



**29057**

**ETHIOPIA**  
**COUNTRY PROCUREMENT ASSESSMENT REPORT**

**Volume I**

**FINDINGS AND RECOMMENDATIONS**

**June 28, 2002**

*Africa Region*  
*Operational Quality and Knowledge Services*  
*The World Bank*

## **CURRENCY UNITS**

Currency Unit = Ethiopian Birr  
US\$ 1.00 = Birr 8.45  
Ethiopian Fiscal Year = July 11- July 10

## **ABBREVIATIONS AND ACRONYMS**

AASWA	Addis Ababa Water and Sewerage Authority
ADB	African Development Bank
CBDS	Capacity Building for Decentralized Service Delivery
CPIA	Country Policy Institutional Assessment
CSRP	Civil Service Reform Program
DFID	department for international Development (UK)
ERA	Ethiopia Road Authority
EU	European Union
IBRD	International Bank for Reconstruction and Development
ICB	International Competitive Bidding
IDA	International Development Association
IDC	Indefinite Delivery Contracts
IS	International Shopping
LIB	Limited International Bidding
MEDAC	Ministry of Economic Development and Cooperation (until year 2001)
MFA	Ministry Foreign Affairs
MCB	Ministry of Capacity Building
MOE	Ministry of Education
MOF	Ministry of Finance
MOF-ED	Ministry of Finance – Economic Development (formerly MEDAC)
MOI	Ministry of Infrastructure
MOWUD	Ministry of Works and Urban Development (until 2001)
MTSE	Maritime Transit Service Enterprise (Ports)
NBE	National Bank of Ethiopia
NBP	No Bribery Pledge
NCB	National Competitive Bidding
NFIA	National Seeds Industry Agency
NS	National Shopping
PSCAP	Public Service Delivery Capacity Building program
RELG	Restructuring and Empowering Local Governments component
RTA	Road Transport Authority
SIDA	Sweden International Development Agency
UDCBO	Urban Development Capacity Building Office (formerly UDSS)
UDSS	Urban Development Support Services (until 2001)
ULGA	Urban Local Government Authority (including Kebeles and Woredas)
UNCITRAL	United Nations Commission on International Trade Law

## **PREFACE**

The Country Procurement Assessment Report (CPAR) of Ethiopia is the result of the joint efforts of the Government of Ethiopia and the World Bank (WB)<sup>1</sup>. It was carried out in close coordination with the Legal and Procurement departments of the Ministry of Finance and Economic Development (MOFED) and donors. The CPAR assesses the strengths and weaknesses of the country's procurement policies, organization and procedures, and recommends suitable actions to improve the economy, efficiency, and transparency of the public procurement system. The CPAR team reviewed relevant Ethiopian laws and regulations and documents of other organizations, including World Bank internal documents, listed in Appendix 4 in the Attachment to the CPAR. The CPAR team is grateful for the cooperation and support by public officials and by the representatives of the private sector. A list of persons met is in Appendix 5 of the Attachment.

The report contains (a) an Executive Summary highlighting the main issues of Ethiopia's public procurement system, and proposing an action plan for procurement reform; (b) the Main Report entitled "Findings and Recommendations", and (c) an Attachment entitled "Data and Analysis" which include nine (9) Annexes in a question and answer format on the legal, commercial and financial framework for public and private sector procurement, consulting services, and procurement performance in WB financed projects. It also contains a Checklist of national procurement procedures as compared to those practiced by IDA.

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<sup>1</sup> The CPAR was carried out during the period December 2001-April 2002, by a CPAR team, comprising officers of the Legal and procurement departments of MOFED, led by Ato Wassihun Abate, and a World Bank Team, led by Francesco Sarno, Task Team Leader, (AFTQK) and including Messrs. Samuel Haile Selassie, Narayanaswami Viswanathan (consultant AFTQK) and Michael L. O. Stevens (AFTPR). Messrs. John Schwartz (consultant, AFTQK) and John Van Dick (consultant, WBIGS) made valuable contributions to the final draft of the CPAR Volume I. Volume II updates the CPAR of 1998 carried out by F.P. Sarno/ N. Viswanathan. Peer reviewers were Robert Hunja (OPCPR), Frederick Krantz consultant, MNA Region, Peter Moll (AFTM1), Frederick Kilby (AFTM2), Duvvuri Subbarao (AFTM2) and Navin Girishankar (AFTPR).

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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

### Context of the CPAR

#### Background

1. Ethiopia is an important country with a growing economy. It is a democratic federation of nine states, governed by a bicameral legislature with 656 representatives combined, a Prime Minister and a President. It receives substantial aid from the international donor community. It is the largest beneficiary in Africa of IDA funds, with \$669 million committed in the IDA fiscal year ending June 31, 2001. In addition, Ethiopia receives significant bilateral assistance from Germany, Sweden, the European Union, Italy and the United States. The UN has an extensive program in Ethiopia's education sector. A large number of international and local NGOs are active in the country.

2. The approximate value of public procurement of goods, works and consulting services financed by external assistance and external loans for the Ethiopian Fiscal Year [2002] is estimated at Birr 1,755.44 million (about US\$ 208 million equivalent.) The approximate percentage of goods, works and consulting services financed by external agencies is 24%. With a GNP per capita of US\$110, and the vast majority of its 60 million people living on less than US\$1 per day, sound fiduciary management of public procurement is, therefore, of primary importance to Ethiopia's economy. Currently the bulk of spending is still carried out by the federal Government, with the ministry of Defense in 2001/02 comprising more than half of the recurrent budget net of debt servicing and other special deductions. On the capital budget side the Ethiopia Roads Authority (ERA) counts for just under half the provisions, followed by the Civil Aviation Authority.

3. Currently little spending takes place at the *woreda* level, and much of the latter' budgets are administered by *zonal* administrations, which are deconcentrated branches of regional government. the capacity of local governments to prepare and execute budgets and carry out procurement varies. the more advanced regions have some capacity, emergent smaller regions very little. Likewise with local government, while major cities like Addis Ababa and Dire Dawa have been procuring for years on their own account, *woredas* have effectively no capacity. In due course, direct *woreda* spending will rise following Ethiopia's decentralization program.

4. Ethiopia is currently undertaking a radical program of decentralization of the powers and functions of the state to autonomous regional governments . These efforts, driven by a high degree of political commitment, are now being intensified through "second generation" reforms which are further decentralizing service delivery responsibilities to *woredas*, local governments entities within regions. this transformation of a formerly highly centralized and controlling central government has major capacity building implications, of which procurement reform constitutes an important part. The overall framework for the reform is the National Capacity

Building Program (NCBP) under the coordinating responsibility of the newly formed Ministry of capacity building.

5. A key sub-program of the NCBP is the Civil Service Reform Program (CSRP) which was originally begun in 1996, and recently relaunched with three core sets of activities: (i) resource control and management, (ii) accountability and transparency and (iii) performance and service delivery. Budget, financial management, procurement, anti-corruption and audit reform comprises components of these core sets, and date back to the launch of the CSRP. The CRSP aims to prototype new systems and capabilities at the federal Government level, which once tested can be developed at sub-national levels, given that the Regions are accustomed to follow closely the administrative machinery and processes of the Federal Government. the training challenge is huge, entailing the delivery of training models in federal institutions such as the Civil Service Training College, Regional training institutes, and private sector providers, blending supply and demand led approaches, such as special training fund

6. **Objectives of the CPAR.** The CPAR has been prepared to provide (i) an analysis of the country's public sector procurement, including the legislative framework, organizational responsibilities and capabilities, present procedures and practices, and how well these work in practice; (ii) a general assessment of the institutional and organizational risks associated with the procurement process, and (iii) a detailed action plan for improvements. It is an integral part of the World Bank's Country Assistance Strategy (CAS) for Ethiopia. Its recommendations concerning decentralization and capacity building are consistent with initiatives proposed under the CAS and other economic sector work, such as the Public Expenditures Review (PER) and Country Financial Accountability Assessment (CFAA). The CPAR recommendations are coordinated with donors such as the EU, UK and Sweden, which are also engaged in procurement reform initiatives with the Government.

7. The CPAR will serve as an input for a possible PRSC (Poverty Reduction and Strategy Credit) that may be prepared for Ethiopia for FY03/04.

