establish deterrence by enforcing existing rules on punishment for misprocurement
- Establish awareness of legal framework..

Medium term

- Execute a general program of monitoring, audit and enforcement, with specific annual goals

3. ORGANISATION AND RESOURCES

Organisation

34. Public procurement decisions in Tanzania are currently made by the CTB; ministerial tender boards; regional administration tender boards; district tender boards; local government tender boards; and parastatal tender boards. In addition to these institutions, there are other relevant organisations such as: the Attorney General, who is responsible for prosecuting breaches of the Procurement Act; the Auditor General who is responsible for auditing all procurement transactions; and the Prevention of Corruption Bureau (PCB), which investigates corruption related offences. Also relevant are the Government Stores (GS), responsible for procurement of a variety of goods for all central government entities; and the Central Medical Department (CMD), which is responsible for the procurement and distribution of medical supplies.

35. **Role of the Central Tender Board.** The most critical issue is the dual role of the CTB currently maintaining both executive and regulatory powers. According to the Procurement Act, the CTB has the following functions:

- *Regulatory:* (i) oversee and monitor the conduct of procurement by the various entities; (ii) advise the Government on procurement policy; and (iii) in cooperation with local and international organisations, supervise the management and training of a cadre of procurement specialist staff within the civil service.
- *Executing:* (i) approve the issue of tenders or the use of alternative methods; (ii) execute tenders; and (iii) review and approve tenders.

36. This mix of powers and functions contributes to an unstable situation, whereby the CTB on one hand participates in the procurement procedure by issuing, executing and approving tenders and on the other hand monitors the same procedures. This leads to a situation where the CTB in reality monitors its own deeds, which is contradictory to all established principles of separation between executive and regulatory powers. It ultimately leads to the CTB losing authority and credibility as a regulatory body. The executive role of the CTB further results in lack of accountability and responsibility at the level of the ministerial tender boards and the ministerial Accounting Officers. Under the current system, the Accounting Officer is fully accountable for the budget but not for procurement with a value above the threshold for CTB approval under that budget.

37. **Decentralisation.** The thresholds laid upon lower-level tender boards are generally perceived as too low. Rather than increasing the thresholds across the board, it is suggested that the procurement be completely decentralised to the ministerial level, leaving the CTB as a purely regulatory and monitoring body.

Advantages of full decentralisation:

- Greater accountability at the Ministry level and for the Accounting Officers, who would not only be responsible for the budget but also for all procurement under that budget
- More efficient procurement, as the CTB would no longer serve as a bottleneck in the procurement process.

38. The potential risks, which have to be proactively addressed, are: (i) potential decentralisation of corruption; and (ii) lack of oversight and coordination. However, these risks may be mitigated by combining decentralisation with the establishment of a well-resourced regulatory body that monitors

compliance and with powers to sanction violators of the laid down procedures. A prerequisite for this is to secure the information flow from the ministerial tender boards to the CTB and thereby ensure that proactive rather than reactive monitoring can be conducted. Also, decentralisation of the entire procurement portfolio to the ministerial level must be followed with substantial capacity building of the ministerial tender boards.

39. **The Regulatory Authority.** The Regulatory Authority (RA) should be a policy and regulatory body. It should also be vested with strong monitoring powers, allowing it to monitor all stages of the procurement process, from procurement planning to contract management, i.e. the entire procurement cycle. The RA should have the following tasks:

- (i) Monitoring the public administration and the procurement environment in order to implement proactive and/or corrective measures when necessary.
- (ii) Forging policies for the future of procurement. The RA will be the foremost advisor to the Government on matters of public procurement.
- (iii) Administrative review the RA will be the second level of complaint for a bidder, consultant or contractor complaining of a violation in procurement proceedings.
- (iv) Regulatory body the RA will be responsible for issuing and updating of regulations.
- (v) Capacity building. The RA shall oversee and coordinate activities aimed at enhancing procurement capacity at all levels of Government. This includes coordination and cooperation with independent training institutions tasked with the implementation of tailored training activities.
- (vi) Information dissemination. The RA shall be responsible for coordinating all information efforts aimed at enhancing the knowledge of the procurement system in general and of procurement decisions in particular.

40. **The location of the RA.** It is suggested that the RA be established as an autonomous body reporting directly to the Minister of Finance and not as present to the Permanent Secretary (PS) of the MoF. By maintaining the RA under the auspices of the Minister of Finance, the RA will benefit from the strength and political influence of the MoF vis à vis other ministries. In addition, the MoF is the coordinator of the major reform efforts and will also be a key player in procurement reform. Thus, by maintaining links between the RA and the MoF, the necessary momentum for procurement reform is best ensured

41. **Establishment and Strengthening of PMUs.** In line with the decentralisation and the establishment of a professional procurement cadre, as described in detail below, the already existing supplies units should be transformed into regular Procurement Management Units (PMUs). The PMUs will provide support and secretariat services to the decentralized tender boards, and will be responsible for the process aspects of procurement.

42. **Monitoring - Securing information flow to the RA.** To ensure comprehensive monitoring of the procurement process by the RA, the reform will need to establish sound and efficient information mechanisms and procedures between the RA and all the procuring entities. This focus on the information flow should ensure that the RA can carry out its monitoring role in a pro-active manner and not only react to already implemented procurement decisions. It is therefore advised that an information sharing model be developed ensuring early and continued flows of information from the procuring entities to the RA. Ideally such a model should entail an early warning mechanism allowing the RA to carry out reviews of planned and ongoing procurement and not merely finalised procurement processes. The information sharing and early warning should be integrated in an **Information Management System (IMS)** tailored specifically for the Tanzanian setting. To facilitate efficient monitoring by the RA, the IMS should include the following features:

- *Intelligence gathering*, i.e. systematised reporting to the RA by procuring entities providing information at various stages of the procurement process
- *Information matching*, allowing the RA to match information and identify high risk procurement jobs
- *Targeting* – where the RTCB based on the risk assessment, conduct targeted early review of certain high risk procurement jobs
- *Information sharing*, ensuring that information is shared among all relevant parties and thereby enhancing transparency and accountability.

43. The *risk assessment part* of the IMS could focus on obtaining and matching information regarding certain procurement jobs, for example procurement jobs: (i) of large value; (ii) within specifically corruption prone sectors, such as construction; and (iii) within procuring entities with weak capacity.

44. **The monitoring role of the RA vis-à-vis local government.** As part of an overall focus on strengthening monitoring of public procurement, there will be an increased need for strengthening the institutions, which will carry out the monitoring functions. Rather than building up extensive monitoring capacity at both the RA and within the President's Office/Regional and Local Government, it is suggested that the RA be empowered to directly monitor local government procurement, and that RA be empowered to intervene at all stages of procurement carried out by local government authorities. This further falls into line with the recommendation above in the legal framework chapter suggesting that one uniform legal framework for procurement be introduced for both central and local government.

