



29055

GHANA

COUNTRY PROCUREMENT ASSESSMENT REPORT - 2003

MAIN REPORT

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**Ghana Country Department
Africa Region**

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ABBREVIATIONS AND ACRONYMS

ABCCG	Association of Building and Civil Contractors of Ghana
ASROC	Association of Road Contractors
BOG:	Bank of Ghana
CBMWU	Construction and Building Materials Workers Union
CE	Chief Executive
CEPS	Customs and Excise and Preventive Services
CHRAJ	Commission For Human Rights And Administrative Justice
CIDA	Canadian International Development Agency
CIF:	Cost Insurance Freight
CIPS	Chartered Institute of Purchasing and Supplies
CMA	Central Management Agencies
CMS	Central Medical Stores
CPAR	Country Procurement Assessment Report
CTB:	Central Tender Board
DA	District Assembly
DANIDA	Danish International Development Agency
DANIDA	Danish International Development Assistance
DFID	Department For International Development
DFR	Department of Feeder Roads
DIC	Divestiture Investment Committee
EC	European Communities
ECOWAS:	Economic Community of West African States
EPA	Environmental Protection Agency
EU	European Union
FAD	Financial Administration Decree
FAR:	Financial Administration Regulations
FIDIC	International Federation of Consulting Engineers
FOB	Free on Board
FPMU	Funds and Procurement Management Unit
GACC	Ghana Anti-Corruption Coalition
GAS	Ghana Supply Commission
GDP	Gross Domestic Product
GES	Ghana Education Service
GIMPA	Ghana Institute of Management and Public Administration
GNI	Gross Domestic Income
GNP	Gross National Product
GNPA	Ghana National Procurement Agency
GoG	Government of Ghana
GPRS	Ghana Poverty Reduction strategy
HOCS	Head of Civil Service
IAPSO	Inter-Agency Procurement Services Office
ICB	International Competitive Bidding
ICM	Initiating Concept Memorandum
IDA	International Development Association
ILO	International Labor Organization
ISODEC	Integrated Social Development Center
ITC	International Trade Center
JICA	Japan International Cooperation Agency
LI	Legislative Instrument
MDA	Ministries, Departments and Agencies
MDBS	Multi-Development Partner Budget Support
MDPI	Management Development and Productivity Institute
MFEP	Ministry of Finance and Economic Planning (MFEP)

MOE	Ministry of Education
MPBS	Maintenance Performance Budgeting System
NCB	National Competitive Bidding
NRDC	
PAC	Parliamentary Accounts Committee
PNDC	Provisional National Defense Council
PNDCL	Provisional National Defense Council Law
PPB	Public Procurement Board
PRP	Procurement Reforms Proposal
PRSP	Poverty Reduction Strategy Paper
PSI	Pre-shipment Inspection
PU	Procurement Unit
RSDP	Road Sector Development Programme
SAC	Social Aspects of Construction
SMCD	
SMMC	Supplies and Materials Management Class
SOE	State Owned Enterprises (SOEs).
SOG	Standards Organisation of Ghana
SSNIT	Social Security and National Insurance Trust
TOR	Terms of Reference
UNCITRAL	United Nations Commission for International Trade Law
UNCTAD	United Nations Conference on Trade & Development
UNDP	United Nations Development Programme
VAT	Value Added Tax
VFM	Value For Money
WB	World Bank
WTO	World Trade Organisation

1. GHANA'S BASIC DATA

General Data

(Source: World Development Indicators Database)

Currency Unit	Cedi
Fiscal year	January 1 -- December 31
Population (2000 Census)	18.4 millions
Population growth	2.30%
GNI per capita	US\$330
Land Area	238,537 square kilometers
Life expectancy	57 years

Financial Data (currency figures in US\$ millions)

(Source: Budget Statement 2003)

	2001 ¹	2002 ²	2003 ³
GDP (US\$ millions)	5200.00	5390.00	5400.00
Overall GDP Growth	4.20	4.50	4.70
Exchange Rates (<i>cedis to 1 US\$</i>)	7300.00	7950.00	8650.00
Total Exports	1867.00	2064.00	2310.00
Total Imports	2968.00	2705.00	3156.00
Total Imports as a % of GDP	51.31	50.18	58.44
Commercial Banks' Interest Rates (borrowing)	44.00	38.50	35.00
Inflation	35.00	14.80	15.10
Total Government Expenditure ⁴	1858.00	1796.00	2482.00
Government Expenditure as % of GDP	35.73	33.32	45.96
Personal Emoluments (of Government expenditure)	435.00	487.00	635.00
Est. Public Procurement Expenditures ⁵	700.00	388.00	745.00
1. GoG Portion	115.00	130.00	360.00
2. Development Partner portion	435.00	173.00	240.00
3. Other public institutions	150.00	85.00	145.00
Public Procurement Expenditure As a percentage of GDP	13.46	7.20	13.78

¹ Actual figures

² Provisional figures

³ Projected figures

⁴ Includes expenditure by CMAs and MDAs only

⁵ Includes 30% for expenditures by Local Governments, parastatals and SOEs

Industry Data

(Source: Data collected from Institutions)

1. Civil works contractors registered	24,034
(i) Local	24,000
(ii) Foreign	34
2. Road contractor's	483
(i) Local	426
(ii) Foreign contractors	27
3. Consulting firms registered	203
(i) Engineering firms	37
(ii) Architects firms	6
(iii) Surveyors firms	14
(iv) Planners firms	5
(v) Accountants	16
(vi) Economics and Finance firms	17
(vii) General management firms	49
(viii) Procurement Agents	0
(ix) Other fields	60
4. Insurance Companies	17
5. Reinsurance Companies	2
6. Commercial Banks (excluding Rural Banks ⁶)	11
7. Manufacturers registered with Ghana Association of Manufacturers	566
(i) Producing local goods	520
(ii) Producing export goods	46

⁶ List can be obtained from the Bank of Ghana (Apex Bank)

GHANA

COUNTRY PROCUREMENT ASSESSMENT REPORT (CPAR), 2003

MAIN REPORT

BACKGROUND

Country context

a. Ghana is a unitary country with a multi-party parliamentary system of Government whose laws and regulations apply to the whole country. There are about 16 UN Agency Missions (including the World Bank) and 43 Diplomatic Missions (including Development Partners offices). Agriculture is the mainstay of the economy, with a large population living on farming, forestry, mining and fishing. A sizeable private sector is developing on service provision, manufacturing and trade. The country has good education base and facilities spread out in the country. There is physical evidence of a lot of activity on construction, informal trade and small-scale manufacturing. Internal security is reasonably good. Media is reasonably free and liberalized.

b. Trade and foreign currency exchange are highly liberalized. No assessment was made on the reasonableness of customs duties, taxes and statutory levies due to difficulties in getting comparative data. Communications, internal security, transport facilities, power, water services and hotel and catering services are reasonably provided within the economic context of the country. The size of Government expenditure, export and import expenditures, estimated amount of public procurement expenditures and other data are provided in Ghana' Basic Data. The country's economic, social and political situation is assessed as fair for transparent and competitive public procurement.

c. For ease of administration, the country is divided into 10 Regions and 110 urban and local Governments (referred to as District Assemblies- DA). Public sector institutions are grouped into 5 main areas, allowing for overlaps in functions, which are Central Management Agencies (CMAs), Ministries, Departments and Agencies (MDAs), District Assemblies (DAs), Sub-vented Agencies and State Owned Enterprises (SOEs). The public sector institutions, referred to, as "Procuring Entities" are budget management/cost centers responsible for carrying out government programs, financial accountability and procurement management.

d. The GPRS cites corruption as being endemic and having a debilitating effect on governance and recommends urgent action. There is a general perception that the endemic corruption mars relationship between the Government and civil society. According to the Transparency International Corruption Perceptions Index (CPI) published in August 2002, out of 102 countries surveyed, Ghana ranks number 50 with a CPI of 3.9, which is much better than many developing countries. The current Government assumed power in January 2001 and its President's "State of the Nation" address emphasized the Government's policy of "zero tolerance on corruption". It is on the basis of this policy direction that it is envisaged that Government would be committed

to improving the efficiency of the public sector and to fiduciary management as recommended in the CFAA and CPAR, both of which would reduce procurement-related corruption and risk to public funds.