## **Findings of the CPAR**

8. **General Assessment.** The CPAR has reviewed the Ethiopian procurement system against the generally accepted international principles of sound procurement fiduciary management, meeting the criteria of transparency, economy and efficiency necessary for an optimal use of scarce public funds. These criteria are: (i) existence of a comprehensive and transparent legal framework, including a clear, well defined organizational structure to ensure the application of procurement laws with adequate monitoring; (ii) the use of modernized procurement procedures and practices; (iii) a proficient and evenly distributed procurement staff; (iv) existence of an independent control mechanism, including a functioning system to treat bidders' complaints and carry out independent audits, and (v) anti-corruption measures with effective sanctions. Using these benchmarks, the team has found that these criteria are only partially satisfied in Ethiopia, and that improvements are necessary.

9. **Strengths and Weaknesses of the Current Procurement System.** The CPAR team found that substantial improvements can be made in the following areas by either starting reform initiatives suggested in the report or by completing the ones already underway. In fact, procurement forms part of the Government's overall Civil Service Reform Program, and there has been work underway for some time which is now being accelerated to draft a comprehensive procurement Code, set up a procurement regulator consistent with international practices, and train staff.

### **Legal and Regulatory Framework**

- Procurement is regulated by (a) the Financial Proclamation No. 57/1966 which constitutes the Procurement Law pursuant to article 55 (1) of the Constitution and deals with procurement and contracts by public bodies; (b) the Financial Regulations No. 17/1997 issued by the Council of Ministers and (c) the Ministry of Finance Directives – procurement and contracts, June 1997. Articles 68 and 69 of the financial "Proclamation" authorize the issuance of "Regulations" and "Directives" by the Council of Ministers and MOF respectively. The Financial Regulations deals with procurement principles on suppliers list, bid and performance securities and progress payment. The MOF directives, which are still on a draft stage, are applicable only to the procurement of goods (except vehicles) in its entirety. They do not cover procurement of works and consulting services, and therefore are not comprehensive (*for more details see main Report and Volume II*)
- Public procurement laws and regulations are not based on recognized international models such as UNCITRAL model law. On the positive side however, the Government of Ethiopia has underway, as part of the CSRP, the process to draft an UNCITRAL conforming new law and regulations to replace the current procurement provisions under the Financial Administrative Proclamation. A preliminary "Public Procurement Regulation" was drafted in May 1999 under TA from the World Bank and is presently being finalized. Similarly, the draft "MOF directives" and a draft "Procurement manual" –last revised April 1999- are in the last stages of finalization as part of CSRP..
- Present procurement laws presently apply only to the Federal Government budget and do not cover procurement by parastatals and other public bodies, financed under separate budgets. Since the procurement rules and regulations of the nine Regional states are based on the Federal model, the same inadequacies are reflected in the procurement codes of each individual state (see also "Decentralization", below). The new laws are expected to have adequate provisions for the ongoing decentralization of procurement authority in addition to procurement by all public bodies and parastatals.

### **Institutional Framework and Procurement Proficiency**

- At present, there is no clearly defined central procurement oversight and policy body with the functions of (i) devising procurement policy, (ii) preparing and disseminating standard bidding documents and contracts suitable for different types of procurement, (iii) monitoring compliance with procurement laws and regulations, (iv) addressing issues of integrity and transparency, and (v) providing an adequate complaint mechanism to

address grievances from contractors and suppliers. This is expected to be addressed under the new procurement proclamation and by the qualitative reinforcement of the new procurement unit (soon a department) within MOFED..

- Until now, there was no specialized institution capable to assess the training needs of procurement staff and ensure continued capacity building. It is expected that the newly created Ministry of Capacity Building will likely take over this responsibility including procurement under the proposed PSCAP.
- There is a shortage of experienced management and procurement staff capable of handling international procurement at the central and regional levels and there is only limited procurement experience at *woreda* level, though some positive experience has been experienced by a number of urban municipalities under World Bank-financed projects such as ESRDF. High turnover of procurement staff in the public service is likely to continue and even increase due to the lack of professional recognition and inadequate salary levels.

### **Procurement Practices and Procedures**

- The Draft Procurement Manual, prepared by MOFED in March 1999, though very useful for the dissemination of good practices, does not adequately cover subjects such as pre-qualification, post-qualification, bid security, liquidated damages, and arbitration.
- The Manual includes non-transparent procurement practices such as the use of a merit point system and required registration of suppliers.
- Although a sample bidding document for the procurement of goods is attached to the Manual, there are no sample documents for works and consulting services.
- Standard bid documents drafted by the Ministry of Infrastructure (former MOPW) and ERA for civil works should be improved by incorporating well defined bid evaluation criteria and adding clauses on price adjustment and settlement of disputes..
- Procedures, Requests for Proposals and contracts used for consulting services are based on models used for the procurement of goods and are inadequate for consulting services.
- There are no procedures in place for modern forms of procurement such as award of concessions, BOT, BOOT and provision and operation of facilities by the private sector. Regulations for the use of “E-procurement” may have to be added.
- Public procurement for the import of commodities such as fertilizers, is carried out by NFIA and NBE through practices which tend to limit competition such as use of a small number of licensed national importers who advertise for bids. In practice, only 1-3 bids are received each time. Moreover, commercial practice or "simplified ICB" may have to be used instead of a conventional ICB which is not suitable for commodities.



### **Private Sector Obstacles**

- Government related companies still dominate the private sector thus reducing competition, hampering private sector development and encouraging inefficiency and corruption. Private sector must be opened up fully to competition and offer the same opportunities to all firms.
- Fertilizers and other commodities are imported through registered importers following government imposed procedures which are both restrictive and inefficient. As for other sectors, market should be opened to all importers, offers requested from all interested bidders and procedures modified to fit internationally recognized and efficient procedures.
- The construction industry is not consulted on issues concerning specific conditions of works, drafting of bid documents, listing of contractors and contractual issues for which they would have specific experience.
- The consulting industry has no advisory role on Government decisions such as present decentralization, which has an impact on the availability of professional strength in the Regions. The consulting industry also experiences serious difficulties from contradictory regulations concerning professional registration and licensing to work.

### **Decentralization**

- Decentralization is being carried out very rapidly without sufficient attention to adequate preparation, staffing and technical assistance of staff at *woreda* level. As a result, public bodies and financial offices have little or no experience in procurement, disbursement and supervision of contracts in most *woredas*.
- Federal agencies have done little so far to train technical officers and transfer procurement knowledge to regional and *woreda* offices. It is expected that this will be given more attention through the capacity building program under PCSAP.
- Financial and district offices lack adequate facilities, equipment, personnel and support staff to handle additional work. This will require a massive program of rehabilitation, purchases and technical training of office staff.
- There is no specific documentation suitable for projects at the community level (simplified bidding documents and contracts for works, goods and consulting services; simplified procurement manuals and tendering procedures).
- There are constant delays and disruptions in implementation due to non availability of funds (e.g. counterpart funds in World Bank financed projects) at district level. The budgetary problem risks to become even worse at *woreda* level unless immediate measures are taken.

## Deconcentration

- Though procurement in Ethiopia is fully delegated to implementing agencies, delays are still common within the same organizations (e.g. ERA) due to low authority thresholds for procurement. Only recently districts were empowered to make local purchases to Birr 30,000, still inadequate even for the most simple procurement methods.