45. **The Public Procurement Appeals Authority.** In consequence of the establishment of the RA as an autonomous body, the PPAA should also be detached from the MoF. The RA could maintain the secretary function of the PPAA. The PPAA should have members appointed by the MoF, by the Procurement Professionals' Body (PPB), and by the private sector. The latter measure is important to ensure that private sector complainants, i.e. the bidders, maintain the impression that the PPAA is a fair and credible review authority.

46. **Local government procurement.** The presence of councilors on the local government tender boards has been an issue of extensive discussion within the local government reform process. All the local government tender boards visited were constituted of elected members of the Council. Since procurement is an executive function, it should be carried out without political interference. Politicians are responsible for approving the budget and supervising its implementation, but should not be involved in the executive role of dispersing the funds. Thus, the oversight role of the councilors is compromised, when they, as in the present situation, are also involved in the execution of the budget provisions through procurement. The mission is pleased to know that the new Local Government Procurement Regulations excludes councilors from the tender boards.

47. Another issue calling for immediate attention is the complete lack of monitoring and audit of local government procurement. None of the districts visited had had their procurement processes audited, despite the many indications that irregularities are frequent. As an aspect of the monitoring element, the mission identified no examples of local community involvement in the monitoring of local public procurement. There is need to build monitoring capacity at the community level.

48. However, other issues of equal importance must be addressed, and one of these is the general lack of capacity for conducting sound procurement at the local government level. A major task persists in introducing the new legal framework to all relevant parties involved in the procurement process, including the local communities and local civil society.

49. **Utilising the advantage of scale – Government Stores and Medical Stores Department.** At present the Government uses the advantage of scale when procuring through the Government Stores (GS) and Medical Stores Department (MSD). Both the GS and the MSD are perceived as ineffective and not meeting demands from the public entities. The GS are obliged to supply all levels of government, but have neither the funds, nor the organisational capacity to do so. As a result, most government entities have stopped relying on the GS and have introduced their own procurement measures for items that should be procured by the GS. The only item, which the GS is still able to procure and provide at competitive prices, is fuel. Overall, however, it is obvious that the present set-up of centralised procurement and storage pose a barrier to a cost effective and value for money oriented procurement system, and the mission suggests that an effective “zero storage system” be introduced.

50. The scope of the MSD is regulated in the Medical Stores Department Act (MSA) of 1993, which establishes the MSD as an autonomous department within the Ministry of Health (MoH). The MSD procures drugs, medical supplies, equipment, vaccines, medical kits and special products. About 90% of MSD orders are procured through ICB, and this has helped considerably to reduce the prices of pharmaceuticals and related products. In light of the extensive resources invested in the current MSD procurement system, and the previous negative experiences with (extensively) decentralised medical procurement, the mission agrees that this set-up should be kept for the medium term. It is, however, recommended that the long-term objective should be to decentralise the medical procurement along the same lines as for the GS.

51. **Information dissemination regarding the RA and the PPAA.** A general lack of knowledge about the PPA prevails, especially at the local government level. Apparently the lack of complaints and appeals lodged is closely connected to the lack of information about the appeals option, as well as a general lack of trust in appeals leading to remedial action. After reforming the CTB and setting up the PPAA, a first step should therefore be to design and initiate a nation wide information campaign targeting central and local government, parastatals as well as the international and national business community and informing all these about the new institutional set-up, its implications, and paying particular attention to the appeals system.

Resources and Capacity

52. **Lack of capacity** is the single most important issue in the sector, and all of the interlocutors with whom the mission met, cited lack of capacity and skilled personnel as a great impediment to conducting sound procurement. Also the lack of capacity on the supply side, i.e. within the private sector was cited as an obstacle. With decentralisation and the creation of properly staffed procurement units in each procuring entity the demand for skilled procurement staff will undoubtedly rise. The procurement capacity of the various procuring entities varies greatly. Some ministries like the Ministry of Works and large parastatals like TANROADS have quite extensive experience with procurement through many years of procuring under donor funded projects, whereas capacity at local government level is diminutive. Here there is a great need for a quick yet carefully planned intervention.

53. **Establishing a procurement cadre.** A first step should be the introduction of a cadre of qualified procurement officials. At the moment procurement is mainly carried out by certified supplies officers without adequate procurement training. On the whole, procurement is not viewed as an established profession and does not present an attractive career path, and from this follows the overall lack of incentive schemes for procurement professionals. This situation stands in the way of establishing the necessary capacity for proper procurement in compliance with existing rules. The introduction of a specialised procurement cadre should be vested within the ongoing Public Service

Reform Programme (PSRP). The mission discussed this matter with the leadership of the Civil Service Department (CSD) of the President's Office, which was agreeable to the introduction of a specialised procurement cadre within the civil service career system.

54. **Upgrading and certification of procurement professionals.** There are currently 901 supplies officers employed within the public service. The challenge will be to organise the transition from mere materials management to full-fledged procurement. Ideally the CSD supplies staff category should be replaced with a category of procurement officers, and this category should be recognised within the public service meritocracy on the same level as other professionals, such as administrators, accountants, etc. Recognising that materials management is merely a limited aspect within the larger public procurement framework, it is suggested that a new procurement professional body (PPB) be established. This body should be tasked with the promotion of the new procurement cadre and should replace the NBMM as the certifying body for professionals working with procurement. The PPB should also be responsible for procurement training in close cooperation with the RA. The establishment of the PPB might be carried out by way of transforming the current NBMM, however, in choosing this path it is important to ensure that a truly new organisation and vocation is created.

Public Service Pay and Pay Reform

55. From the on-set the reform of public service pay was a core component of the Civil Service Reform Project (CSRP). The CSRP was launched with two basic objectives for the pay reform: (i) to rationalise the compensation structure by making it more transparent, equitable and efficient; and (ii) to enhance public servants salaries to levels consistent with satisfactory performance motivation and productivity. Considerable progress has been made towards attainment of the first objective, and compensation structures have been simplified through the elimination of some allowances and benefits and consolidation of a simplified salary structure. However, public service pay levels remain low in both absolute and comparative terms, especially compared with salaries offered in the private sector.

Capacity Building Measures

56. Currently the training offered to civil servants in public procurement is at best very sporadic and for the most non-existent. The implementation of the proposed procurement reforms is expected to generate an extensive demand for procurement training over and above the already limited availability, and the Government needs to address this issue by employing both short, medium and long term measures. Training for the reform of public procurement will not only cover the rules and regulations, it will also involve changes in ethical and cultural ways of doing procurement. Future procurement training should also include anti-corruption measures as further deliberated below. In order to create real impact the training must also address the supply side, i.e. the private sector, enabling the local companies to compete in both national and international bidding. On the short term, two immediate actions are suggested:

- *First*, a training needs assessment (TNA) must assess and specify the current capacity and the needs for capacity building within each institution, and will be crucial in the design and further development of a sound training programme
- *Secondly*, a survey of potential training institutions must be carried out in order to ensure the involvement of the most capable institutions.