Procurement history and context

e. Ghana has accumulated considerable and valuable experience on public procurement under civil and military administrations. In the pre-independence era, that is prior to 1957 there was a public procurement policy in which public procurement was treated as part of the colonial administrative process in the British Empire. The colonial administration engaged Public Works Department (PWD) for procurement of works and Crown Agents for procurement of goods. From Independence (1957) to 1967, Government relied less frequently on Crown Agents for procurement of goods and procured goods directly through MDAs.

f. For procurement of works, Government set up Ghana National Construction Corporation (GNCC) to carry out works and reduced the force account component of PWD. In 1960, the Government established the Ghana Supply Commission (GSC) for procurement of goods for all public institutions. Essentially GSC took over the functions of Crown Agents. In 1976, the Government established Ghana National Procurement Agency (GNPA) for procurement of bulk items such as sugar, fertilizers, auto parts, etc. for sale to public and private sectors. GSC and GNPA had purchasing manuals for their use. In 1975, the Architectural and Engineering Services Corporation (AESC) was established to carry out consulting services for works contracts. Except for SOEs, public institutions were mandated to use GSC, GNPA GNCC and AESC for public contracts. In 1967 the Government set up Central, Regional and District Tender Boards as advisory bodies for works contracts and subsequently in 1996 changed them to contract awarding authorities.

g. By 1996, GSC was overwhelmed by the demands from its clients, inefficiency was rampant, and there were numerous complaints on contract prices, delayed delivery and at times delivery of wrong items. MDAs began to handle procurement of goods following FAR rules but without institutional arrangements. Works procurement procedures, though not comprehensive, are described under the Central, Regional and District Tender Board procedures. There are still no guidelines for procurement of consultant services. AESC and GSC were transformed into limited companies in 1996 and 1999 respectively, thus rendering them no more providing services to public institutions on a mandatory basis. Due to the inadequacy of public procurement procedures, procurement procedures under World Bank-financed project signed from 2000 are defined in a “Procurement Procedures Manual” prepared for the project. These manuals are based on World Bank guidelines and Bank’s standard bidding documents are used.

h. **Past CPARs:** The Bank carried out the first CPARs in Ghana in 1985 and a second one in 1996. The 1985 CPAR recommended non-applicability of NCB, price inspection and comparison in ICB contracts and a review of GSC’s and GNPA’s

procurement practices. Between 1985 and 1996 there were other studies on specific issues of public procurement in Ghana. These studies focused on approval procedures and effectiveness of GSC and GNPA. The 1996 CPAR provided a list of major and minor unacceptable features for Bank financing and a list of recommendations for improvements.

i. The 1996 CPAR identified the main deficiencies in the public procurement system as loose legal framework, lack of codified procedures and regulations, weak capacity of procurement staff, and unclear institutional and organizational arrangements for processing procurement and decision-making in award of contracts. The CPAR recommended comprehensive procurement reforms and an International Procurement Legal Consultant, Gosta Westring, was contracted in 1997 to assist Government draft a procurement code. Government did not act on the consultant's draft Public Procurement Bill. The on-going procurement reforms started in 1999 and are financed under an IDA credit "Public Finance Management Technical Assistance Project". The procurement reforms are in the final lap with a Public Procurement Bill submitted to Parliament for enactment.

j. **Country Financial Accountability Assessment (CFAA):** a CFAA for Ghana was completed in 2001 and was updated in April 2003. The CFAA highlights weaknesses in execution, compliance, monitoring and enforcement of what are otherwise sound procedures that would, despite inefficiencies, ensure sound financial accountability and management. A sound public financial management is critical to the efficiency of public procurement. The Audit Service and internal audit are weak and reports are not timely. The 2001 CFAA identified three areas of high risk to public funds: pay roll, pension fund and procurement. These risks still exist. The Government has on going programs to reform financial management systems, but these have not resulted in tangible improvements. A new Financial Administration Bill and a Central Internal Audit Agency Bill have been submitted to Parliament and Cabinet respectively. It is expected that enactment of these Bills will bring required improvements.

The 2003 Budget Statement indicates that reinforcing effective monitoring, control and transparency in public expenditure (including tracking, spending on poverty reduction program, and the wage bill) would be key policies in ensuring growth, implementation of GPRS program and reducing inflation. The statement articulates measures to be taken to improve public financial management, including public procurement management, concluding by indicating that the "new public Procurement Bill has been approved by Cabinet and submitted to Parliament". The Budget statement stresses that government would continue to make public expenditure management a transparent system emphasizing accountability to close all possible loopholes.

k. **Country Assistance Strategy (CAS);** the CAS for 2000-2003 consists of two parts. Part I outlines the Government's Poverty Reduction Strategy, and Part II outlines the World Bank's business strategy. In Part I, the Government makes reference to procurement as it relates to governance, financial management and anti-corruption measures. The CAS emphasizes the need for effective management at all levels of Government to ensure effective service delivery to Ghana's Citizens. It advocates building a coalition between Government, the Private Sector and Civil Society,

networking and collaboration of regional and international bodies and support by Development Partners in the fight against corruption.

l. Part II states that assistance by Bank Group should focus more specifically on assisting the Poor, delivery of social services, decentralization, more collaboration with the partners outside Government (in particular Civil Society and the Private Sector), Public Sector reforms, and encouraging/facilitating private Sector development. The strategy focuses specifically on decentralization, addressing weaknesses and corruption in the management (including use of financial resources, including procurement by putting in place appropriate legal and regulatory framework) and taking a strong stand, if corruption is identified in its projects. This focus underpins the importance of sound procurement practices that would ensure proper use of public funds, including those provided by the Bank, under decentralized systems and by communities, and enhancement of anti-corruption measures.

m. The Public procurement Bill takes into account these concerns. The process for the next CAS has started and it is going to focus on the themes of growth, service delivery and governance. The CAS will also focus on “implementation” which will include fiduciary management as a key ingredient for supporting the three themes.

n. **Country Portfolio Performance Review 2002 (CPPR);** a joint team comprising of staff from the World Bank, Ministry of Finance and consultants conducted a CPPR for Ghana in months of April to June 2002. The main findings of the CPPR were:

- i. Delays in effectiveness of projects;
- ii. Slow pace of project implementation; and
- iii. Low disbursement.

o. Slow pace of project implementation was caused by, among other things, inadequate planning [including procurement planning] and poorly performing contracts. The CPPR action plan included preparation of project implementation plans (annual work plans and resulting procurement plans) and monitoring staff performance of staff. Good progress has been made in the implementation of the CPPR action plan.

p. 10. **Ghana Poverty Reduction Strategy (GPRS) 2002-2004;** the GPRS cites decentralization and devolution of power to the district authorities as pivotal to involvement of communities in poverty reduction programs and advocates a program to strengthen the District Assemblies is therefore essential. Strong procurement system is essential for proper utilization of PRSC, HIPIC and MDDBS resources, the bulk of which will be channeled directly to the Districts. The GPRS proposes that cumbersome customs procedures be revised to reduce cost of transactions associated with clearing and exporting goods. The GPRS cites the capacity of public service as low that is the public service is not as efficient as it should be due to a combination of factors (indicated elsewhere in this report) and weak oversight on staff performance.

q. 11. **Public Expenditure Review [PER]:** since 1994 the Government has been responsible for preparing PERs and each PER focuses on one economic sector. The year 2000 PER is the latest PER on the Ministry of Local Government. These sectoral PERs cannot give full picture. There is a need for the World Bank to prepare a PER for Ghana.

r. **World Bank portfolio in Ghana;** the World Bank portfolio in Ghana comprises of 18 (as on March 30, 2003) on-going projects and 5 under preparation (including Poverty Reduction Support Credit (PRSC) that are expected to be effective in calendar year 2003. The projects cover all major sectors of the economy – rural development (7); infrastructure (6); human resource development (5); and public/private sector finance (5). Total funding from IDA sources is estimated to be US\$ 680.00 million⁷, out of which US\$ 460 million is un-disbursed. The average annual disbursement is US\$ 210. Million, which is above 20%, mark for acceptable level of total annual disbursement over un-disbursed funds over the year. About 8 projects will close by the end of 2003 and new credits totaling US\$ 608 million are expected to be effective in 2004, including PRSCs II and I worth US\$ 250 million. The portfolio is summarized as on Tables 1 and 2 below.