## **Recommended Action Plan**

10. The following priority actions are recommended:

- **Establish a coordinating unit and task force to spearhead the procurement reform:** The key actors are represented here by MOFED (legislative and organizational framework), MCB (capacity building), MOI (standard bid documents, contract management etc.) and ULGA (local government issues), together with representatives from the private sector. Suitable arrangements may be feasible under CBDSD/PSCAPT, though clear responsibilities will have to be established for the implementation of the Action plan proposed in the CPAR report. The coordinating unit / task force would be assisted by independent procurement experts to strengthen the technical foundation of its work.
- **Prepare a comprehensive procurement legislation based on the one already present, which would meet internationally acceptable standards.** This would require the continuation and completion of an activity already started by MOFED, the formal submission to legislature and dissemination through press releases and open forum.
- **Prepare: (a) a set of standard bidding and contract documents for the procurement of goods, works and consulting services, (b) a revised Procurement Procedures Manual and (c) simplified procurement / disbursement manuals for use at community level.** Standard, fully comprehensive documents would facilitate and accelerate the procurement process and the Procedures Manuals would be a practical implementation tool for Federal, Regional and local government staff responsible for procurement. Present standard documents used in construction contracts (e.g. ERA and MOPW documentation) should be improved to include clear bid evaluation criteria, pre and post-qualification criteria and adjustment formulas.
- **Establish a new Procurement Policy and Monitoring Directorate with an oversight function of public procurement.** To achieve a sound and transparent procurement system, this Directorate could be created within MOFED as an extension of present procurement to : (a) oversee and make policy adjustments in the implementation of procedures and regulations, and the use of standard documents; (b) initiate and oversee a complaints mechanism which would receive and objectively treat complaints from contractors, suppliers and consultants regarding the procurement process, and (c) ensure that similar, parallel mechanisms are created and function at the regional level. The procurement policy and monitoring directorate could be established under the proposed procurement legislation or under a special decree.

- **Promote dissemination and use of Ethic code in the context of the CRSP.** The present CPAR recommendations with respect to modernizing the procurement laws and regulations, and establishing a central procurement oversight and policy-making body remain central to the recommendations of the 1998 Anti-Corruption Report.. In addition, political and administrative decentralization should ensure that Regions adopt a reliable procurement system as a condition for the Federal financial contributions to their capital and recurrent budgets. The transparency in public sector procurement can be improved by devising adequate anti-corruption measures with effective sanctions. This can be done through seminars on transparency and the dissemination / use of the recently drafted Code of Ethics.
- **Launch a sustained procurement capacity building program.** This initiative is in full synchronization with present Government initiatives. Capacity building is urgently needed to provide management expertise, staffing, and implementation tools to the nine Regions and the still inexperienced staff based in the *woredas*. Only proficient procurement staff will be able to contribute towards accomplishing the Government's programs for poverty alleviation. The component "Restructuring Local Government" of the IDA financed CBDS project, with Technical Assistance under the Indefinite Delivery Contracts (IDC), could help jumpstart the program, **but it will need sustained leadership, financial and technical support by the World Bank and other donors to succeed.**
- **Involve the private sector and civil society as a whole in the procurement reform.** This can be done by organizing public forums on procurement issues concerning imports, construction and the consulting profession and would increase the chances for a successful impact of the reforms.

## **Managing the Resistance to Change**

11. **Risk Assessment.** The risks resulting from resistance to change that could hamper a successful implementation of the proposed reforms are considered manageable because these reforms are fully compatible with the general aim of the Government to modernize procurement regulations and practices and with the Government's decentralization policy of delegating authority to the Regions, local governments and *woredas*. However, resistance to change may have to be addressed in the following areas:

- Government may prefer to maintain the current procurement regulations or draft provisions without taking into account internationally accepted standards. This could delay and perhaps perpetuate the use of inadequate laws and regulations.
- Reform of the private sector may have an impact on so called "party-owned companies" presently dominating many sectors of the economy. This may cause strong resistance to change and requests to continue with present procedures (e.g. for fertilizer imports).

- Major Ministries might resist the reforms because they may perceive them as reducing their power, continuing ad hoc procurement decisions that are not in the general interest of Ethiopia.
- Action to draft standard bid documents may languish for lack of initiative or because of vested interests, delaying improvement in transparency, efficiency and economy.
- Capacity building may not proceed as needed because of lack of qualified teaching staff or insufficient logistics and funding, causing bottlenecks and procurement delays.
- Unequal distribution of funding for the reforms to the Regions and local governments may cause frustration and slow the momentum in moving forward to better fiduciary management.
- Insufficient monitoring of anti-corruption initiatives and remedial action would reduce procurement efficiency and increase the cost of doing business to the Government.

**12. To manage such possible resistance to change, the following measures are recommended:**

- MOFED (possibly through a newly created policy directorate), in coordination with the MCP should lead a strongly motivated task force, supported by interested donors, which would promote and sustain the reforms over a sustained period..
- World Bank and donor community should tie resources to actual completion of each step of the reform. An incomplete reform of the private sector procedures for instance would create transparency problems and would not be beneficial to GOE in the long term.
- The new Financial Proclamation on procurement policy should be completed and formally approved by Parliament. The new regulations should include a new Manual of Procedures and model standard documents for goods, works and services.
- Standard documents with simplified procedures for procurement/ disbursement should be prepared and disseminated for use at *woreda* level..
- Financing under CBDSO should be increased through pooling of funds with other donors thus allowing for a common focus and reduction of administrative burden to the recipients.
- .MOFED should explain the functions of the proposed Policy and Overseeing Directorate to the major Ministries and the public in an open Forum, and maintain this dialogue on a continuing basis.
- Ethics Code should be institutionalized in all government agencies and private sector (both international and national) made aware of dangers related to bribery.

**ETHIOPIA  
COUNTRY PROCUREMENT ASSESSMENT REPORT**

**MAIN REPORT**

## INTRODUCTION

### Country Setting

- The Federal Democratic Republic of Ethiopia is a democratic federation of 9 states, governed by a bicameral legislature with 656 combined representatives, a Prime Minister and a President. With a GNP per capita of US\$110, and with the vast majority of its 60 million people living on less than US\$1 per day, Ethiopia is one of the poorest countries in the world. Ethiopia is in a full economic rebound from the hardship of the conflict with Eritrea and, with US\$667.8 committed in the fiscal year ending June 30, 2001, is presently IDA's largest beneficiary in the Region.
- Most of the structural objectives and criteria for an IMF reform package, supported by a poverty reduction and growth facility (PRGF), have been fulfilled. The country has, therefore, satisfied most of the conditions for debt relief under the "heavily indebted poor countries" (HIPC) and appears eligible to become a major beneficiary of international donors. However, disbursement of development aid is hampered by Ethiopia's insufficient capacity to handle significant increases in expenditures, particularly at regional level. Hence, there is a need for reform of current legislation, including procurement regulations, practices and technical capacity.
- Following the preparation, in 1997, of the CPAR and the Country Assistance Strategy (CAS), the Ministry of Finance (MOF) started procurement reform activities. The old "MOF procurement and contract directives regulations" were amended on the basis of the 1997 CPAR recommendations, and a "Procurement Manual" for use of ministerial staff was drafted with World Bank (WB) assistance. In addition, about 40 staff of the central ministries undertook "training for trainers" courses under the procurement component of the IDF for the "Restructuring of the civil service".
- However, in 1998, several events occurred in Ethiopia which adversely impacted on the progress with public procurement reforms: (i) the war with Eritrea (May 1998) which ended in October 2000; (ii) the subsequent rapid implementation of the new regional decentralization policy, delegating also more procurement management responsibility to the Regions, and (iii) the start of major, highly de-centralized WB financed sector programs in Education, Health and Social Rehabilitation. These events, compounded by the inflow of substantial amounts of aid funds, underscore the need for a new CPAR to devise measures for improved fiduciary management.
- Ethiopia is currently undertaking a radical program of decentralization of the powers and functions of the state to ethically based autonomous regional governments. These efforts, driven by an high degree of political commitment, are now being intensified through "second generation" reforms which are further decentralizing service delivery responsibilities to *woredas*, local government entities and municipalities within the Regions. the speed at which decentralization is occurring implies a huge capacity building challenge since the capacity of regional governments to prepare and execute

budgets, and carry out procurement Likewise, while major cities like Addis Ababa and Dire Dawa have been procuring for years on their own account, *woredas* have effectively no capacity.