57. **Nature of the training.** It is suggested that the public servants in need of training be divided into three main categories:

- (i) *Procurement specialists:* These are the persons, who will be involved in and in charge of procurement matters on a day-to-day basis, including the staff of the CTB

- and all central and local government officials who will eventually be certified as procurement specialists
- (ii) *Specialists in need of targeted procurement training:* This group will comprise individuals from the specialised bodies, which do not deal exclusively with procurement, but for which it is important to maintain a high degree of knowledge and experience with procurement related matters, i.e. employees of the PCB, Auditor General and Attorney General's Office.
 - (iii) *Public servants or others periodically involved in the procurement process:* This group includes the members of the tender boards at both central and local government level and the various external and internal experts charged with developing technical specifications, etc.

58. In order to meet the training demands it is important that the training devised be targeted, well-planned and executed in a cost-efficient and value for money oriented manner. It is suggested that a **Public Procurement Training Strategy (PPTS)** be developed. The PPTS should be designed to deliver differentiated training for the above three groups. The PPTS should determine the content and the form of the training. The Public Procurement Training Strategy should be coordinated with the overall training strategy for the public service, and should also address how training will be funded (the choice is whether funds should be held centrally, and earmarked for procurement training, or be deemed part of the general training votes held by departments). Over the longer term, the training function might be coordinated or discharged by the newly created PPB in coordination with RA.

Main Recommendations on Organisation and Resources

Short term

- Establish the Regulatory Authority (RA) as an autonomous regulatory body reporting directly to the Minister of Finance
- Decentralise procurement to ministerial level
- Change legal framework to include private sector representatives and representatives from the Procurement Professionals' Body (PPB) in the Public Procurement Appeals Authority (PPAA)
- Appoint members of PPAA and ensure that it becomes operational
- Provide RA full monitoring and supervisory powers vis-à-vis local government procurement
- Transform supplies units into procurement management units
- Conduct training needs assessment
- Conduct survey of potential training institutions
- Develop Public Procurement Training Strategy.

Medium term

- Establish Information Management System linking RA with procuring entities
- Establish a new cadre of procurement specialists while phasing out supplies officer cadre.
- Conduct certification of procurement specialists
- Conduct information campaign on the new institutional set-up within procurement
- Develop initiatives for civil society involvement in procurement monitoring

- Replace National Board of Materials Management with PPB
- Introduce Selective Accelerated Salary Enhancement (SASE) scheme for key procurement staff
- Coordinate and ensure quality of procurement training
- Implement procurement training programme targeting both public and private sector.

Long term

- Close Government Stores and introduce system based on framework agreements
- Establish MBA program in procurement
- Close Medical Stores Department and introduce framework agreements

4. AUDIT AND ANTI-CORRUPTION MEASURES

59. **Corruption in Procurement.** It is estimated that at the national level about 20 percent of the government expenditure on procurement is lost through corruption, mainly through kick-backs and bogus investments that have to be written off. Considering that public procurement accounts for about 70 percent of the entire government expenditure budget, this translates to a loss of TShs 300 billion (USD 300 million) per year, enough to finance the combined annual recurrent budgets of the ministries of health and education. Clearly such a loss is economically unsustainable. Major losses occur in construction and supply contracts, which are the major avenues for corruption, particularly at the local government level.

60. Transparency International (TI) has consistently ranked Tanzania among the most corrupt countries in the world. However, there has been a significant improvement in this ranking during the past five years (1998-2002) both in relative terms (ranking in relation to other countries) and qualitative terms (with the quantitative score improving from 1.9 in 1998 to 2.7 in 2002). This positive development is due to three main reasons. *Firstly*, most government ministries have taken deterrent measures to identify corrupt elements and expose or retire them “in public interest”. *Secondly*, the government has demonstrated a long-term commitment to eradicate corruption. In November 1999, the National Anti-Corruption Strategy and Action Plan (NACSAP) was issued by the President’s Office. Combating corruption in procurement is one of seven priority areas of the NACSAP. *Thirdly*, there is increased awareness by the general public of the debilitating effect of corruption to the national economy. The general public knows that corruption diminishes public revenue, undermines fair trade, frustrates economic development and increases human suffering.

61. **Auditing.** Auditing of public procurement is exercised by the National Audit Office (NAO). The NAO is an independent agency under the Ministry of Finance as described in the Public Finance Act (PFA) of 2001. According to the PFA, the Controller and Auditor-General is responsible for auditing of all public expenditure and shall report on this to the National Assembly. As a relatively new measure, the PFA requires the NAO to conduct value for money audits for the purposes of “establishing the economy, efficiency and effectiveness of any expenditures or use of resources by any Ministry or department”. In addition, the NAO is urged to make recommendations to the Minister of Finance with the purpose of: preventing or minimising unproductive expenditure of public money; maximising the collection of public revenues; and averting loss of public resources by negligence, carelessness, theft, dishonesty, fraud, and corruption. In recent years the NAO has received increased funding from the GoT to match its comprehensive powers and duties. However, it is widely recognized that the NAO still lacks capacity and skills for procurement auditing, with the result that auditing of public procurement is less comprehensive than may be necessary to ensure a high degree of compliance with the PPA and to combat corruption effectively.

62. **Institutional Set-up for Fighting Corruption in Procurement.** A central issue is the role of the RA *vis-à-vis* the above mentioned institutions, especially the Prevention of Corruption Bureau (PCB) and the NAO. The PCB and NAO have already taken the initiative to establish joint teams, which investigate corruption offences in procurement. It is suggested that the RA is involved in this initiative. Likewise, a technical audit unit for public procurement, the Contract Unit, was established within the NAO in 2001. The auditors in this unit have all received targeted training in procurement auditing. At present a new unit, which will focus on value for money auditing, is being established. It is suggested that ways of cooperation between this unit and the RA are further explored.

63. **Legal Framework.** The Prevention of Corruption Act (PCA) of 1971 provides the overall legal framework for anti-corruption interventions in Tanzania. The PCA has been amended on a number of occasions. One of the more important amendments was adopted in 1990 with the

establishment of the PCB as an independent agency under the Office of Minister for Good Governance in the President's Office. The PCB has recently developed a number of recommendations for amendments of the PCA, including amendments focussing on bribery in procurement procedures and the introduction of whistleblowing procedures.

64. **The National Anti-Corruption Strategy and Action Plans.** The NASCAP launched by the Government in 1999 was a result of a comprehensive consultative process. It recognizes that combating corruption requires a holistic approach that involves institutional reforms, coalition building and raising public awareness. The strategy identifies seven priority areas, including procurement. For each priority area, the strategy has identified several key actions to be undertaken in the short and medium-term by both the government and civil society. It is pertinent to note that the enactment of the PPA is considered one of the most important achievements of the strategy with respect to combating corruption in procurement. However, the challenge remains to put it into practice and ensure implementation of the institutional and legal framework established by the PPA.