Table 1: World Bank Portfolio

		Date Effective	Date Closing	Age In Yrs.
1.	Ghana Aids Response Project (Umbrella)	05/08/02	06/30/5	2.1
2.	Community Based Poverty Reduction Project	10/23/01	12/31/04	3.6
3.	Natural Functionary Literacy Programme	08/15/00	12/31/04	3.6
4.	Public Sector Management Programme	09/06/99	08/31/03	3.7
5.	Public Financial Management. TAP	04/04/97	07/31/03	6.2
6.	Trade and Investment Gateway Project	01/13/99	12/31/05	4.6
7.	Public Sector and Privatisation Project	09/25/96	06/30/03	6.6
8.	Natural Resource Management Project	06/09/99	06/30/03	4.7
9.	Agric Services Sector Investment Project	11/26/01	10/31/03	2.5
10.	Rural Financial Services Project	12/04/01	12/31/06	2.6
11.	Ghana: GEF – Northern Savanna Biodiversity Conservation Project-TF050723	09/23/02	02/01/08	0.9
12.	Village Infrastructure	02/04/98	12/31/03	5.7
13.	Road Sector Development Programme	01/15/02	06/30/06	1.5
14.	Urban 5 Project	08/06/01	12/31/03	2.8
15.	Second Community Water Project	07/19/00	06/30/03	3.4
16.	Urban Environmental Sanitation Project	09/03/96	12/31/03	6.8
17.	Local Government Development Project	12/30/94	03/31/03	8.9
18.	Roots and Tubers (International Fund for Agric. Development)			

⁷ The figures exclude adjustment credits.

Table 2: Projects in the Pipeline

2003	Education Sector Development	60.0
	Ghana: Land Administration	25.0
	Poverty Reduction Support Credit	125.0
	Health Sector Programme	90.0
	Promoting Partnerships with Traditional	5.0
	Sub-Total	305.0
2004	Accountability and Capacity Building Project	28.0
	Urban Environmental Sanitation Project	32.0
	Poverty Reduction Support Credit II	125.0
	Water Restructuring	100.0
	Village Infrastructure Project II	18.0
	Sub-Total	303.0
2005	Urban V – Phase II	75.0
	Poverty Reduction Support Credit III	125.0
	Natural Resources Management Project	10.0
	Sub-Total	210.0
	TOTAL	818.0

s. **Extent of Government participation:** the Ministry of Finance and Economic Planning (MFEP) was responsible for the conduct CPAR on behalf of Government. MFEP selected a team of five senior Government staff, including a team leader (see **Annex 1**) with a skill mix in law, public administration, procurement, engineering and economics. The Government team leader was responsible for assisting the CPAR assessment team and consultants access the relevant public officials and records, as well as organizing team meetings, including the mission’s National Workshop. The Government team performed the following tasks satisfactorily:

- iv. Review of the consultants reports, jointly with the assessment team;
- v. Participation in the main assessment mission;
- vi. Review the Action Plan and the matrix of recommendations;
- vii. Review of the draft CPAR; and
- viii. *Obtaining Government clearance of the final CPAR⁸.*

t. **Role of MFEP:** MFEP will, in collaboration with Sector Ministries, be responsible for ensuring implementation of the CPAR Action Plan and addressing the issues in the matrix of recommendations, The Action Plan identifies officials responsible for implementing and providing oversight for each action point.

⁸ Action to be inserted in the final CPAR

LEGAL FRAMEWORK

Public Procurement Policy and regulatory framework

u. Ghana has had a documented procurement policy since colonial days. The Constitution of Ghana contains the “Directive Principles of State Policy” which requires public officials to observe sound management of the economy in such a manner as to maximize the rate of economic development. It is assumed that this policy statement includes application of sound procurement management. Therefore all laws with procurement related policy and other provisions, including the various public procurement circulars by the Minister of MFEP derive their legitimacy from the “Directive Principles of State Policy” in the Constitution.

v. **Laws governing public procurement** are grouped into two types, core and non-core laws. Core laws are those that have specific provisions on public procurement that directly regulate a particular activity and/or are essential to the regulation of public procurement. Non-core laws are the laws that were not enacted for the regulation of public procurement but have provisions that impact on public procurement. The existing laws are discussed in detail in **Annex 12**.

w. The assessment on the current procurement regulations concur with the findings of the 1996 CPAR and that of the procurement reforms consultants that there is no one law that governs public procurement. There are several laws with procurement related provisions. The regulatory framework is summarized as follows:

- ix. The regulations in the FAR concern acquisition, management and disbursement of supplies and equipment. Procedures for procurement of goods are in the Ghana Supply Commission law, which is now repealed.
- x. There are no guidelines for procurement of services except a regulation requirement that no payment would be made unless a “contract agreement committee” in MFEP approves the contract. The committee appears to have disappeared.
- xi. Procurement of works is regulated by Tender Board procedures, which are very sparse and unclear in many respects.
- xii. Procurement under Donor –financed projects following donor guidelines.

Public Procurement Regulations

x. **Bidding Procedures:** these are in the FAR for goods and in the Tender Board procedures for works contracts. But these procedures are loose and are often supplemented by MFEP circulars that are unclear and often contradictory. The procedures do not differentiate between ICB and NCB. The procedures have many

loopholes, including shopping for large contracts by telephone, that make it easy for public officials to avoid compliance. The proposed public procurement legislation is designed to ensure a one document with comprehensive regulations applicable to the procurement of goods, works and services by all public Procuring Entities. The assessment identified several procedures that do not facilitate economy, efficiency and transparency in public procurement. With the repeal of the Ghana Supply Commission law, procurement of goods was decentralized to public institutions using the FAR procedures.

y. The application of the FAR procedures suffers from lack of support by adequate human resources because most of the public institutions had not formed procurement units staffed with appropriately qualified personnel. However Development Partner-financed projects do not suffer from these shortcomings because they use Development Partner procurement guidelines and well-staffed PMUs. Except for contracts financed by Development Partners, goods contracts are often procured on the basis of selective bidding or shopping. Procurement of works follows open competitive bidding using Tender Board procedures.

z. **Ethical behaviour and anticorruption**; in 2002 Ghana ranked 50 among 102 countries in the Transparency International's Corruption Perception Index, ranking 3.9, which may reflect improper application of procurement regulations. Procurement system is weak and perceived as a source of corruption. Identifying and dealing with corruption and conflict of interest is not explicitly addressed in the existing regulations. Corruption is thriving because procurement procedures are inherently non-transparent and erring officials are rarely sanctioned.

aa. **Expenditure control and accountability**; though procurement should be based on authorized budget, there are instances where contracts have been committed without such budget authorization. This issue is addressed in the proposed draft Financial Administration Bill already submitted to Parliament.

bb. **Financial Audits**; the external and internal audit systems are weak, so it is difficult to track compliance with procurement regulations. The Auditor General has a constitutional responsibility to audit expenditures of public institutions but the office suffers from limited budget resources and an insufficient number of qualified staff. Audit is an effective monitoring tool for financial and procurement transactions. Sanctions taken against erring officials are powerful deterrents to malpractice. Government should take a bold move to improve the audit functions to enable it provide adequate oversight over use of public funds, including via procurement. Some of the subvented agencies and SOEs have internal audit departments, which perform perfunctory checks on procurement. These checks, however, do not constitute proper procurement audits.

cc. **Registration of Contractors**: the Ministries of Roads and Works maintain registers of contractors classified according to their capabilities. It is mandatory for contractors to be registered in order to qualify for government contracts. The register is used for qualifying contractors even under open competitive bidding. The register is rarely updated and some unqualified contractors find their way into the register. In

addition DAs require contractors to register with them before they can be awarded contracts. For DAs. Registration is seen as a source of revenue. Pre-qualification is seldom used except for procurement of large works contracts. There are no guidelines for pre-qualification.

dd. **Bidding documents;** there are no standard bidding documents for goods and services. World Bank standard documents are adopted for all non-ICB procurement by Procuring Entities that benefit from World Bank financing. There are standard bidding documents for works for use by Ministries of Works and Roads. These documents for works elaborate specifications and conditions of contract. STDs will replace these documents in the procurement bill.