- **Linkage of the CPAR with the CAS.** In November 2000, the 1997 CAS, which could not be completed due to the war, was replaced by the WB "Interim Support Strategy" (ISS), designed to address the immediate human, infrastructure and economic emergencies and to tackle weaknesses in the management of the IDA portfolio. Discussions with the Government in November 2001 and January 2002 led to the identification of four main pillars for a new CAS, to be finalized in 2002: (i) Decentralization and Service delivery; (ii) Capacity Building; (iii) Infrastructure development, and (iv) Private Sector Development (PSD) / Pro-Poor growth. The present CPAR, including the proposed reforms, has been prepared in support of the core objectives of the new CAS by recommending reforms in procurement legislation and mechanisms for delegated procurement authority to facilitate the decentralization policy. The CPAR is prepared in parallel with a proposed Country Financial Accountability Assessment (CFAA). The CFAA will assess the strength of financial accountability in both the public and private sectors and facilitate the design and implementation of an action plan for reforms, which will be complementary to the CPAR recommendations.
- **Linkage with Public Expenditure Review (PER) and the Poverty Reduction Strategy Paper (PRSP).** The 2001/02 PER was the first review that included a regional focus in its scope and that provided advice and support in public expenditure to the Regions. The PER included a financial management capacity assessment in pilot Regions (Tigray, Oromya, Benishangul-Gumuz) to implement the Poverty Reduction Strategy Paper (PRSP). The assessment, which was made in coordination with other institutions such as ADB and EU, identified measures to strengthen regional capacity. The CPAR and PER / PRSP both aim to develop implementation capacity at regional level and engaging regional offices in the improvement of fiduciary management. This linkage may help ensure that donor funds allocated to poverty and social sector programs will reach poor and disadvantaged groups more efficiently.

### IDA Lending Portfolio

- Thus far, 59 IDA financed projects have been completed in Ethiopia. Ethiopia's current portfolio of IDA credits (see Table 1 below) comprises 17 investment projects for a total amount committed of about US\$1,665 million, with an un-disbursed balance of about \$860 million. Transport and energy constitutes about 60% of the FY2001 opening balance, followed by human development, agriculture and rural development, multi-sector development, and urban and water. Of these, only 2 projects in the social sector, which are structured on decentralization to the Regions<sup>2</sup>, are considered at risk.

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<sup>2</sup> The implementation risk for the two projects had been anticipated in the Appraisal report of both Program given the lack of experience of some of the regions in procurement and implementation. massive capacity building programs and out-sourcing of procurement to the private sector had been recommended. Similar, if not worse, problems should be expected in the second wave of decentralization to *woredas* and municipalities given their present status of un-preparedness.

**TABLE 1**  
**COMMITMENTS AND DISBURSEMENTS – ETHIOPIA**  
**US \$ millions**

<b>SECTOR</b>	<b>PROJECTS</b>	<b>NET COMMITMENT</b>	<b>DISBURSED</b>	<b>UNDISBURSED BALANCE</b>
Agriculture	4	244.3	146.7	84.9
Education	2	104.9	60.1	40.5
Power/Energy	1	200.0	88.2	90.3
Environment	1	1.9	0.2	1.7
Health/Education	2	159.7	46.4	106.6
Private sector development	1	230.0	42.5	185.9
Social Protection	3	284.1	132.2	136.9
Transportation	2	405.2	181.7	194.2
Water/Sanitation	1	35.7	21.2	10.1
<b>ALL SECTORS</b>	<b>17</b>	<b>1665.9</b>	<b>719.2</b>	<b>859.1</b>

### Government and donor participation in the preparation of the CPAR

- Government, at the central, regional and at some of *woreda* (community government) levels has been fully involved in the preparation of this CPAR. In particular, the Ministries of Finance and Economic Development, Infrastructure, Education and Health were involved. Meetings were also held with large importers, such as fertilizer imports, to discuss issues of modernizing procurement methods to increase competition and efficiency, and eliminate bottlenecks. Importers are looking forward to the modernization of import procurement procedures. Meetings with the Construction Industry and Contractors Association were comprehensive and raised many issues of obstacles to efficient public procurement, leading to the proposal that a Construction Industry Forum be organized with participation of the main Government ministries and the private sector. Discussions were also held with the aid agencies active in Ethiopia. The aid agencies expressed interest in furnishing comments and proposals on the draft CPAR in order to make the final report an integrated and common document.<sup>3</sup>

<sup>3</sup> In June, 2002, the Department for International Development (DFID) forwarded to the CPAR team a brief report prepared by their Project's equipment and procurement specialist on the situation concerning the Ethiopian Roads authority, following the request of comments to a preliminary draft copy of the CPAR. The study includes an analysis of delays in implementation and recommendations for improving performance. These concern mainly the drafting of better bid documents (e.g. incorporating pre-determined bid evaluation criteria) and the streamlining of procurement decision. The CPAR team endorses both proposals.



## FINDINGS

### A. Public Sector

- **Importance of Public Procurement to Ethiopia.** The value of Ethiopian imports of major commodities in 2001 is estimated at Birr 12,675 million [about US \$ 1,500 million, of which US \$16 millions (a drop of about 40% in comparison to year 2000) for fertilizer. The approximate value of public procurement (goods, works and consulting services combined) financed by external aid agencies amounted to about US \$251 millions. For the Ethiopian fiscal year 2002, this amount is expected to reach about US \$ 251 million. Although more than 90 % of public procurement follows competitive procedures, private sector participants in public procurement judge the system of limited fairness and efficiency. Clearly, in view of the magnitude of public procurement in Ethiopia, a sound and efficiently functioning procurement system is of vital importance to its economy, and this premise is the basis for the Report's analysis following below. The findings and the resulting follow-up by the Government of the CPAR recommendations also serve as a critical input for the preparation of a possible PRSC (Poverty Reduction and Strategy Credit) for Ethiopia in FY03/04.

### Legal and Regulatory Framework

- **Procurement Laws.** Public procurement is regulated by: (a) the "Financial Proclamation" No. 57/1996, of December, 1996, which constitutes the Procurement Law issued pursuant to Article 55 (1) of the Constitution and deals with procurement and contracts by public bodies; (b) the "Financial Regulations", No. 17/1997, effective since July, 1997, and issued by the Council of Ministers, so authorized by the "Financial Proclamation" and (c) "The Ministry of Finance Directives – Procurement and Contracts of June 1997 which contain the detailed provisions on public procurement. In addition, a draft "MOF Procurement Manual" has been provided to provide guidance to public bodies in the organization and undertaking of procurement of goods and services.
- The "Financial Proclamation"<sup>4</sup> and the "Financial Regulations"<sup>5</sup> (Part III – procurement Contracts) regulate (in no great detail) the procurement of goods, works and consulting services. The "Ministry of Finance (MOF) Directives" deal more specifically with the procurement of goods (except vehicles, which is done through the Road Transport Authority – RTA, and "certain areas", which are dealt with through the Ministry of Infrastructure - MOI). The regulations are applicable to procurement financed from the national budget (MOF), and not to procurement financed from local resources,

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<sup>4</sup> The Financial Proclamation No. 57/66 which took effect from December 19, 1966 deals inter alia with procurement and contracts by public bodies and public disbursement. this financial proclamation constitutes the procurement law issued pursuant to Article 55(1) of the Constitution of the Federal Republic of Ethiopia. Articles 68 and 69 of the Financial proclamation authorize the issuance of "Regulations" and "Directives" by the council of Ministers and the Ministry of Finance respectively.

<sup>5</sup> The "Council of Ministers Financial Regulations No. 17/1997 effective from July 1, 1997, contains more detailed provisions on "procurement – contracts" and deals with procurement principles, "supplier's list", "bids", "bid security", "contract security", "loan and Aid", "progress payment" and "Retention of records".

but the nine Regions generally apply the Federal regulations. Parastatals follow their own rules, but if using funds from the national budget, they must apply the Federal rules and obtain MOF approval above certain financial thresholds for local and international bidding. For external aid agency financed procurement, the rules of the agency prevail.