65. **Anti-Corruption sector strategies.** After the adoption of NACSAP all MDAs, were directed to prepare anti-corruption plans. These plans were published in September 2001, and review of the sector strategies reveals that corruption in procurement is identified as a problem within 14 government ministries and offices. Some of these ministries, notably those responsible for works, health and education, handle large procurement volumes per year. The corruption problems in procurement encountered by these ministries and offices relate to non-compliance with or abuse of procurement procedures, lack of transparency, loopholes/weaknesses in the procurement system, inefficiency, poor contract specifications and poor contract administration. In order to curb corruption some of the actions planned are to: strengthen enforcement of procedures, strengthen staff capacity; enhance transparency; and strengthen financial auditing. The Permanent Secretaries of sector ministries report to the Chief Secretary through the Good Governance Coordination Unit (GGCU) on implementation of sector strategies and action plans. According to the GGCU, some progress has been made in the implementation of the respective sector action plans, albeit the infancy of the plans, however, it is still too early to provide a proper impact assessment.

66. **Ethics and Integrity.** There are currently two sets of ethics rules governing public servants in Tanzania: the Code of Ethics and Conduct for the Public Service directed towards all public servants and the Leadership Code of Ethics addressed specifically to public service managers. The greatest weakness of the Code of Ethics and Conduct for the Public Service lies in the lack of disciplinary measures and procedures. Thus, the Code refers to other laws for address rather than incorporating review or appeals mechanisms directly in the Code itself. This omission leaves that code of ethics as a rather weak instrument.

67. **Code of Conduct for Registered Materials Management Professionals.** On a more specialised level and of direct relevance to public procurement is the Code of Conduct for Registered Materials Management Professionals issued by the NBMM. This code of conduct outlines the duties and responsibilities of registered material management professionals. It introduces disciplinary measures as well as a review mechanism in cases of misconduct. While the Code of Conduct for Registered Materials Management Professionals serves as a well-developed standard for self-regulation, it is nevertheless recommended that the Code be replaced with a comprehensive ethics code for the new procurement profession. Such a code will serve as an important building block in establishing the new cadre as a profession within and beyond the civil service. It is important that the new code of ethics addresses ethical issues within all aspects of procurement and that disciplinary and enforcement measures are provided for.

68. **Training of PCB investigators.** The PCB has indicated an urgent desire to have a core group of about 60 investigators trained in procurement. The training required by the PCB should cover basic

procurement principles and procedures and should integrate both technical and legal aspects of procurement. A proper understanding of basic procurement principles and procedures will enhance the skills of PCB staff in investigating corruption in procurement.

69. **Monitoring public procurement – access to information and the involvement of civil society and the media.** In many countries the involvement of civil society, the media and the general public in the monitoring of public procurement has served as an important early warning and awareness raising mechanism. An important prerequisite for civil society and media monitoring of public procurement is the possibility of obtaining timely and reliable information about the procurement process. This requires that as much information as possible is made public and that publication is made without delay and in a manner which makes it easily accessible also to stakeholders outside the government system. A broader legal framework determining the rights of citizens to obtain information from the public sector is lacking. A draft Freedom of Information Act has been developed but has not yet been passed by Parliament.

70. **Lack of capacity among NGOs.** The lack of capacity among local NGOs constitutes a deterring factor for civil society involvement in monitoring public procurement. At present the group of NGOs working in the area of anti-corruption is very limited and their capacity remains weak. Most of the NGOs are based in Dar es Salaam with limited outreach and operation in the regional and rural areas. In addition, none of the NGOs encountered have developed particular activities targeting public procurement, and none had planned to do so.

71. **Involving the media.** The involvement of the media in creating public awareness on corruption constitutes one of the seven pillars of the NACSAP. The media serves as an important watchdog in exposing the negative effects of misconduct and corruption within procurement. Also, the media may serve as an important partner in efforts to strengthen public awareness on procurement issues. Unfortunately, the Tanzanian media are presently not fulfilling the watchdog role and sound investigative journalism on corruption and procurement is very limited. The knowledge of procurement is virtually non-existent among journalists, and this situation should be alleviated by the introduction of procurement training specifically designed for the journalists.

72. **Introducing whistleblowing mechanisms.** Whistleblowing is the popular term for the act of raising a concern about malpractice within an organisation. As a means of allowing and encouraging citizens to blow the whistle on malpractices within public procurement, it is suggested that a hotline be established. The hotline could be operated by the RA or by the PCB, which already has a broader corruption hotline.

73. **Performance Indicators to Monitor Corruption in Procurement.** In February 2002 the GGCU issued a report on “Strategic Indicators for Monitoring Cross-Cutting Governance Trends. This report includes a series of indicators for monitoring corruption in public procurement, and annual reports on these indicators are to be forwarded by each MDA to the GGCU. Together the ten indicators provide an overall comprehensive picture of the performance of the procurement system in a specific organization. However, the focus remains on contractual and procedural measures, whereas there is little focus on more “soft” areas within procurement, such as training/ capacity building, and civil society involvement, and it is suggested that such indicators are developed and included in the already established reporting scheme.

Main Recommendations on Audit and Anti-Corruption Measures**Short term**

- Adopt amendments to Prevention of Corruption Act as suggested by PCB. Revoke those amendments, which are in contradiction with fair trial principles
- Amend Code of Ethics for the Public Service to include disciplinary measures and enforcement mechanisms
- Adopt Access to Information Act
- Establish procurement hotline
- Strengthen the audit capacity of the NAO and increase the frequency of audits.

Medium term

- Establish joint investigation and monitoring teams between the RA, the PCB and the NAO
- Develop and implement training for PCB investigators
- Draft new code of ethics for public procurement professionals
- Disseminate and conduct training on Access to Information Act
- Develop capacity building scheme for NGOs to enhance NGO monitoring of public procurement
- Introduce Legal framework for whistleblowing
- Develop and implement information campaign on procurement related whistleblowing
- Adopt and use performance indicators on corruption in procurement
- Strengthen internal controls and audit functions of ministries and other government agencies.

Long Term

- Develop and implement procurement training for journalists.

5. PUBLIC SECTOR MANAGEMENT PERFORMANCE

74. **Value of procurement.** Because neither the MoF nor the CTB collect and publish data on the performance of the public procurement system, a reliable estimate of the value of expenditure on public procurement in Tanzania is difficult to make. However, Tanzania's total annual expenditure budget is estimated at Tshs 2.0 trillion (equivalent to USD 2 billion), and according to the NAO about Tshs 1,400 - 1,500 billion or just over 70% is expended annually by the Government through public procurement.