ee. **Advertising:** advertising under Government financed contracts for goods and services are rarely done because there is no specific rule requiring it. Except for Development Partner-funded projects, there is no evidence that any of the public procurement institutions assessed use General Notice of Procurement as a first step to advise the private sector of bidding opportunities. MDAs generally use newspapers adverts (there are a number of regularly produced and widely read newspapers) as against the previous practice of using Government Gazette. The Gazette is not widely read or readily available to business community. In procurement of works, even where the invitation is described as open, it is actually restricted in the sense that the adverts normally state the class of contractors who are “qualified” to respond. There is no standard period observed by as minimum time for advertising prior to submission of bids.

ff. **Submission of Bids:** The FAR has no procedures for submission of bids but Tender Board procedures for works contracts require that bids be opened publicly. Some delivered bids have been “discovered” after the close of submission either due to mis-address, specifying more than one location for submission or specifying the location ambiguously. In these cases it is difficult to determine which bidder did not meet the deadline set in the invitation. There are no clear procedures addressing how public institutions would compensate bidders for mistakes by public officials.

gg. **Bid opening:** for works contracts, bid opening is carried out at the District, Regional or Central Tender Board as advertised, following Tender Board procedures that also indicate the essential data to be included in minutes of bid opening. The regulations provide an ambiguous provision on public bid opening that it would be “as publicly as possible” at a duly constituted meeting presided over by the Chairman of the DTB, without showing how public the opening should be. For goods and services contracts, public bid opening is not specified. In some entities bid opening is restricted to members of the entity and often shrouded in secrecy. The tender Board procedures assume that all awards of contract in the DAs would always be advertised for competitive bid, which is not the case as there is extensive use of sole source and selective methods. The basic flaw of the regulations is that procedures for advertising and submission of bids are not clear.

hh. **Engineer’s estimate for works contracts:** there is a provision in TB regulations, which requires that an engineer’s estimate be posted into the bid box prior to

opening of bids and with the bids. In this case bids shall be invalidated if it is detected that a bidder had information on the engineer's estimate and in some DAs if the bid is below the engineer's estimate. The regulations make no provision as to who would do the "detection" or how it would be done.

ii. **Bid evaluation and contract award:** bid evaluation and contract award provisions are not generally consistent with good practice as the regulations for these are not clear. Often these steps are carried out in a discretionary manner. Bid evaluation and contract award are most abused steps in the procurement process. In many cases the evaluation criteria is prepared after bids are opened. Evaluation is done by ad-hoc evaluation committees of persons selected for the specific contract and on basis of their competence. A circular by MFEP required use of ad-hoc committees to avoid the inherent risk of compromise (bidders influencing permanent evaluators). Incompetent persons have at times carried out bid evaluation. Use of merit points systems in the evaluation of bids have lead to an ambiguous criterion for awarding the contract. In one entity price carries as low as 50% out of 100. Bidders with very high prices have won contracts under these circumstances.

jj. **Oversight arrangements:** Central, Regional, Departmental and District Tender Boards) are mandated to review only works contracts. There is no evidence of undue delays by the Tender Boards, but the decisions for contract awards may be discretionary, given the unclear procedures followed. TBs rarely monitor implementation of contracts.

kk. **Disputes resolution;** Disputes in the contracts are negligible. Few contracts suffer from disputes because contractors and suppliers fear being blacklisted or branded as litigants, and therefore not be considered for future business opportunities. Disputes are often amicably resolved. Bidders with complaints can take them to Procuring Entities as a matter of course, to the Chairs of Tender Boards, to responsible Ministers and politically charged ones go up to the President. A few have gone to court.

ll. **Enforcement of the regulations:** there is no specific institutions set up under laws to enforce procedures of procurement. The MFEP role in enforcement is provided for in the constitution, FAD and FAR, but little is done using these two instruments. There is no evidence of a public official sanctioned by the MFEP for non-compliance with any procurement procedures.

mm. **Record keeping:** Record keeping is poor in most procuring entities even though they are all expected to keep proper records of all procurement transactions. Record keeping improves transparency and enhances the work of audit.

nn. **Procurement Planning:** the regulations do not have a provision for mandatory procurement planning. However some form of procurement planning is undertaken in the sense that the requirements of the Government are determined in advance by the MDAs for purpose of justifying budget requests. In some few instances, in the procurement of works, planning is undertaken on medium term basis. Generally, detailed procurement plans for specific projects are not prepared especially for

Government-financed projects. This is a major weakness as use of budget is not predictable and users are not advised when to expect deliveries.

oo. **Monitoring Contract execution:** there is no requirement for monitoring contract execution, except to the extent that payments must be made against certificates for delivery or completion of works.

pp. **Disposal of public supplies and equipment:** this is a procurement process in reverse. If flawed, government could incur heavy losses. There are many advocates that the procedures for disposal of public supplies and equipment be regulated within public procurement procedures to remove the risk of “buy and dispose” to beat the system. Although the FAR has guidelines for disposal of public assets, there were variations in their application.

On-going Procurement Reforms

qq. Procurement reforms have been on going since 1999. A Team of Consultants hired to prepare procurement reforms prepared three reports, Inception Report, and Review Reports Volumes I and II. Each report was reviewed and approved by the Public Procurement Oversight Group (PPOG) a committee formed in MFEP to oversee the reforms. On basis of their reports, the Consultants prepared a Procurement Reforms Proposal (PRP) which consists of two parts: part one is background information describing the situational analysis, summary of Consultants’ reports, rationale for reforms and the proposed reforms; and part two is Annexes 1 and 2. Annex 1 is the draft Public Procurement Bill and Annex 2 is a proposal for capacity building to support the reformed system.

rr. The PRP outlines principles that guide public procurement policy [economy, efficiency and transparency], measures to encourage private sector to be competitive and the need to adhere to international and regional agreements. The Public Procurement Law would be applicable to all public sector institutions except those that would be exempted by the law itself. The PRP deals with anti-corruption measures and concludes “anti-corruption measures have been included in the draft Public Procurement Bill for the purpose of addressing this insidious cancer”. The PRP went through very vigorous reviews and critique by the PPOG, stakeholders, Ghana’s Development Partners (which include the World Bank) and finally by a National Workshop of about 100 participants selected from public sector, private sector and from Development Partners. The views and comments from the National Workshop were synthesized by the PPOG secretariat and used by the Consultants to prepare a final PRP.

ss. Cabinet approved the PRP and MFEP submitted the Public Procurement Bill 2003 (see **Annex 8**) to Parliament for enactment. It is expected that the Public Procurement Bill will be enacted in the calendar year 2003. The Bill has detailed descriptions of procurement methods, procedures and regulations and thresholds for use of each procurement method and procedure for approval of contracts. It provides for mandatory use of standard bidding documents which will part of the law. The Bill

provides for creation of Tender Boards to approve proposed contract awards from Procuring Entities. The Bill provides for establishment of a Public Procurement Board (PPB) in MFEP which would not be involved in procurement processing but whose functions would be to regulate public procurement, including dispute resolution.

tt. CPAR's mission's Aide Memoire (**Annex 5**) provided comments on provisions requiring further revisions to improve on the objective of the Bill. The main comments discussed with the attorney General were:

- xiii. Chairmanship of the Public Procurement Board; the major recommendation is that that the Chair should be selected from the private sector.
- xiv. Mechanisms to handle appeals and complaints be shortened to avoid delays;
- xv. Chairmanship of the Entity Tender Committees; Ministers should not be Chairs but should provide leadership and oversight;
- xvi. Margin of preference; this should be specified in the law.
- xvii. Limit on participation in procurement proceedings on nationality basis; this provision should be omitted as it undermines the principle of transparency and equal opportunity and may be a cause of abuse; and
- xviii. Evaluation and award criteria for goods, works contracts and services contracts should be clearer than in the draft bill.

uu. In April 2003 the Parliamentary Accounts Committee (PAC) invited interested persons to send views and comments on the Bill; MFEP submitted to PAC the mission's comments. The passing of the Public Procurement Bill⁹ and its implementation are key to establishing a credible legal framework for public procurement and to making improvements in public procurement practices. The Bill will regulate procurement practice and ensure it is carried out in a structured manner, instead of a discretionary manner. The Bill places accountability and responsibility for procurement on Heads of Procuring Entities and other public officials to whom Government has placed responsibility for carrying out government programs and use of funds. The Public Procurement Law will harmonize government and Development Partner procedures and reduce cost of transactions and areas of conflict. The law will also enable private sector and civil society participate in oversight on public procurement. The Procurement Reforms Consultants are currently preparing the standard bidding documents referred to in the draft bill, structure of the PPB and plans for capacity building. These documents have been completed and are under review.