- The legal and regulatory framework is currently under revision, but still needs to be adapted to internationally acceptable standards, such as those set by UNCITRAL. The 1997 draft revision of the “MOF Directives”, which deal with the procurement of goods, employ four methods of procurement: (i) “open tender”; (ii) “selective tender from an approved list of suppliers”; (iii) “negotiated procurement”, and (iv) “direct requests for quotations from selected suppliers”. All these methods contain some elements that restrict competition. The Directives do not distinguish between procurement of goods, equipment, works and consulting services, use a list of approved suppliers, leave too much room for negotiations in tenders, and apply a merit points system that can be easily abused in subjective evaluation. Even in “open tender” a bidder not listed on the “approved list of suppliers” can be rejected, if the procuring entity, in consultation with the MOF, decides negatively on its “technical competence”, “managerial competence”, “financial stability”, “level of resources”, or “commercial standing and reliability (including any previous record of corruption)”. The application of such criteria, if not adequately defined in post-qualification criteria provided in the bidding documents and equally applied to all bidders, may lead to subjective decisions in the bid-evaluation process. This should be replaced by an appropriate post-qualification procedure.
- In regard of "**works**", the Proclamation No. 4/1995 article 16 provides for the definition of powers and duties of the Ministry of Infrastructure, formerly the Ministry of Works and Urban Development (MOWUD). In particular, the Ministry is empowered to "issue standards for design and construction works, and follow up and supervise implementation of the same", "cause the preparation of design and contract documents necessary for government constructions financed by the Federal Government" and "cause the supervision of and inspect, the execution of construction works financed by the Federal Government to ensure their conformity with the quality standards, time limits and costs as provided in their contracts" . in case of works contracts not involving financing from external funding agencies, public bodies and parastatals are required to follow the MOI standard bid documents for construction of civil works contracts, dated December 1994. The Ministry may delegate part of its powers to another federal Government organ when it deems it necessary for purposes of efficiency.
- In regard to procurement of '**consulting services**' by public bodies, the Ministry of Economic Development and Cooperation (MEDAC) – presently incorporated in MOFED - has the responsibility for preparing the list of approved consultants and has the responsibility for preparing the directives relating to the selection and appointment of consultants by public bodies. In the case of consulting concerning construction works, Proclamation No. 4/1995 article 16 state that the Ministry of Public Works and Urban Development has the authority to determine conditions under which design, construction and supervision contracts concerning construction works financed by the Federal Government may be awarded to foreign contractors and consultants.

## Procedures and Practices

### *From Bidding to Contract Award*

- **Procurement Methods.** The "MOF Directives" and the "Procurement Manual" of March 1999, which is currently under revision, describes the various procurement methods used by the Federal Government. It includes six methods, "open tendering", "two-stage tendering", "requests for proposals", "restricted tendering", "requests for quotations" and "single-source procurement". *Procurement planning* is done at the Federal level in major procuring entities and in parastatals, often with the help of consultants, but is weak or non-existent at the regional and *woreda* levels, where much procurement will be launched in the future. *Procurement monitoring* and administration is only beginning to get computerized in some IDA financed projects to help track delays in the process and alert managers, but is generally done manually and not very efficient or complete.
- For goods and works, open tendering, with or without prequalification, is the norm. Use of the other methods must be justified in accordance with pre-set criteria, which are in accordance with international norms. "Two-stage tendering" is used only exceptionally, under strict criteria. "Negotiated procurement" occurs under a two envelop system, using sequential opening of the technical and financial proposals. Only those bids that meet the technical criteria are opened and the contract is negotiated with the lowest bid, in order to lower the price. This procedure is obviously not transparent and unfair . and should not be used.
- Since march 2001, the "Financial Regulations" provide for the application of *domestic preferences* for local producers of goods and contractors, when it concerns local competition. Eligibility for the domestic preference for goods contracts requires a certified financial report showing that the domestically added value is at least 20% of the goods value. Products of metal and engineering industries are deemed to be locally produced if the domestically added value is at least 15%. At evaluation, in such a case, 15% of the price of the equivalent imported good (offered by another local supplier) is added to the price of its bid. A preference formula is also being devised for local contractors. These regulations are in conflict with the principle that domestic preference is only applicable to international competitive bidding and not to NCB, and should therefore be corrected during the proposed revision of the laws and regulations.
- **Procurement Documents.** Most procuring entities, with exception of the Road authority which uses its own model, use the standard bidding documents of the external aid agencies, with some adaptation, for locally funded procurement. However, for locally funded works contracts, the procuring entities are required to follow the Standard Bidding Documents for Construction of Civil Works (dated December 1994) issued by the Ministry of Infrastructure (MOI). These documents do not provide for price adjustment for contracts with a duration of more than 18 months, and include a non-transparent arbitration provision in that the final arbiter is the MOI and not an

independent authority. The bidding document for goods used by the Road Authority has several deficiencies and the agency has been advised to follow more closely the standard model of the WB. These deficiencies can be overcome by the preparation of standard bidding documents for national use, which are in accordance with internationally accepted norms.

- **Advertising and Bid Securities.** Open tender bids must be advertised in the local news papers, but there is no “general procurement notice” procedure through which information on possible bids under other procurement methods is disseminated. Prequalification is applied for major civil works contracts with appropriate criteria, but where no prequalification is followed, the procedures do not provide for appropriate post-qualification of the selected bidder and this is, therefore, rarely done. Generally, bidders are given sufficient time to tender. Bid securities are required as a fixed sum and calculated as a percentage (1-3%) of the estimated contract price. The redraft of the MOF Directives provides for fixed bid securities for three ranges of contract values, but this proposal is being reviewed for its practicality.
- **Bidding and Evaluation (Goods and Works).** Bid closing and opening procedures need to be tightened, since they vary among procuring agencies, and although MOF requires that bid opening follows bid closing immediately, often it occurs a day or even several days later. Bid evaluation at the Federal level is generally carried out by qualified evaluation committees, on the basis of criteria specified in the bid documents (except those maintained by the RTA), but due to the fact that decentralization only started a few years back, such capacity at the Regions and *woredas* is still rather weak. Contracts are awarded to the lowest evaluated responsive bidder, but in several cases, procurement entities have negotiated price with the lowest evaluated bidder, a practice that should be strongly discouraged as it contributes to lack of transparency, accountability and integrity of the procurement process. Contracts above certain money thresholds require MOFED approval (> Birr 500,000 for local bidding, and > 2 million for international bidding) or PM approval ( goods and works contracts > Birr 10 million and consulting services contracts > Birr 1 million.) MOFED also requires prior review and approval for contracts which deviate from the procurement methods in the Procurement Manual. Contract awards are sometimes overridden by higher governmental authorities, but as a rule compliance with existing procurement regulations is supported and enforced by the Government, and violations are investigated with officials being held accountable.
- **Consultants Selection.** The above pattern is similar for the selection of consulting services. Consultants are normally chosen from a short list of qualified firms, information on which is obtained from expressions of interest or through advertisement or from locally kept data bases. Except for small to medium size contracts (< Birr 200,000 and < 700,000, respectively), terms of reference are well prepared in most cases. For large contracts, which are more likely financed by external aid agencies, the Request for Proposals contains adequate information on the selection process and evaluation criteria, but this is not the case for locally funded contracts. Similarly, in externally funded contracts, most procuring entities apply the Quality and Cost Based selection method, with weighting of quality and price in the range of 70-30 for engineering

services, construction supervision and management services, or in the range of 80-20 for special studies, and they open and evaluate technical and financial proposals sequentially, but they do not do so in the case of locally funded contracts. The Ministry of Education uses only selection based on quality. Least cost selection methods are also applied. Again, when local funding is used, procurement entities have required bid and performance securities from consultants, which is not standard practice in procurement (although this practice occurs in other African countries as well.) At the Federal level, bid evaluation is generally carried out by competent teams, and contract award procedures are satisfactory, but this capacity is weak at the regional and community levels.