75. **Public Sector Reform Programmes.** A number of reform programmes have been ongoing in Tanzania since 1995. The programmes are primarily aimed at the alleviation of poverty through the equitable distribution of services to all sectors and sections of the community. The programmes include the:

- Public Financial Management Reform Programme (PFMRP)
- Tax Administration Project (TAP)
- Public Service Reform Programme (PSRP):
- Poverty Reduction Strategy (PRS):
- Local Government Reform Programme (LGRP)
- National Anti-Corruption Strategy and Action Plans (NACSAP):
- Accountability, Transparency and Integrity Program (ATIP):

76. **Status of Public Financial Management.** In May 2001, the Government of Tanzania and donors jointly carried out a Country Financial Accountability Assessment (CFAA). Despite a number of significant improvements in financial accountability, the CFAA pointed to a number of deficiencies and a total of 170 recommendations were proposed. The CFAA noted that Tanzania has advanced in the areas of accounting and expenditure control, and that a sound system of formal rules for financial management has been put in place. However, the CFAA also noted that despite the improvements, the financial management framework is still characterized by:

- Inadequate macroeconomic forecasts
- Weak resource mobilisation, allocation and monitoring
- Inadequate strategy for debt management
- Expenditure base, which is too broad relative to funding prospective
- Failure to record and optimise external and internal revenue opportunities
- Low levels of public service capacity and performance
- Inadequate financial accountability and discipline
- Weak cash planning and management
- Weak procurement procedures and practices
- Ineffective scrutiny and oversight.

77. For procurement, a few of the recommendations of the CFAA have already been adhered to, namely the: development of Regulations for the PPA; and the preparation of procurement manual and standard documents. However, most of the recommendations of the CFAA have still not been met and are consequently repeatedly dealt with in this report. These include recommendations on capacity building measures, the establishment of a procurement cadre and development of a procurement support facility within the CTB. The fact that most of the recommendations of the CTB have not been followed up, may for some part be explained by the wish to wait for the detailed recommendations of the present CPAR. However, as in many other countries, Tanzanian reform efforts, may often be delayed under the pretext of one review or the other, where sometimes reform should simply be initiated and then be subject to subsequent review. In this case, the lack of follow-up on the CFAA

recommendations may be seen as an indication of lack of resources and reform capacity within Government rather than the lack of political will.

6. E-PROCUREMENT

78. E-procurement as a term is used to describe a procurement system that utilises the possibilities created by electronic communication and office computers. As such an e-procurement system is governed by the same basic principles as a normal paper-based system. The main purpose of the system is to promote value for money in public spending, through the application of sound, transparent practices. However an e-procurement system can offer a number of advantages over a normal paper based system of procurement. The main advantages are easy and cost effective access to information. Examples could be bidders access to advertisements, authorities access to legal documents and guidelines, and the access of oversight authorities to individual electronic procurement protocols and any documents on file.

79. The different issues facing a country wishing to implement an e-procurement system can be outlined as follows:

Fig. 1: E-procurement issues

Issue areas	Requirements
Governance	<ul style="list-style-type: none"> - Adapted legal framework - Oversight organisation in place
Human Resources	<ul style="list-style-type: none"> - Capacity to utilise system in place and well trained staff
Institutions	<ul style="list-style-type: none"> - Work flows adapted to system - Uniform information(data) schemes applied - Functioning market able to perform under new system
Technology	<ul style="list-style-type: none"> - Infrastructure in place - Access to infrastructure established through office technology - Necessary e-procurement software in place.

80. While access to information is the main stem of any procurement system e-procurement can be approached from different angles. The e-commerce approach includes setting up an electronic marketplace to improve the efficiency of the market and promote value for money. However, looking at the issues identified in the procurement environment of Tanzania it is evident that the more pressing problems of information dissemination and transparency should be prioritised. The different types of e-procurement systems, each with increasing level of sophistication and requirements are presented in Figure 2.

Fig. 2: Features and complexity of e-procurement systems

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

81. An electronic information system could be introduced in Tanzania, with minor changes in the legal framework, and thus may not produce higher technological demands than a computer with Internet access in each of the procuring entities. On a longer term, the system should develop into a full fledged business-to-government commercial marketplace, with facilities for online contracting and execution of the entire procurement process, from advertisement to handling of variations through electronic means. The introduction of such a system may require quite substantial changes to the basic laws of contracting in Tanzania in areas such as electronic formation of contracts and signatures.

Main Recommendations on E-procurement

Short term
<ul style="list-style-type: none"> • Make the Procurement Journal accessible through the Internet to reduce advertisement costs and make all tender notices, notices of extension and notices of award available for bidders and the public. • Launch project to assess current status of the requirements for e-procurement, nature and size of any benefits expected, and the maturity of the private market.
Medium term
<ul style="list-style-type: none"> • Make online access to a centralized database of prices on commonly procured items to improve the quality of tender documents. • Support ongoing efforts to introduce technology (pcs and Internet access) to the entire public sector. • Make tender documents available for download in electronic form to reduce time spent on post service and increase access for potential bidders while at the same time reducing costs. • Make administrative decisions from the CTB and relevant court decisions accessible to help in shaping a common understanding of the main principles in sound procurement and strengthen the effort to harmonize practices throughout the public sector. • Establish isolated pilot projects in sectors most likely to benefit and where the listed requirements are most easily met.
Long term
<ul style="list-style-type: none"> • Enable public access to the procurement protocols that has now been entrenched in the Regulations, thereby enlisting the public in the ongoing effort to enforce the rules to the best of society as a whole.

7. PERFORMANCE OF BANK FINANCED PROJECTS

82. Parallel with the CPAR exercise the World Bank undertook an Independent Procurement Review (IPR) of: 40 selected contracts in Health Sector Development Fund Projects; 34 under Integrated Roads Project (IRP-II), 25 in Agricultural Research Projects, 35 Social Action Fund Projects; and 14 contracts in Public Service Reform Projects. The total of 138 contracts reviewed are funded by World Bank, the African Development Bank and the Government. 3 contracts originally selected under IRP-II (TANROADS) could not be reviewed due to non-availability of records and documents. The main shortcomings identified were:

- Poor procurement planning, leading to packaging of procurement in projects not supporting value for money and selection of wrong procurement method.
- Inadequate advertising, limiting the field of potential bidders, thereby reducing competition and value for money.
- Excess use of shopping method, reducing the portion of the project costs that are carried out through the preferred tendering methods.
- Lack of proper documentation of tender process and record keeping, hindering proper enforcement and audit of projects.
- Evaluation reports of uneven quality, leading to non-transparent application of award criteria.
- Unrealistic implementation timeframes applied, leading to extensions of timeframes, which again increases costs.

83. **Recommended Supervision Plan.** In order to address these shortcomings a series of supervision measures are recommended:

- The importance of proper procurement planning, including packaging and choice of procurement method must be emphasized by providing additional focus on substantiating the individual steps of the procurement plan. Higher quality in procurement planning would also address the problem of unrealistic timeframes by forcing the accounting officers to apply timeframes suited for that particular project.
- The issue of inadequate advertisement should be seen in connection with the general recommendation that a procurement journal is established in Tanzania. Mandatory use of such a journal would certainly address the problems of potential bidders having to access different sources of information.
- The remarkably high percentage of procurement carried out by the shopping method should be examined more closely and all accounting officers should be required to substantiate why a shopping method was used if not in the procurement plan.
- The poor record keeping could be addressed by stepping up the number of audits, and by requiring a signed list of the present contents of the procurement file as a prerequisite for Bank approval.

8. GENERAL RISK ASSESSMENT

84. Any assessment of risk in a country's national public procurement system should be based on the stage of development of its legislative framework, the effectiveness of its regulatory institutions, the strength of its enforcement regime, the capacity of its institutional and human resources and the threat of corruption.