⁹ Ghanaians and Development Partners have rated this Bill as good law.

CONTRACT MANAGEMENT

Overview of methodology of assessment

vv. The assessment of contract management started by reviewing the PRP, to determine to what extent the Public Procurement Bill and the capacity building program would enhance efficient contract management. The Consultants then selected institutions and the contracts to be reviewed. The review included the role and performance of key actors on each contract (i.e. managers, consultants, procurement staff, and contractors). 300 contracts selected provided an adequate sample size for the different types of contracts, both small and large/complex contracts procured through ICB, NCB, selective tendering, and shopping, and sole source procedures. The contracts examined included contracts financed by the Government itself, by the World Bank and by other Development Partners. For each contract the review determined whether (a) the contract was completed in time; (b) deliverables were as per contract agreement; and (c) the final cost was overrun.

ww. The assessment of each contract included record keeping, existence of sufficient data; contract monitoring arrangements and measures taken, if any, in case of poor or inadequate performance. The review also attempted to evaluate financial accountability and control systems which track the flow of funds and assist in detecting weaknesses in the application of procurement regulations and procedures, and those that facilitate fraudulent practices; and the extent to which payments are in accordance with signed contracts. Interviews provided perceptions of public staff responsible for contract management.

xx. In order to assess the practical situation on the way contracts are managed, the consultant reviewed 291 contracts (97% of the targeted number of 300). The strategy adopted was, to request for a list of all contracts executed between 1997 and 2002 and select at random the ones to be reviewed. Officials were physically interviewed and asked to complete the questionnaire in Attachment 3. Records were then examined to determine how each contract advanced. Contracts were selected based on the ratios for Works, Goods and Service as stated in the TOR. The reviewed contracts consisted of 132 Works, 137 Goods and 22 Service contracts as indicated in the table 3 below.

Table 3: Contracts reviewed

No	Agency to be Assessed	Number of Organizations		GOVERNMENT Contracts		Development Partner Contracts		Total Contracts		%
		Target	Actual	Target	Actual	Target	Actual	Target	Actual	
1.	Metropolitan/ Municipal/ District Assemblies	10	7	30	36	40	15	70	51	73
2.	Ministries	5	4	25	30	45	24	70	54	77
3.	Subvented Departments & Agencies	8	5	40	53	40	14	80	67	84
4.	State Corporations	5	6	25	94	25	2	50	96	192
5.	Institutions	2	2	20	20	10	3	30	23	77
Total		30	24	140	233	160	58	300	291	97

Main findings

yy. The assessment concludes that Government should pay attention to contract management, as there are a significant number of institutions contracts assessed that are not managed efficiently. No analysis has been done on the premium government is paying due to poor contract management but the numbers of contracts that suffer from poor contract management is adequate evidence to warrant attention. Flawed Contract Management process leads to increased costs, delay in contract completion, failure to achieve expected deliverables and may expose the Procurement Entity to legal complications of unpredictable results. In this case poor contract management involves delayed completion, non-completion, uncontrolled variations, political pressure, flawed assessment of contractor claims, failure to apply damages where due and general failure to comply with other contract conditions. Contracts not performed in accordance with the agreements undermine the principle of economy, efficiency and transparency.¹⁰

zz. Contract Management involves all technical and administrative tasks performed by designated officials from the time a contract has been awarded until it is successfully completed, accepted or terminated and final payment made and disputes resolved. Therefore contract management is an issue of practice and ethics, even though some of the problems are due to unclear procurement procedures and inadequate oversight. The Government should appoint a Task Force or a Consultant to review the issues on contract management and advise on required measures for improvements. Ensuring a clear structure of management responsibility should strengthen a clear.

Recommendation: There should be a monitoring system to ensure qualified personnel manage contracts and non-performing personnel are sanctioned. Teams should undertake certification of works contracts, instead of individuals.

¹⁰ For easy reference, **Table 10** provides a list of organizations visited and number of contracts assessed, **Table 11** provides summary of contracts reviewed, **Table 12** provides Format of questionnaire used, and the **Attachment to these tables** provides “Causes of arrears and delayed payments in the roads sector”.

aaa. **Technical options:** value for money is achieved by a combination of sound contract management and sound technical options. Some works have suffered over design, resulting in unduly expensive works. Bids have been invited on basis of incomplete designs. A study conducted some 4 years indicated that unit cost for roads in Ghana are higher than in neighbouring countries. This was a result of use of flawed designs, wrong technical options and poor contract management, which includes excessive preliminary costs. In some contracts for roads, whole permanent houses have been constructed under the contracts. In some cases, vehicles for supervisory staff have been exaggerated.

bbb. All these add to the final cost of the final unit cost of the road. These issues appear to be not controlled. There is no policy or guidelines for procurement of equipment. For example in the absence of a vehicle size policy, public officials have procured large and expensive (to buy and maintain) vehicles in cases where smaller vehicles would be appropriate; and engineers have built reinforced concrete drains on both sides of the road where storm-water flows on one side.

Recommendation. The Government should appoint a Task Force or a Consultant to review and prepare practice guidelines and procedures for contract management, technical options and for equipment standards.

Good practice; the Ministry of Health has established a Technical Committee that determines specifications for specialized equipment. This has resulted in procurement of appropriate and economical purchases.

ccc. **Contract manager;** out of 24 organizations reviewed, only 4 had specific officers designated as contract administrators. The work is often split among number officials like Planners, Accountants, and administrators etc. who do it on ad hoc basis. This is an organizational weakness that contributes to poor supervision of suppliers. However qualified engineers often better supervise works contracts.

ddd. **Procurement methods used;** from the pie chart below (figure 1.) and the table below it is observed that most popular procurement method used by the organization assessed was selective bidding (including shopping), which constituted 52% of the total contracts reviewed. Sole sourcing followed with 20%. It was evident from investigation that about 60% of the contracts awarded through selective bidding would have qualified for National Competitive Bidding (NCB)¹¹. It is significant to note that most of the organizations using the selective bidding method of procurement did so because there are no thresholds for NCB. There was little use of formal pre-qualification. Investigations revealed that, in most cases, although there was a database of contractors, in about 70% of the cases, same contractors were used frequently over the years. This posed the inherent danger of collusion and of not taking action on poorly performing but “friendly” contractors.

¹¹ Using World Bank standards for NCB thresholds.

Figure 1: Use of Procurement Methods

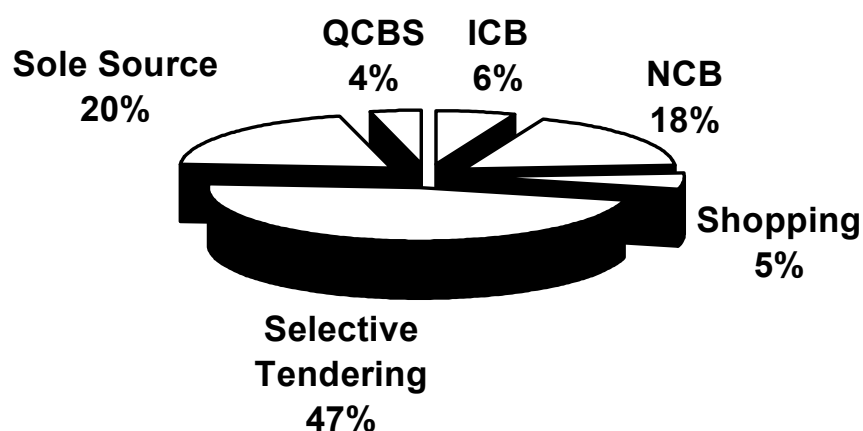


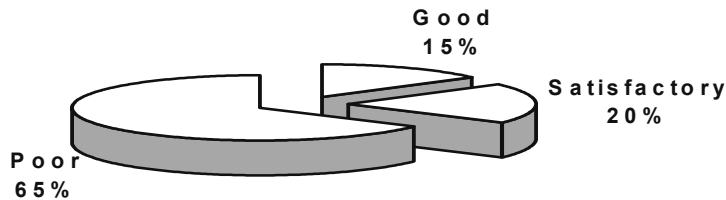
Table 4: Procurement Method used by institutions assessed