- **Publication of Contract Award.** The public is not notified of the contract award and successful bidder. The draft Procurement Manual of 1999 states that the procurement entities should notify unsuccessful bidders and discharge them of their bid securities

### ***Contract Administration***

- No specific issues have been identified in contract administration. Ethiopia generally requires provision of a *performance security* for goods and works contracts in an amount of 10% of the contract price, furnished in the form of a bank guarantee or an insurance company. The Road Authority requires 30% if furnished by an insurance company. *Pre-shipment inspection* of public procurement is not general practice, except when required in externally financed procurement, such as IDA Credits. *Inspection at arrival* at the port or the project site is left to the discretion of importers. Most procuring entities require their staff to inspect goods at arrival at the project site. Fertilizer imports are inspected by an independent inspection agency at the port of discharge on the basis of contract conditions, as well as by the Customs Authority, which, however, only verifies the quantity at the importer's warehouse. In December 2001, the Ministry of Revenue issued a tender for pre-shipment inspection services, but no decision has been taken on the results, which are in dispute. With respect to *contract payments*, suppliers, contractors and consultants are generally paid according to the agreed schedules. Under works, goods, and consultant contracts, slippage in *completion or delivery dates* varies from 20 to 25%, and in some exceptional cases, slippage of 60 to 80% has occurred. *Contract changes* are handled according to contract requirements. There is no specific mechanism for administrative and judicial review of *bidders' complaints*, and bidders and contractors are left to avail themselves of the civil court procedure, which is long and time-consuming.
- *Arbitration* for locally funded contracts follows the Civil Code of Ethiopia and Civil Procedure Code of Ethiopia. In locally funded contracts for works, settlement of disputes is referred to the decision of the Engineer, with appeal being heard by the Ministry of Infrastructure, which is entirely non-transparent. Arbitration rules should be extended by including procedures such as those provided under the UNCITRAL Arbitration Rules of 1976 to be more meaningful. Externally funded internationally let contracts for works generally follow the FIDIC rules for arbitration.
- With regard to *record keeping*, the "Financial Regulations" stipulate the requirements for maintaining information, and the MOF has issued a directive on

“Retention of Financial Records. The procuring entities at the Federal level have been found to be generally in compliance with these requirements and provide periodic reports on overall procurement activities. The degree of compliance in this regard at the regional and *woreda* level has not been verified, but is likely to be much weaker.

- **Conclusion and Recommendations on Laws, Regulations and Practices.** In conclusion, improvement in the procurement laws procedures and practices is achievable with concrete adjustments to internationally acceptable standards. This is already underway in Ethiopia, since GOE is drafting a UNCITRAL based Public Procurement Proclamation which should lead to (a) a more comprehensive Procurement Law and MOF Procurement Directives; (b) drafting and use of internationally recognized standard bid documents which will include adequate post-qualification procedures, elimination of contract negotiations for goods and works, application of domestic preferences only in the case of international competitive bidding, and provision for a price adjustment formula in works contracts with a duration of more than 18 months; (c) issuing of a more complete Procurement Manual suitable for use at woredas and communities level, (d) establishment and implementation of a functional complaints and arbitration mechanism to deal with bidders’ and contractors’ grievances, and (e) carrying out increased and long term capacity building at all levels of procuring entities, and especially at the regional and *woreda* levels. The analysis also suggests that the quality of procedures and practices for locally funded contracts needs to be elevated to the level applied in externally funded contracts.

## Organization

- Ethiopia has decided not to use the concept of a Tender Board. In Ethiopia, the procurement function is decentralized in the various procuring entities (Ministries, public utilities, parastatals), but procurement decisions are subject to MOF or PM approval for contracts above certain thresholds (see paragraph 2.9 above, with the exception of some major agencies, ERA, MOE and RTA.) Procurement delegation to the Regions is in process, including the *woreda* level. Each procuring entity has its own Tender Committee. Their members are required to be present at the bid closing date and bid opening to ensure integrity of the procedure. They oversee that the bid evaluation and contract award subcommittees appropriately record the results. They recommend the award to the General Manager, or the highest level of authority of the procuring entity, who has also signing authority, and make proposals for the use of the procurement method, extension of the bidding period, cancellation of the bidding procedure, and disqualification of bids. The quality of national procurement staff is considered average at the Federal level and weak at the regional and *woreda* level. There is no career stream for procurement specialists, and capacity varies substantially among the procuring entities, with some of the major entities (RTA, Water and Sewerage Company, Power Company) being better endowed than others. Lack of continued capacity building is a major constraint to improved procurement quality.
- The Vice-Minister’s office of the MOF houses the Government Procurement Unit (GPU), a small unit of five procurement experts. It does not function as a full-fledged

procurement oversight body but reviews the contracts that are subject to the MOF in accordance with the monetary thresholds mentioned in paragraph 2.9 above. It also reviews non-standard decisions on locally funded procurement proposed by procuring entities, including the use of non-standard procurement methods, contracts not awarded to the lowest evaluated bidder, and bids submitted by suppliers not listed on the approved suppliers list. However, when the monetary threshold of a contract requires approval by the PM, GPU does not intervene, and the procuring entity submits its documentation directly to the office of the PM.

- There is lack of experienced procurement staff at all levels, particularly at regional level. The problem may become even more acute when decentralization to *woredas* will become effective and most of procurement actions will be carried out at local level. Inadequate implementation experience, lack of specialized professional institutions and training opportunities are the main causes for it. Moreover, as with other technical categories, there has been loss of procurement specialists to state enterprises and the private sector due to low level of pay in the civil service. Procurement staff in Ethiopia have traditionally been part of the administration and finance cadre of civil servants, and as such have seen their remuneration slip relative to other groups, such as economic planners. Recently, as part of the HRM pillar, the Government has completed a job evaluation exercise, which suggests that procurement staff are under graded relative to their responsibilities, and it is expected that an adjustment will be made to reflect this finding. In the regions the dynamics of capacity building and loss are likely to play out differently across the country. Regions are not obligated to follow the same grading structures as central government, though are strongly guided by them. Again, it will be necessary to ensure pay and work conditions are sufficient to retain and motivate newly trained staff. And in some regions and municipalities, there may be scope for engaging private sector procurement expertise (as has been tried in Tigray).
- **Recommendations for Strengthening the Procurement Function.** The procurement function in Ethiopia could be strengthened by establishing a competent oversight body, perhaps starting with enhancing the role of the GPU. This body could also be responsible for policy, standard bidding documents, monitoring of the procurement function, overseeing a properly functioning complaints' mechanism, and ensuring implementation of a continued capacity building program, especially at the Regional and *woreda* levels. Development of a procurement specialist career stream with adequate salary remuneration would help reduce the currently high turnover of staff responsible for the procurement activity and contribute to a higher return on the expenses related to capacity building. A massive program of training and assistance to national training institutions supported by the World Bank and donors, as the one envisaged under PSCAP should help in establishing long term capacity building in the country.

## **Audit and Anti-corruption Measures**

- **Audit.** As part of the CSR, Ethiopia has taken steps to create a truly independent audit capacity. While there have been auditors general for both the Federal Government and the Regions for a long time, reporting was to the head of the executive. Only recently

the report of the federal auditor general was submitted to Parliament for examination by the Budget and finance Standing Committee (which fulfills the role of a public account committee). The Auditor General enjoys some degree of independence in his budget, which is presented directly to Parliament for approval. Employment of qualified staff is still constrained by low civil service pay scales, though the auditor general is allowed to remunerate his staff two scales higher than the regular civil service, and there have been discussions of creating a more marked related pay structure for both accounting and audit staff in government. there is no statutory requirement to complete the audit by a certain date, though in practice the target is four months from receipt of the annual accounts. each region has an Auditor general who reports to the regional Governing Council.

- **Procurement Audit** There is no proper "procurement" auditing system in place. Procuring entities are subject to financial audits, and maintain quality control or inspection mechanisms for goods and works. The principle of auditing of procurement activities is embedded in the draft Procurement Manual of March 1999, which requires procurement entities to ensure that procurement activities are regularly audited and that controls are in place and functioning. Corrupt practices are identified through financial audits, performance evaluation exercises, and by citizens who report cases of alleged offenders to the police, which is under equipped and not free of corruption itself. Grave offenses may be prosecuted by the Public Prosecutor's office. Auditing is perceived primarily as an internal function, but independent audits may also be carried out. The MOF Directives contain a section on a "Code of Ethics", which is acceptable, but needs to be strengthened
- The **Federal Auditor General** includes the review of procurement processes in his annual audit work, and has begun a limited number of performance audits in the procurement area, undertaking a performance audit of the Central Purchasing Department two years ago, which was broadly favorable. One issue in the procurement area the external audit has flagged is "variations in contract specifications" , which has been a frequent source of price escalations. Internal audit in the Government of Ethiopia has tended to be weak, with internal audit staff lacking in professional qualifications, and mostly confined to routine pre-audit work, rather than the assessment of the control systems. Although MOFED has an internal audit department, its links with internal audit staff in the line ministries has been loose. Under CSRSP efforts are underway to strengthen the internal audit function of the Federal government.
- **Anti-corruption** In December 1998, at the invitation of the Government, a World Bank mission visited Ethiopia to assess corruption risks and explore ways in which the Government' efforts to combat corruption could be supported. Its findings were subsequently summarized in the Ethiopia Anti-Corruption Report, in October 1998. In seeking the World Bank' support, the Government had felt that corruption in Ethiopia did not approach the levels noticed in some other Sub-Saharan Africa countries and believed that moving forward with the CRSP would strengthen domestic controls against corruption. As the Government saw it, the main disposing factors for corruption in Ethiopia were: (i) a poorly functioning legal and judicial system; (ii) a bureaucratic culture which focused more on regulation than service delivery; (iii) a low paid civil service; (iv) the newness of the federal structure; (v) weak budgeting and financial



management controls, (vi) an outdated procurement system. In particular, there was a concern that as the private sector expanded in Ethiopia, and the country became more integrated in the global economy, corruption could grow.