- Tanzania's **legal framework** has been thoroughly revised since the introduction of the new Public Procurement Act (2001), the Regulations (2001), the Standard Bidding Documents (2002) and the regulations on local government procurement just issued in March 2003. Some important steps still need to be taken, such as the establishment of a credible complaints system through the formation of the Public Procurement Appeals Authority and the creation of a procurement journal, but the legal framework is largely up-to-date and in compliance with international standards.
- However, the on-going legal reforms have accentuated the problems that exist in the actual procurement **procedures and practices**. There is a huge gap between existing rules and actual practices. This gap is caused in part by lack of capacity and knowledge and in part by corrupt behaviour that is allowed to flourish because of weak enforcement. The large gains that the country has made in reforming the legal framework will all be in vain if compliance with the new rules are not rigorously enforced.
- The **enforcement regime**, which underpins the procurement legislation, is particularly weak in Tanzania. Audits are very rarely carried out and never in adequate scale. External auditing is still in its infancy and current mechanisms for reviewing bidders' complaints are non-functioning. As a result, the accountability of public officials for the procurement decisions they make is undermined.
- While **regulatory functions** are vested in the CTB (albeit, mixed with executive functions) the oversight responsibility of the board is not clearly defined, particularly at local government level, and the authority of the CTB to ensure compliance is unclear. In addition, the CTB lacks both adequate budget and staffing to enable it carry out its responsibilities effectively.
- With a few exceptions, the **public sector institutions**, which conduct procurement, are ill-equipped for the task. Most ministries do not have dedicated organisational units to undertake procurement, and **staff** who handle the task invariably do so without training. The problems are exacerbated at regional and local government levels. The entire country lacks a planned training system for procurement.
- **Corruption** in Tanzania is widely recognized as being a real and widespread problem and appends itself particularly to public procurement, given the substantial expenditure, which all levels of administration make in this area.

Measured against all of these parameters, the environment for conducting public procurement in Tanzania is one of **high risk**. However, the Government is determined to implement the recommendations contained in this report to address the above weaknesses. There is strong political will to improve the system and the process to amend the Procurement Act has already started. The main risk in the success of these reforms is the possible lag between building capacity to operate the reformed system and the timing of the various reform actions. This risk will be mitigated through a carefully designed implementation plan that will endeavour to synchronize capacity building with the overall reform agenda.

Prior Review Thresholds for World Bank Financed Projects

85. Notwithstanding the above general risk assessment, specific assessment will vary from project to project depending on the capacity of the implementing agency as determined on a case by case basis by the procurement capacity assessment. In the context of this assessment, the prior review maximum thresholds in **Table A** will be applicable for the various procurement methods used in World Bank financed projects.

Table A: Maximum Prior Review Thresholds and Procurement Methods

Expenditure Category	Contract Value Threshold US\$ equivalent			Procurement Method	Contracts Subject to Prior Review
	High Risk	Medium Risk	Low Risk		
1. Works					
Major Works	≥500,000	≥5,000,000	≥10,000,000	ICB	All
Small works	<500,000	<5,000,000	<10,000,000	NCB	Ex-Post
Minor Works	<50,000	<50,000	<50,000	At least three written quotations from qualified contractors	Ex-Post
2. Goods	≥250,000	≥500,000	≥1,000,000	ICB	All
	<250,000	<500,000	<1,000,000	NCB	Ex-Post
	<30,000	<30,000	<30,000	Shopping	Ex-Post
3. Consultancy Services					
Firms⁴	≥100,000	≥350,000	≥750,000	QCBS	All
	<100,000	<350,000	<750,000	CQ/QBS/LCS/FBS	Ex-Post
Individuals	≥50,000	≥100,000	≥200,000	IQ	All
	<50,000	<100,000	<200,000	IQ	Ex-Post
Firms/Individuals	All	All	All	Single-Source	All
4. Training, Workshops, Study Tours	≥50,000	≥50,000	≥50,000	QBS/CQ/LCS/IQ	All
	<50,000	<50,000	<50,000	QBS/CQ/LCS/IQ	Annual plans

QCBS – Quality and Cost Based Selection

CQ – Consultants Qualifications

LCS – Least Cost Selection

FBS – Fixed Budget Selection

IQ – Individual Qualifications in accordance with Section V of the Guidelines.

⁴ For contracts estimated to cost US\$200,000 or less the shortlist of firms may consist entirely of national consultants

9. COMMERCIAL PRACTICES AND CUSTOMS

86. Tanzania embarked on the road towards liberalization in 1985 after almost two decades of central planning characterised by excessive government intervention in economic activities. Trade liberalisation, privatisation and investment promotion, tax, financial and civil service reform followed and has been expanded since. Agriculture is by far the most important sector followed by trade and tourism, financial and business services and manufacturing. Major exports are gold, cotton and coffee, and major imports are consumer goods, machinery and industrial raw materials.

87. **Trade policies and business conditions in general.** Tanzania's effort to reform and improve its trade environment has picked up speed over the last five years. The most important improvements are the reduction in import duties and the extensive elimination of export and import licences.

88. **Collateral.** To issue Letters of Credit banks require as collateral either cash cover or landed property. The value of the security should either be 100% cash cover and the value of landed property should be at least 125% of the secured amount. Suppliers complain that the rates are too high and claim that this is one of major impediments in the import process. The banks argue that the high rates are charged due to the weak legal environment, the high cost of capital, the high degree of risk, general loan recovery problems, and collateral recovery problems.

89. **Tax closure.** Another issue concerns tax collection, where companies complain that they cannot obtain proper closure from the TRA of their tax payments at the end of the year. This forces them to put aside resources and to operate with overheads twice the size of what is necessary for other countries in the region. The effect on competitiveness is obvious.

90. **Custom Practices and Authorities in General.** Customs and Port Authorities in general have the reputation of being a hindrance for importers throughout Tanzania. Unpredictable and lengthy clearance delays and facility payments are said to be commonplace. Most often legal action is not taken and penalties not imposed on those breaking the rules, and the institutions and companies that are to report irregularities and enforce penalties often experience pressure from e.g. politicians not to impose penalties. It is vital that this issue be addressed if adherence with proper procedures is to improve.

91. Over-invoicing, under-invoicing, false labeling and incorrect description of goods on invoices are frequently practiced by importers. In addition, some clearing agents demand facility payments from importers even when such payments are not necessary. The general professional level of the clearing agents is said to be low, and there is insufficient knowledge of the details of import regulations and procedures, and there is a need for training of clearing agents in ethics, regulations, procedures and practices concerning the import process.

92. **Import Procedures and Practices.** The issue in need of urgent attention is that of Pre-shipment Inspection (PSI). PSI was introduced almost 20 years ago to counteract lack of efficiency in Destination Inspection (DI) at that time. In principle PSI is a temporary measure, which should only be used until sufficient competence, organisation and ethics are in place for reverting to DI. It is generally recognised that due to a variety of factors, PSI is no longer the most efficient measure to ensure that goods are declared correctly, and there is strong evidence that PSI is also inefficiently carried out in Tanzania. The introduction of a Post Entry Audit (PEA) Programme in December 1999 to inspect the already inspected goods confirms this notion.