No	Procurement method/organization	ICB	NCB	Shopping	Sole Source	Selective bidding	QCBS
1	Metropolitan/Municipal/District Assemblies	-	15 (29%)	4 (25%)	10 (17%)	21 (16%)	1 (8%)
2	Ministries	12 (67%)	30 (59%)	3 (19%)	3 (5%)	1 (17%)	5 (38%)
3	Subvented Agencies & Departments	5 (28%)	2 (4%)	4 (25%)	10 (17%)	41 (30%)	5 (38%)
4	State-Owned Enterprises.	1 (5%)	4 (8%)	5 (31%)	26 (45%)	58 (43%)	2 (16%)
5	Institutions	-	-	-	9 (16%)	14 (10%)	-
Total		100	100	100	100	100	100

eee. **Procurement Planning and Budgeting;** some institutions do not pay adequate attention to procurement planning linked to annual work plans and approved budget. Out of the 24 institutions assessed, none of them had procurement plans except for World Bank-financed projects. Procurement planning is critical to implementation of programs and projects. Annual procurement plans are a requirement under World Bank-financed projects, but the plans are often finalized late, prepared inadequately, not updated and often not adhered to. World Bank Task Team Leaders require to be more proactive in the planning process and in monitoring implementation, as well as in the updating the annual work plans and procurement plans. This should be a joint effort with the staff of the World Bank Desk in the MFEP. On the budget side, contracts are often extended without due consideration to availability of budget which has resulted sometimes in delayed payments or arrears to contractors.

Recommendation. Procuring Entities should be required to prepare comprehensive work-plans and resulting procurement plans, within the budget preparation cycle and consistent with allocated budget.

Figure 2: Quality of Record Keeping



fff. **Record keeping:** record keeping is inadequate or poor in a majority of institutions. Record keeping was assessed as poor in the 1985 and 1996 CPARs but since then there have been little improvements. Many managers do not give attention to or totally ignore record keeping. Out of 24 organizations assessed, record keeping in 17 representing 65% was not in order (see figure 2 above). Contract documents were incomplete and were filed haphazardly or stacked in different offices. This affected the time used in reviewing contracts.

ggg. The organizations with good records keeping were either those with Project Management Unit (PMUs) and those with well established procurement units. Almost all Procuring Entities could not recall when they were last subjected to audit.

Recommendation. Records keeping should be mandatory as it facilitates transparency, auditing and monitoring of contracts. All documents relating to a particular contract should be filed together and kept in a filing cabinet. To the extent possible record keeping should be computerized. The existing purchase orders used by public organization should be re-designed to incorporate the contractual obligations and rights of the purchaser and (Procuring Entities) and suppliers.

hhh. **Contract completion;** out of the 291 contracts reviewed (see Table 5), 155 representing 53% suffered delayed completion. Major causes of delays identified include:

- xix. Unpredictable weather/climatic conditions;
- xx. delays in the release of funds to make payments;
- xxi. delays in relocation of utility facilities (telephone and electricity cables and water pipes) in case of civil works;

- xxii. delayed payments due to lengthy and payment processes; and
- xxiii. contractor poor performance.

iii. In organizations where contracts monitoring and field inspection were effective, contracts were completed in a timely manner. For instance out of 136 contracts which were completed on schedule, 100 contracts representing 74% were works contracts, which were closely monitored and site meetings held regularly. It was also evident from the assessment that, appropriately qualified staff designated as contract managers managed most contracts that were completed on time. Almost all contracts awarded under shopping procedures did not stipulate delivery dates, thus making it difficult to ascertain whether contracts were executed in a timely manner or not. It was also difficult to assess the cost implications of such delays due to difficulties in obtaining accurate data.

Table 5: Number of contracts completed on time or delayed

No	Type Of Organization	Total № Of Contracts	Number Of Contracts Completed On Time	Number Of Contracts Delayed
1.	Ministries	54	32 (59%)	22 (41%)
2.	S. O. Es	96	50 (52%)	46 (48%)
3.	Institutions	23	3 (13%)	20 (87%)
4.	Sub-Vented Agencies	67	29 (43%)	38 (57%)
5.	Metropolitan/ Municipal/ District Assemblies	51	22 (43%)	29 (57%)
Total		291	136 (47%)	155(53%)

jjj. **Cost overrun;** out of the 132 works contracts reviewed, 61 representing 46% and 51 representing 38%, were affected by fluctuations and variations respectively, resulting in cost overruns which raised the initial contract sums by more than 30%. Some of the factors that cause cost overruns are:

- xxiv. Excessive variations orders which required time extension; and
- xxv. Unrealistic time extension by consultants to cover poor contractor performance.

kkk. The results of fluctuation by organization are summarized in the Table below. A number of staff interviewed felt that application of fluctuations clause was abused, and characterized with flawed calculation.

Recommendations. There should be a clear procedure and methodology for price fluctuations which would deter contractors from deliberately delaying contract completion This deterrence will also remove inherent risk of compromise on the part of

supervisory staff. The formula method for calculating fluctuations should be used rather than the traditional method of documentary evidence.

Table 6: Effect of fluctuations on sampled contracts

No	TYPE OF ORGANIZATION	INITIAL CONTRACT SUM	AMOUNT OF FLUCTUATION	%
1.	Metropolitan/Municipal/District Assemblies	824,182,106.00	125,513,662.00	15
2.	Ministries	28,010,282,438.00	5,293,477,343.00	19
3.	Subvented Departments/Agencies	83,729,522,490.00	32,095,873,879.00	38
4.	State Corporations	2,876,361,730.00	956,106,311.00	33
5.	Institutions	4,190,551,137.00	546,123,652.00	13
<u>Total</u>		119,630,899,901.00	39,017,094,847.00	32%

III. **Performance security**; generally, application of performance security was handled properly wherever required. Out of 132 works contracts assessed, 106 or 80% were covered with performance security of either 10% Bank Guarantee or 30% for insurance bond. In the remaining instances (i.e. 20% of contracts assessed) however, the performance security clauses were not enforced, even though it was stipulated in the contract agreements. It was also observed that most of the contracts covered by letters of credit/supplier credit terms did not attract performance security. For instance, at GNPA, almost all their contracts were not covered by performance security. Even with the high rate of delayed contracts, there was almost no calling up performance security or liquidated damages.

mmm. **Advance payments**; out of 87 contracts for which advance payments were given, 65 or 75% were supported by advance payment guarantee. The remaining 22 or 25% were not covered. Advance payments in some cases were too high, as much as 50% -100% of the contract price. Amongst organizations, which gave out high advance payments are Ghana Airways Corporation, GIMPA and SSNIT. The analysis indicates good practice in the case of securing advance payments. Details are given in Table 7.

Table 7: Performance Security/Advance Payment and Advance Payment Guarantee

No	Ttype organization of	Total no of contracts	No performance security with	No with advance payment given	No with advance payment guarantee
1.	Metropolitan/Municipal/District Assemblies	51	5 (10%)	13	13 (100%)
2.	Ministries	54	42 (78%)	11	8 (73%)
3.	Subvented Departments/Agencies	67	35 (52%)	26	22 (85%)
4.	State Corporations	96	18 (19%)	26	19 (73%)
5.	Institutions	23	6 (26%)	11	3 (27%)
Total		291	106	87	65 (75%)

nnn. **Payments.** It is a contractual obligation for clients/employers to pay for services rendered by contractors in accordance with contract terms. However, payments especially on Government-financed contracts were often delayed, and in some cases not paid at all ending up registered as arrears/debt. Out of the 233 Government-financed contracts, 87 (representing 37%) suffered payment delays. Delays in payments affected contractor's cash flow and productivity. A payment certificates unnecessarily passed through many hands before it is finally paid. This was prevalent in contracts executed in the regions. Attachment 4 provides some idea of the lengthy payment process by procuring entities. Delayed payments attract interest payments or claims at bank interest rates. There is a perception that contractors do not mind delayed payments if they would be entitled to interest payments.