- The WB offered its assistance through, among others, technical support for legal and judicial, financial management, civil service and public procurement reform. For procurement reform, it was recommended that (i) procurement laws and regulations should be modernized on the basis of the UNCITRAL Model Law for national and regional tiers of Government, (ii) a reliable complaints mechanism be established, so that there are clear channels for reporting and investigating complaints of fraud and corruption. It also addressed the issue of introducing an anti corruption undertaking in government financed procurement, a step that had been suggested to the Government as a result of an initiative launched by Transparency International. It cautiously recommended that an AU might be tested in a major infrastructure contract financed by the Bank, once the key procurement reforms the report advocated had been put in place. Due to the war with Eritrea and shifts in the Bank's lending program towards rehabilitation support, it was subsequently not possible to do this.
- Since then, in August 2001, the Government has issued a Proclamation for the Establishment of an Ethics and Anti-Corruption Commission, which strengthens the existing law on bribery and fraud, and provides for the establishment of an Ethics and Anti-Corruption Commission. This body has now come into being, in effect expanding the powers and staffing of a small anti-corruption unit which had been created under the CSRP in the Office of the Prime Minister. The work of the Commission will be critical to ensuring corruption free public procurement. However, it will be important as the work of the Commission proceeds, a careful balance be struck. Investigation of allegations of corruption must steer the right course between the necessary prosecution of wrongdoing where the evidence supports this, on the one hand, and the need for units of government, particularly at the sub-national level, to build confidence in procurement capacity without fear of punitive action if unintended mistakes are made. As far as explicit anti-corruption undertakings are concerned, bidders have been required for several years to sign anti-bribery pledges for all contracts financed by the Government.
- **Private Sector Perception of Public Procurement.** Bidders do not hold procuring entities in high regard when it concerns locally funded procurement, because of lack of clarity and transparency in the bid evaluation and contract award process. This perception is better in the case of externally funded procurement where the rules and regulations for bidding and evaluation are more clearly established. Private sector firms wanting to participate in public procurement state that it is necessary to establish a contact with government officials ("a syndicate") and pay down a percentage of the contract price in order to get a bid, and then again at contract signature and completion. This would be the case for national and regional procurement. Party-affiliated organizations and NGOs were also reported to enjoy preferential treatment in bids. As pervasive in obtaining licenses or permits or any government document, a pattern noted also by the Bank's anti-corruption mission. The private sector wants to participate in procurement reforms, since it considers that its experience with public procurement can provide useful recommendations for improvements. There is skepticism, however, about

the efficacy of the no-bribery pledge mechanism, on the part of firms, who argue that it is a meaningless requirement in the face of routine demands from officials for small payments for services rendered. Officials monitoring the effectiveness of procurement policy, on their part, note that there have been no disqualifications of firms which have not provided the undertaking, and doubt generally its effectiveness.

- **Recommendations.** Improvement of the transparency of the procurement system should continue to be pursued under the Anti-Corruption Proclamation, in the context of the CRSP. The present CPAR recommendations with respect to modernizing the procurement laws, regulations and procedures, and establishing a central procurement oversight and policy-making body remain central to the recommendations of the Anti-Corruption Report. The preparation and application of standard bidding and contract documents will help to improve transparency of the procurement system. In addition, political and administrative decentralization should ensure that Regions adopt a reliable procurement system as a condition for the Federal financial contributions to their capital and recurrent budgets. With the introduction of a requirement for a no-bribery pledge in routine public procurement, the Report's recommendation that an Anti-Corruption Undertaking be tested in a major contract once the key CPAR procurement reforms have been undertaken, has been overtaken by events. This could still be considered for a major Bank financed contract once the reforms have been completed. However, the Government might want itself to review the effectiveness of the existing requirement and possibly revise the requirement in the light of findings. The current view in the Bank is that while it is important to draw bidders' attention to the penalties bidders would incur if bribes were paid, devices like no-bribery pledges are unlikely to be effective in countries where a sound framework of public procurement is still being institutionalized, and even when this framework is established, the device, always vulnerable to a "sign and bribe" behavior, is controversial.

## **Performance of IDA-Financed Projects**

- **Procurement Performance.** Procurement under IDA-financed projects is generally satisfactory, with a few exceptions where misprocurement had to be declared ( US\$ 150,000 under the Seeds Systems Development project, Credit # 2741-ET, US\$ 11 million under the Ethiopian Social Rehabilitation and Development project. Procurement complaints have, thus far, been limited and resolved. Procurement processing up to contract award is subject to delays of about six months. Procurement implementation has been delayed by as much as two to four years as a result of exogenous factors, such as civil strife, changes in Government, and Credit restructuring. Two sector investment programs (Education and Health) are considered at risk due to their decentralized implementation in the Regions and remote areas, where government capacity is still very limited. The existing thresholds for prior review appear appropriate as they are and at present there is no justification for increasing them.
- **Conflicts between Local Practices and IDA Guidelines.** The conflicts are mainly on account of local procedures not fully meeting generally accepted public procurement standards.

- **Recommendations.** To eliminate conflicts between the local and IDA procurement guidelines and practices, the recommendations are similar to the general recommendations for procurement reform. On the short to medium term (one to two years), it is recommended that (a) the existing legislation be modernized in accordance with international models such as UNCITRAL model Law, (b) standard bidding and contract documents be developed, including independent arbitration rules for contract implementation, and (c) the Procurement Manual be upgraded, including preparation of specific regulations for the selection of consultants and less restrictive procedures for the imports of fertilizers. In view of the noted differences in treatment between locally and externally funded procurement, it is also recommended that the Government hold consultations with the private sector to iron out these differences and ensure that these differences are removed. On the longer term, the creation of adequate overview and monitoring procedures and sustained capacity building and maintenance of proficiency will be needed to ensure that the gains are kept and expanded.

## **B. Private Sector and Trade Practices**

- The private sector almost disappeared in Ethiopia during the socialist government of 1974-1991 and State owned corporations monopolized all sectors of production and distribution of goods and services. At the end of the period, most manufacturing and agricultural enterprises were operating at about 10% of capacity for lack of raw materials and other inputs. The new government took a number of economic liberalization measures, such as a new Investment Code and the undertaking of privatization, and with the assistance of the donors community put together an emergency rehabilitation and recovery program. The program however was only partially successful since only a few companies, generally close to the dominant party, had to opportunity to compete for domestic production, imports and exports.
- The dominant firms, at times described as regional trading houses, include firms in sectors such as construction, industrial engineering, mining, agriculture, general and commodities import, cement, building materials etc. These firms are reported to have special access to credit (through the state-owned Commercial and Development bank of Ethiopia) as well as privileged information on government contracts. The presence of favored firms hampers private investment, reduces domestic competition, reduces trust in the system and encourages corruption and inefficiency.
- The government has so far defended present situation by asserting that they compensate for the country's weak independent private sector and that these dominant firms only operate in areas where other private sector companies lack the capacity to operate efficiently. However, the strong presence of party related firms in the areas of construction, transport, commodities import and export would not fit this description. A reported case from Dire Dawa indicates that the biggest share of the official quota for chat exports to Djibouti by the Ministry of Trade and Industry was awarded to a party-preferred company through non transparent process contested by three other independent firms.