93. Thus, all indicators point towards an urgent need to move from PSI to DI. This is not a new issue. The need to move from PSI to DI has been recognised but not acted upon. Two years ago, a plan was drawn up by the TRA and Ministry of Industry and Trade with the assistance of SIDA and agreed upon with the aim of reforming customs, building capacity, introducing DI and terminating PSI as of 31 December 2002. However, to this day the first step of the plan has yet to be initiated. The Customs Department does not at present have the competence and capacity to implement and operate an overall DI system.

94. **Private Sector Procurement** Procurement practices in the private sector are generally weak, except within a few large companies, and among them some ex-parastatals, which have very strong procurement practices both for national and international procurement. This knowledge base could be utilised by the training institutions by inviting experienced procurement officers from the private sector to serve as guest lecturers. Furthermore, some private companies have developed incentive schemes for procurement officers where part of the salary depends on the officer's ability to cut cost by obtaining the best quality at the lowest price. These incentive schemes could be of interest for the public sector as a measure to improve procurement efficiency.

95. **Private sector performance on public procurement contracts.** Inadequate performance in terms of suppliers not delivering the assets they were contracted for is to be expected when corruption is widespread in procurement. This is due to the fact that money spent on facility payment must be recovered somewhere else in the business process. The IPR and its site visits aimed at verifying procured assets does, however, not point towards substandard deliveries being systemic and pervasive. Irregularities are reported, but not as a systemic observation.

Main Recommendations on Commercial Practices

Short term

- Establish procedures to ensure the follow up on suggested measures and recommendations in the study done by The Sub-Committee of the Shipping Industry Consultative Forum
- Intensify the effort to implement and enforce ethically correct practices as well as adherence with rules and regulations on the side of customs, importers and clearing agents. Legal action has to be taken and penalties imposed on importers that are "caught cheating"
- Draw up and implement a plan for a shift from PSI to DI
- Revise and simplify the procedures for businesses to provide collateral, thus allowing the activation of the hidden value in land and other property.
- Look into the possibilities of establishing a guarantee scheme or another support measure (excluding any forms of subsidisation) that may lower the high interest as well as performance and bid bond costs
- Establish and enforce procedures that allow companies to obtain closure of their tax payments at the end of each year

Medium term

- Look into the possibilities of establishing a guarantee scheme or another support measure (excluding subsidisation) that may lower cost of obtaining letters of credit for suppliers.
- Elaborate and implement an obligatory training programme for clearing agents
- outsource implementation and operation of Destination Inspection to a private inspection company
- Incorporate experienced procurement officers as trainers in their training institutions' procurement courses

Long term

- Hand back the DI operation to customs when capacity is in place

10. ZANZIBAR

96. **Background.** Zanzibar has developed its own Poverty Reduction Strategy Paper (PRSP), securing some support from the international community. Thus, it is planned that 4,5% of PRSC funds will go to Zanzibar, stressing the need for increased focus on public expenditure and as part hereof, on public procurement. At present, public procurement accounts for app. 40% of the state budget, which in the FY01/02 totaled Tshs 86.400 billion. By virtue of the constitutional independence of Zanzibar, matters of public expenditure and public procurement are a prerogative of the Government of Zanzibar.

97. **Legal Framework.** The Act to Establish the Central Tender Board in Zanzibar and Other Related Matters (CTBA) came into effect on 1 July 2002 and repeals the procurement provisions of the previous legal framework. The CTBA, which both establishes a CTB and addresses issues of the procurement process, is supposed to be based on the Public Procurement Act of Tanzania mainland. A review of the legal framework reveals the following main shortcomings:

- *Role of the CTB.* The CTBA provides extensive powers to the CTB. Thus, the CTB is endowed with both regulatory and executing functions. This poses a serious threat to the functioning of the board.
- *Appeal.* The complaints and appeals procedures includes the Minister of Finance as the third level of review, by which a political level within the appeals process is inserted. This constitutes a serious flaw of the CTBA, and it is recommended that a regular, independent Appeals Body be established.
- *The lack of Regulations,* which are supposed to determine authorisation thresholds and describe the practical application of such critical issues as conditions for selection of procurement method and contents of bidding documents.

98. The review of the CTBA reveals a number of defaults, whereby a general overhaul of the Act is recommended. As an interim measure, providing a legal base for procurement while the CTBA is amended, it is suggested that the Ministry of Finance and Economic Affairs (MoFEA) issue instructions authorising the ministries/Accounting Officers to approve all contracts. This would at least legalise the current practices.

99. **Procedures and Practices.** The procedures and practices of procurement in Zanzibar are marred by the lack of a proper legal framework. Thus, at present procurement, apart from donor funded procurement, is conducted on an ad hoc basis leaving extensive discretion to the Accounting Officers in the Ministries. While some of the procuring entities are applying the rules of the now void Treasury Instructions, others have simply adopted their own procedures. The procedures and practices of procurement in Zanzibar have the following characteristics:

- Complete lack of *procurement planning*.
- Excessive use of *competitive quotation* (shopping) at the discretion of the Accounting Officer and without pre-qualification.
- *Contract award* largely based on which supplier can provide credit.
- *Standard contracts* are rarely used, In some cases, contracts are not signed at all, and instead delivery is based on a so-called "gentlemen agreement."
- *Post-contract negotiations* are common practice.

- *Weak enforcement* illustrated by the lack of disciplinary and penal measures as well as lack of complaints by bidders.
- A general *information void* on all aspects of the procurement system, including the recently enacted CTBA.

100. All in all, the review of procedures and practices portrays a situation of complete disorganisation. The review has identified arbitrary applications of principles and standards, high risk of and indeed situations of conflict of interest. This, in turn, leaves room for fraud and corruption to flourish. In order to amend the situation, the new legal framework must be in place and capacity building at all levels provided.

101. **Organisation and Resources.** The organisation and resources of procurement in Zanzibar mirrors the situation as described for the legal framework and procedures and practices. Hence, the organisation may only be characterised as fragmentary and resources as scarce. When prioritising interventions in this area, the following issues needs foremost attention:

- *The role of the CTB.* As in Tanzania mainland, where a key recommendation is the division of regulatory and executive functions and the transformation of the CTB into a purely regulatory body, the CTB of Zanzibar should undergo a similar transformation. Thus, a Regulatory Authority for Zanzibar (RAZ) should be established as an autonomous body under the auspices of the MoFEA.
- *Decentralisation.* In addition to the CTB, the CTBA establishes tender board for ministries (Ministry Tender Committee) and for parastatals. There are currently no ministerial tender boards in place, and thus no prior experience, neither organisational nor human, with such arrangements. This has to be taken into account when **decentralisation** is being structured. Thus, decentralisation must be matched with extensive capacity building, in particular at ministerial level, as well as the introduction of an information management system similar to that suggested for the mainland.
- The current *Appeals system* for procurement is flawed. The CTBA does not provide for a proper appeals authority, in that the Minister of Finance serve as the point of final administrative review. To mend this situation it is suggested that Zanzibar establish a public procurement appeals authority along the same lines as that of Tanzania mainland.
- The lack of *capacity* both in human and institutional terms, pose the greatest challenge to the development of a sound procurement system in Zanzibar. Only a very limited number of public officials have experience with regular procurement and there is an extensive need for sensitisation and training in procurement, which might very well be carried out in cooperation with mainland institutions. Thus, a training programme should be developed including the same features as for the mainland.