Table 8: Payments Schedules in the Agencies Assessed

No	Type of organization	Total payments as per contracts	No of payments on time	No of payments with delays
1.	Metropolitan/Municipal/District Assemblies	51	22 (43%)	29 (57%)
2.	Ministries	54	31 (57%)	23 (43%)
3.	Subvented Departments/Agencies	67	51 (76%)	16 (24%)
4.	State Corporations	96	83 (86%)	13 (17%)
5.	Institutions	23	17 (74%)	6 (26%)
Total		291	204	87(37%)

ooo. **Enforcement of contract conditions;** the existing Government 'conditions of contract' for building and civil engineering works which dates back to the colonial era are inadequate for effective contract administration. This document does not take into consideration clauses like interest payment to contractors, contingencies, performance security, advance payment guarantee etc. Therefore, contracting procuring Entities and contractors have tended to seek refuge under the FIDIC procedures where these provisions are clearly spelt out. In some Procuring Entities World Bank's standard bidding documents are used even for non-Development Partner-financed contracts. It was observed that the application of remedies was negligible. Thus, out of the 143 contracts that were delayed in completion, only 2 remedies (representing 0.014%) were enforced. Almost all the Purchase Orders reviewed, did not stipulate any contractual terms such as delivery dates, warranty, etc. It is therefore impossible to determine whether a contract has been performed in a timely manner or not. There should be regular ex-post contract audits (in addition to financial audits) of projects to unearth procurement related malpractices.

ppp. **Disputes;** disputes in the contracts reviewed were negligible. For instance out of 291 contracts reviewed, only 3 representing 1%, suffered from disputes. The disputes were however amicably resolved. Few contracts suffer from disputes because contractors fear being blacklisted or branded as litigants, and therefore not be considered for future business opportunities.

Stores management

qqq. Some Government warehousing and storage facilities visited by the Team are not kept properly. The facilities are dilapidated and do not conform to modern standards. Goods were not kept under the right ambient conditions. Most of them have leaking roofs jeopardizing the shelf life of the goods. A classical example is the central Medical Stores at Tema. In other cases, large quantities of goods were found on the bare floor. In some of the stores visited, there are no adequate measures for staff health, safety and fire risk. Most of the fire extinguishers were not functioning, and the functioning ones were not strategically located. Schools Desks meant for classrooms have been left at the mercy of the weather and books were not stored on pallets.

rrr. Stores constitute a large amount of public expenditures but there is no data in the system indicating how much public funds are held in stores. Stores facilities need to ensure safety of goods and workers. Sound stores management that includes regular stocktaking (say monthly) discourages theft. There are also public stores wasting at the ports for not being collected in time, sometimes not collected at all. Initiatives for improvements in stores management appear slow; for instance, a study¹² financed by the Nordic Development Funds for streamlining the Central Medical Stores (CMS) since 2000 has not yet yielded physical improvements. The Stores Inspectorate Unit that used to monitor stores management has not been functional for over 10 years. Heads of Procuring Entities do not appear to exercise prudent responsibility to ensure proper stores management, including total supply chain because they see this as a responsibility of the SMMC.

sss. There should be a deliberate effort to avoid wastage in public stores resulting from poor storage facilities, poor stores organization and lack of proper record keeping.

Recommendation. The MFEP should take action to reduce stores wastage by:

- (b) Requiring Heads of Procuring Entities to immediately put their stores in order:
- (c) Reinstating the Stores Inspectorate Unit so that it can advise the Minister of MFEP on Procuring Entities not observing sound stores management; and
- (d) Requiring heads of Procuring Entities to clear all overstayed stores from the ports and to ensure collection of stores from ports in a timely manner.

Supplier's credits

ttt. Contracts under these credits do not achieve value for money, as they are not prudently managed. Some investments have not adopted appropriate and economic technical options while a few constructions have remained unused because operational

¹² The study is to finance civil works, capacity building for a new management team, franchising operations, computerization, equipment and works consultants.

budget was not provided. Supplier credit financing per se is a good idea. Foreign suppliers, credit firms or contractors offer the credits to fill the ‘needs gap’ of MDAs. However, the contracts reviewed can best be described as very unfavourable to the government, as they are often worded in favour of the credit suppliers. A value for money (VFM) assessment, by Crown Agents identified a potential saving of about \$ 38 m, from 32 contracts valued at \$852 million. Actual savings realized amounted to about US\$6 million. The propriety rights of some foreign suppliers hampered the scope of assessment by Crown Agent, in addition to the difficulty of obtaining reliable figures from other sources. Some investments have not adopted appropriate and economic technical options while a few constructions have remained unused because operational budget was not provided

uuu. The VFM service was designed to yield significant financial savings. More importantly, it identified contractual weaknesses that could have put the Government at risk. It helped to strengthen the contracts to provide long-term sustainability and “value for money”, and started the process of capacity building and skills development at MDA level. Some potential suppliers have contacted Crown Agents on the VFM with a view of making acceptable submissions. This is an ‘upstreaming’ process that often results in improvements in the quality of contract documents submitted.

Recommendation. Efficient management of supplier credits would be achieved to a much larger extent by subjecting the credits to competition, including the financing part. If competition is not feasible in the very exceptional case, sole source contracts should be negotiated in a collective decision-making manner, and negotiations based on a good knowledge of market prices.

vvv. The following contracts highlighted in Table 9 are a classic example. The percentage saving may appear low but the sums involved are high.

Table 9: Value for Money Outcomes

Contract	Contract Price	Outcome/Benefit
Supply of materials for SHEP-3 project	US\$13,643,686	Recommended price savings of 6%-10% on materials price of US\$12.1m. Buyer and Supplier by negotiation reached agreement on 6% savings equivalent to about US\$720,000, ploughed back into additional material purchases
Turnkey construction of residential staff accommodation at Hospital and a general study of facilities at Korle Bu Teaching Hospital	US\$9.8 million (US\$7.9million for Construction Component and US\$1.9 million for the Study Component)	Price analysis indicated that the cost of the residential accommodation component is on the high side and savings of about 34% is feasible (about US\$2.7 million). Contract price negotiation strongly advised. Contractual linkage of the construction project at Ho to the general study at Korle Bu (Accra) not justified and presents substantial contractual and financial risk to the Buyer and does not offer good value. The two should be implemented as separate contracts to run within their own term, conditions and agreed timeframes.

www. **General perceptions from interviews** (Tables 10, 11 and 12, with attachment) the people interviewed often gave their view of the current practices. Some of the key perceptions are:

- i. Contractors mark-up their prices or reduce the quality and quantity of work in order to cushion the effects of delays in payment.
- ii. Unscrupulous public officials capitalize on delays in payments by demanding “rent or facilitation fees”.
- iii. Selective bidding and shopping are widely used to offer contracts to specific contractors. These contractors are the ones campaigning against the public procurement bill.
- iv. Politicians that give contracts to contractors and suppliers aligned to their parties are using extensive use selective bidding.
- v. Most consultants do not do thorough pre-contract evaluation (feasibility on contracts) resulting in unacceptably high levels of variations.
- vi. Most Government staff responsible for managing contracts are not well-remunerated, so generally they lack enthusiasm in their work.

Labor Standards in works contracts

xxx. The Government has placed poverty alleviation as its highest priority and has established policies accordingly. Employment creation and local enterprise promotion are important strategies for poverty alleviation. Fair wages, good conditions of work and equitable opportunity for waged employment are needed to ensure the strategic aim.

yyy. The Department of Feeder Roads of the Ministry of Roads and Transport has recently undertaken a study (through DFID financing) on the Social Aspects of Construction (SAC) on the application of Ghanaian labour standards (which include health and safety measures) in works contracts. The Study indicated that bidding documents used by the roads sector include provisions on labour laws as fully applicable. The SAC however showed labour standards were being complied with by big contractors but rarely by small/medium size contractors. Similar labour clauses are gradually being included in works contracts by other Procuring Entities.

zzz. The Ministry of Roads and Transport indicated that contractors pay much higher wages than the gazetted minimum wages. Correct payment benefits are not paid to temporary workers, i.e. “Casual workers” continue to attract benefits distinct from other workers. Due to accounting difficulties and lack of enforcement, contractors do not make deductions and remit to SSNIT. Workers themselves are not keen that such deductions be made. On compensation payments to workers against injury, there are concerns that contractors may not be complying with the requirement that they hold workmen’s

compensation insurance policies to cover such payments and whether such payments are made in case of injury. It was suggested that there should be a program to educate workers on these rights to enable them demand compliance. This insurance increases the cost of contracts, but the benefits out-weigh the cost.