- In the case of fertilizer, an important import for the country, competition has been reduced to two or three firms due to several factors such as restriction in the licensing of "authorized importers"; restrictive and inefficient procurement procedures, forbidding banking requirements and practices by CBE with the common perception that the regional trading houses received unjustified preferential treatment. Further financing of fertilizer imports should be made conditional to a straightforward reform of the sector and the use of internationally recognized commercial practices acceptable to financing institutions.
- **Importance of Private Sector Procurement.** In weekly foreign exchange auctions, between 45-55% of the available foreign exchange is absorbed by the private sector, which indicates that it has a significant share of the economy. Agricultural production accounts for 50% of GDP, with the remainder of private sector activity being shared by manufacturing, construction and services. Imports are mostly done by the private sector, except for fertilizer, which is shared by the public and private sectors on a 50-50% basis, and seeds, which is entirely imported by the public sector. Although licensing for imports is free, the importer must apply to the Exchange Control Department of the National Bank of Ethiopia (NBE) to obtain the import license and to purchase the foreign exchange needed. NBE verifies if the contract price is fair on the basis of two pro forma invoices, then authorizes participation in the foreign exchange auction and issues the import license. As mentioned above, these restrictions tend to favor only a few dominant firms related to government.
- Import duties are payable on importation, with the Customs Authority requiring (i) the import license, (ii) the bill of lading, and (iii) the packing list, and other documents as needed. Customs indicates that clearance of imports takes five days or less, but it may take longer (up to three to four months, estimated by some government agencies), if the documentation is incomplete. However, this would only be the case for 20% of all cases studied by Customs.
- Most private sector procurement is considered inefficient. Goods are purchased by placing orders with known suppliers, often container by container, without planning and market analysis, and with inefficient logistics, handling and transportation. No procedures are in place for pre-shipment inspection. Even if procurement officers of private companies recommend the adoption of efficient procurement systems, owners resist the prescription of such procedures. Most procurement is by direct contracting with negotiations focusing on price and not quality. Contract implementation is not monitored efficiently because contracts do not provide for performance securities, or liquidated damages for delays in deliveries or completion. There are no special laws, policies or procedures in place for the award of concessions to manage public enterprises or utilities by the private sector, or other private sector arrangements, such as BOT (Build, Operate, Transfer), or BOOT (Build, Own, Operate, Transfer). There are no regulations yet for the use of "E-procurement".
- **Recommendation.** It is recommended that private sector efficiency is improved by creating the correct mechanisms for open competition and eliminating present anomalies which tend to favor only a small number of firms. Training of operators in

international practices by the Chamber of Commerce or international institutions would improve transparency and assist in the dissemination of good practices.

## RECOMMENDED ACTION PLAN

- To achieve a more transparent, efficient, equitable and economic public procurement system, the following priority actions are recommended, as summarized in the table below. Several of these actions require “sub-actions”, and these would need to be specified in a more detailed implementation plan.

<b>First priority (next 12 months)</b>			
<b>Reform Activity</b>	<b>Reform Objective</b>	<b>Implementation</b>	<b>Executing Agency</b>
Revision of procurement laws and regulations	To modernize public procurement, increase transparency, facilitate decentralization	Improve MOF Financial Directives and Procurement Manual to international standards. Establish regional and woreda procurement authorities, with thresholds	MOFED leading a national task force assisted by internationally recruited experts
Drafting of new procurement documents	Standardize, simplify and increase efficiency and transparency of the procurement process and contract administration	Draft standard documents and contracts for goods, works and consulting services, using internationally tested models as an example	MOFED with National Task Force and in consultation with major procuring entities and private sector
<b>Next Priority (next 18 months)</b>			
Establishment of new Procurement Policy Directorate and procurement auditing mechanism at MOFED	Prepare procurement policy, oversee and maintain quality and transparency of procurement function	Draft procurement policy notes, disseminate and ensure appropriate use of standard bidding documents and contracts by procuring entities, initiate and oversee adequate bidders' complaints mechanism, and capacity building	PM and/or MOFED
Development of Sustained Capacity Building	Advocate use of modernized procurement regulations and practices nationally, regionally and at woreda level	Organize workshops for procuring entities at national, regional and woreda levels	MOFED/MCB/UDCBO and national and regional training institutions

<b>Recommended Action Plan (cont'd)</b>			
<b>Reform Activity</b>	<b>Reform Objective</b>	<b>Implementation</b>	<b>Executing Agency</b>
<b>Next Priority cont'd (next 18 months)</b>			
Involve Private Sector in Procurement Reform	Increase open competition giving equal opportunities to all; reduce commercial, banking and procurement restrictions; improve efficiency and transparency of the sector.	Conduct study on restrictions for the private sector or use results already available (e.g. on Fertilizer marketing and credit) and reduce them. Organize public forums on issues concerning the private sector inviting civil society (parliament, journalists, chambers of commerce, general public)	MOFED , Chamber of Commerce, WTO and consulting, construction, importers associations.
Anti-Corruption Measures	Continue to improve transparency in public and private sector procurement under new anti-corruption laws  Improve monitoring and recording of public procurement activities	Organize transparency seminars, initiate anti-corruption initiatives, promote dissemination and use of Code of Ethics  Integrate public procurement M.I.S. into national M.I.S. system	MOFED / MCB with national task force  MOFED
<b>Next Priority (next 24 months and over)</b>			
Develop long term procurement capacity building and creation of a professional procurement cadre	Sustained availability of proficient procurement staff at all levels of government and procuring entities for procurement and contract administration	Implementation of capacity building project to support national and decentralized procurement capacity. This activity should gradually involve all regions and woredas and be protracted over a period of at least 15 years.	MOFED/MCB and regional training institutions
Modernize business practices of national construction industry participating in public procurement	Improve efficiency, transparency and competitiveness of national construction industry	Organize seminars for civil works contractors and consultants	MOW/MCB and training institutions

	Improve private efficiency in contractual issues, commercial laws, import procedures	Organize seminars for importers, suppliers, consultants	MOFED/MCB and chamber of Commerce WTO
<b>Recommended Action Plan (cont'd)</b>			
<b>Reform Activity</b>	<b>Reform Objective</b>	<b>Implementation</b>	<b>Executing Agency</b>
<b>Next Priority (cont'd) (next 24 months and over)</b>			
Modernize business practices of national construction industry participating in public procurement	Improve transparency, efficiency and competition for national and international contracts	Establish registration criteria for contractors, suppliers and consulting firms. Establish national criteria for price indexes for price escalation formula	MOI/MOFED
	Establish common donor procurement procedures leading to long term pooling of TA funding	Simplify donor procurement procedures	IDA and international donor community and in consultation with Government



## GENERAL RISK ASSESSMENT

- The risk management strategy of the Government to successfully implement the recommended reform actions could be summarized as in the table below.

<b>Reform Activity</b>	<b>Obstacles to Reform</b>	<b>Risk Management</b>
Reform of procurement laws and regulations.  Drafting of new procurement documents.	Government may prefer to keep present procurement laws and regulations or draft new ones not based on internationally accepted models.  The initiative to draft standard bidding and contract documents loses momentum due to lack of leadership and financial support	MOFED should complete the drafting of the new procurement laws and regulations and promote its dissemination in order to assist Government decentralization initiatives.  Parliament should be urged to approve new laws and regulations  MOFED should proactively promote preparation of modernized Procedures and Practices, standard bidding documents and an upgraded Procurement Manual
Establishment of new Procurement Policy Directorate	Major Ministries may resist the establishment of a procurement oversight function because of fear it would reduce their authority	MOFED should vigorously promote the importance of and need for the new directorate, including organizing an Open Forum to promote its function.
Development of Sustained Capacity Building and creation of a professional procurement cadre	Insufficient funding and/or unequally distributed funding to the Regions and local governments.  Serious risk of implementation delays.	Increase funding for capacity building under CBDS by pooling funds with other donors. Prepare and implement long term (up to 15 year) plan in coordination with MCB. TA be extended over the same period covering all regions and municipalities.
Anti-Corruption Measures	No consistent long-term action plan undertaken by Government Sporadic actions are based on political motivations	MOFED should promote use of ethic code through new Policy Directorate. Ethics Code to be institutionalized in all government agencies