102. **Anti-corruption.** Evidence points towards widespread corruption in public procurement in Zanzibar. Fighting corruption in Zanzibar is mainly the responsibility of two government institutions: the Anti-Corruption and Fraud Squad of the Police Force and the Ministry of State for Constitutional Affairs and Good Governance (MSCAGG). In September 2002 the MSCAGG appointed a committee to draft a leadership code of ethics and a new law for combating corruption in a more comprehensive manner. The intention is to establish institutions similar to the PCB and Ethics Commission of the

mainland. The Ministry hopes to secure the approval of the House of Representatives for the new bills by July 2003.

103. **The Private Sector in Zanzibar.** There has been a steady movement towards liberalisation of the economy in Zanzibar, and although there are still restrictions on e.g. foreign investments in some areas, these are few and limited in scale. However, the stability or static nature of the different sectors suggest an economy that is still highly regulated and insufficiently liberalised to generate change and growth on its own. Contrary to the mainland, Zanzibar does not have PSI, as the Government was hesitant to approve this measure when it was introduced in the mainland. Thus, the current system is based on DI. Both custom clearance and release is reportedly conducted effectively by the Customs and by the clearing agents. In case of re-export to the mainland, the clearing agents complain that clearing goods is a big problem taking two to three weeks even after clearance by the Zanzibari authorities. The delay in re-export from Zanzibar to Tanzania mainland may partly be explained by the reports of extensive smuggling taking place via the Zanzibari ports, which has also caused the government to drop the export-processing zones. Reportedly the smuggling via Zanzibar mainly concerns imported foodstuffs and consumer goods, which are illegally re-exported to the mainland (some are never counted as imports). The practice is well established as the “Zanzibar loophole”.

Main Recommendations on Zanzibar

Short term
<ul style="list-style-type: none"> • Issue intermediary instructions to legalize the current procurement practices • Revise the legal framework, i.e. the CTBA to reflect standards of a sound procurement system • Draft and issue procurement Regulations • Reform the CTB into a purely regulatory body (RAZ) • Establish ministerial tender boards and PMUs • Develop anti-corruption strategy and action plan for Zanzibar • Review the current legal framework of relevance to anti-corruption • Train 2-3 investigators from the Anti-corruption and Fraud Squad
Medium term
<ul style="list-style-type: none"> • Introduce a flexible model for delegation of authority from CTB to ministerial tender boards • Establish a Public Procurement Appeals Authority modelled on that of the mainland • Develop and implement procurement training programme for key institutions and individuals. • Strengthen collaboration and coordination with the anti-corruption institutions of Tanzania mainland • Initiate sensitisation of the civil society, media, business community and general public on corruption matters • Outsource destination inspection to a private inspection agency
Long term
<ul style="list-style-type: none"> • Develop and implement a capacity building programme for organizational and human development in procurement

11. Action Plan for Implementing Proposed CPAR Recommendations

104. The attached **Table B** is a proposed Action Plan for the key recommendations.

Table B – Action Plan for Key Recommendations

Issue	Action Required	Timing			Responsibility
		Within 12 months	Within 24 months	Beyond 24 Months	
Weak Legal and Regulatory Framework	Disseminate New Local Government Regulations	♦			President's Office - Regional Administration
	Establish the Public Procurement Appeals Authority	♦			MOF
	Introduce necessary amendments to the PPA including decentralizing procurement operations, establishing a Regulatory Authority, introducing time limits for processing procurement actions and providing protection for whistleblowers	♦			MOF/CTB
	Establish a Procurement Journal		♦		MOF
Weak Enforcement of Existing Procedures	Enforce existing rules on advertising, pre-qualification, submission and opening of bids, and the use of appropriate evaluation criteria through regular audits	♦			MOF/CTB/RA
	Introduce a credible complaints mechanism, by strengthening the complaints handling ability of the CTB and establishing the Public Procurement Appeals Authority	♦			MOF
	Enforce procurement planning through monitoring and capacity building		♦		MDAs/CTB/RA
Weak Organization and lack of Resources	Separate operational and regulatory functions of the CTB, establish RA and decentralize procurement	♦			MOF
	Prepare Capacity Building Strategy	♦			CTB/CSD
	Establish Information Management System linking RA with procuring entities		♦		RA
	Establish New Cadre of Procurement Specialist		♦		RA/CSD
	Establish a system of certification for procurement specialist		♦		RA
	Close Government Stores and introduce a system based on framework agreements			♦	MOF
	Introduce Selective Accelerated Salary Enhancement (SASE) scheme for key procurement staff		♦		CSD
	Implement procurement training program targeting both public and private sector		♦		RA
Corruption	Train PCB investigators on procurement		♦		PCB
	Monitor public procurement through involvement of civil society and media			♦	RA
	Introduce whistleblowing mechanism by opening a procurement hotline		♦		PCB
Weaknesses in Commercial Practices	Revise and simplify procedures for obtaining collateral for securing loans		♦		MOF
	Look into possibilities of establishing a guarantee scheme that could lower the cost of bid and performance bonds			♦	MOF
	Draw and implement a plan to shift from PSI to DI			♦	MOF

Issue	Action Required	Timing			Responsibility
		Within 12 months	Within 24 months	Beyond 24 Months	
Weaknesses in World Bank Financed Projects	Enforce preparation of acceptable procurement plans with appropriate procurement methods		◆		MOF/RA/NAO
	Enforce use of Procurement Journal for advertising			◆	RA
	Initiate a study on the apparent excessive use of the shopping method	◆			RA
	Enforce proper record keeping through frequent procurement audits			◆	RA/NAO
Weaknesses in the Zanzibar System	Issue intermediary instructions to legalize the current procurement practices	◆			Ministry of Finance Zanzibar
	Revise the legal framework, i.e. the CTBA to reflect standards of a sound procurement system	◆			Ministry of Finance Zanzibar
	Draft and issue procurement Regulations	◆			Ministry of Finance Zanzibar
	Reform the CTB to maintain limited executive function	◆			Ministry of Finance Zanzibar
	Establish ministerial tender boards and procurement management units	◆			Ministry of Finance Zanzibar
	Introduce a flexible model for delegation of authority from CTB to ministerial tender boards		◆		Ministry of Finance Zanzibar
	Establish a Public Procurement Appeals Authority modeled on that of the mainland		◆		Ministry of Finance Zanzibar
	Develop and implement procurement training program for key institutions and individuals			◆	