Recommendation: A countrywide study on application of labour standards would provide a better analysis and basis for revisions of the labour law, practices and implementation.

aaaa. Details, recommendations and rationale are provided in **Annex 9**, which is exclusively on “Labour Clauses in Public Contracts in Ghana, recent experience in Roads Sector” and prepared by ILO consultants. The report includes useful lessons learnt from the SAC that would apply to all works Contracts. The SAC in a wider context revealed that labour-based contracts that create employment were not being used effectively, given the success of the early initiatives. The Public Procurement Board will be expected (actually required) to introduce a sustainable system for monitoring of compliance with labour standards and use of labour-intensive contracts in construction contracts, and measuring the impact on target groups. It is recommended that:

- vii. Procuring Entities must ensure that clauses on labour standards (fair wages, health and safety measures and social security) are incorporated in works contracts and enforced by contract managers. The draft Standard Tender Documents prepared as part of the Public Procurement Law contain these provisions but these need to be reviewed against Ghanaian labour laws to ensure completeness;
- viii. There should be a clear policy on the desirability of using labour-intensive contracts in construction contracts wherever technically feasible and cost effective, and implementing strategies should continue to be developed to support this policy.
- ix. There is a need to strengthen the capacity of the Department of Labour, or to explicitly broaden the mandate and capacity of consulting engineers to monitor compliance with labour standards. Procedures should be put in place to allow communities to inform Government of the impact of improved procedures and cases of lack of compliance.

Table 10: List of organizations visited and number of contracts assessed

NO	TYPE OF ORGANIZATION	TOTAL NO. OF CONTRACT ASSESSED
A.	Municipal/Metropolitan/District Assemblies	
1.	Tamale	8
2.	Bolgatanga	5
3.	Techiman	7
4.	Ho	10
5.	Agona	5
6.	Ga	6
7.	Accra	10
Sub-Total		51
B.	Ministries	
1.	Ministry of Education	9
2.	Ministry of Roads & Transport	24
3.	Ministry of Works & Housing	4
4.	Ministry of Health	17
Sub-Total		54
C.	Subvented Agencies & Departments	
1.	Divestiture Implementation Committee	6
2.	Ghana National Fire Service	10
3.	Ghana Education Service	2
4.	Ghana Highway Authority	11
5.	Ghana Civil Aviation Authority	38
Sub-Total		67
D.	State Corporations	
1.	State Insurance Company Limited	4
2.	Ghana Water Company Limited	8
3.	Ghana Airways Company Limited	7
4.	SSNIT	31
5.	GNPA Limited	17
6.	Volta River Authority	29
Sub-Total		96
E.	Institutions	
1.	GIMPA	11
2.	University of Ghana	12
Sub-Total		23

Table 11: Summary of contracts reviewed

№ of Contract Reviewed		291
Category:	Works:	132
	Goods:	137
	Service:	22
Procurement Method:	ICB	18
	NCB	51
	Shopping	16
	Selective Biding	135
	Sole Sourcing	58
	QCBS	13
Funding Agency:	GOVERNMENT	233
	Development Partner	42
	GOVERNMENT/Development Partner	16
№ of Contract Completed	On Time	136
	Late	143
	Stalled	1
Monitoring and Field Inspection	Generally Okay	
№ of Affected by Fluctuations		61
№ with Variations		51
№ with Performance Security		106
№ with Advance Payment Given		87
№ with Advance Payment Guarantee		65
№ with Remedies Enforced		2
№ where Final Price exceeded initial Price		70
How is Records Keeping?		Poor
Payments:	Timely payment	204
	Delayed payment	87
No. With Disputes		3

Table 12: Format Of Questionnaire Used

1. Date:
2. Organization
3. Discussions with Name Position
4. Name of Contract
5. Funding Agency
6. Do you have a Contract Manager? Yes No
7. If No who are in charge
8. Contract Sum
9. Date Contract was signed
10. When did the Bid close
11. Date contract was completed?
12. When was contractual completion date?
13. Was Contract in a Timely Manner?
14. Type of contract, - Goods / Works / Service
15. Procurement Method Used
16. How good is the Record keeping of the Contract?
17. Was performance security provided for entire period of contract?
18. What was the percentage.
19. What was the term of payment?
20. What percentage of advance payment/mobilization was given?
20. Was there an advance payment guarantee? Yes No
21. Were payments authorized? Yes No
22. Were remedies being applied egg. Liquidation damage.
23. Did materials supply conform to specification? Yes No
24. Did you have any field Inspections/Expediting (Goods) Yes No
25. Were site meetings regular? (Works). Yes No
26. Were procuring entity's engineer involved in the case of works? Yes No
27. Was there any retention of payment? Yes No
- Was final payment made? Yes No
28. When was the final payment made?
28. Were fluctuations allowed? Yes No
- IF yes, what formula was used.
29. How much was involved?
30. Were variations done? Yes No
31. Was the communication for variation in written form? Yes No
32. Did it affect the final price? Yes No
33. How much was involved?
34. How was the performance of the Consulting Engineer?
35. Did the contract deliver as per contract? Yes No
36. Who certified the contract?
37. What were the causes of delays?
38. What action was taken to avoid the delays?
39. What was the final cost?
40. Where is the current location of the Goods / Works?
41. Has any audit been conducted on this contract before? Yes No
42. Were there any disputes? Yes No
43. If yes, how where they handled.
44. Any other information that can improve performance in terms of Contract Management?
45. Remarks by Interviewer.

Attachment

CAUSES OF ARREARS AND DELAYED PAYMENTS IN THE ROAD SECTOR

Background;

a. One of the key areas of infrastructure development has been the road sector. The objective of road projects is to improve the road network throughout the country. Sources of funding of projects are from both GOVERNMENT and by various bilateral and multilateral Development Partner agencies. Over the past several years, there appears to have been a steady rise in the cost of executing road projects, often in excess of the allocated budgets, and frequent inability to complete projects within the stated period. The reasons for this situation are many and varied; the result is that the MRT has been faced with an increasing number of disputes, and arbitration particularly arising from delayed payment with its attendant interest payments. The following areas in the budgeting, procurement and execution processes have been identified as some of the main causes contributing to delayed payment and hence

Arrears.

b. **Budget Preparation.** The parameters used in the preparation of the budget as issued by the Ministry of Finance (MFEP) in July are always outdated when the budget is approved in March in the subsequent year. The exchange rate given by MFEP in July to prepare the foreign component of the budget normally changed when the budget is approved. Also the inflation effect is not taken into consideration during the approval of the budget. In real terms the budgetary ceilings given for the preparation of the budget would have dwindled when the budget is approved.

c. **Non-Budgeted Projects.** There have been numerous occasion during a given fiscal year where contractors have been asked to undertake road projects, which have not been given budgetary allocation. The Ministry of Finance normally issues a deed of guarantee to cover such projects. When such projects are started, MFEP is not able to furnish the Ministry of Roads and Transport with any agreed payment schedule and the terms of payments. Certificates received for work done are then deferred till the next fiscal year when such projects are captured under the budget. Certificates will already be in arrears and payment will then attract interest; in this case the Bank interest rates of over 35%. This indeed lucrative business and would definitely encourage contractors to agree to undertake work on promise of future payment.

Unrealistic cost estimates

d. Due to the high demand by the populace to get good roads in their communities, some Road Agencies tends to thinly allocate their budget over considerable number of projects. During the tendering, most of the tenders received are far above the estimated costs. Payments for the difference in the estimates and the actual project costs will then have to be scheduled in subsequent budgets. When contracts are awarded the rate of execution far outstrip the allocation made in a given fiscal year. The effect is that payment of the certified works will be delayed till the next fiscal year.

Inadequate budgetary allocation

e. Budgetary allocation made to the road sector has always been inadequate to meet contracted works. The releases made are often about 75% of the approved budget. The investment component of the budget which is used for projects is reviewed downwards which tends to compound the payment problems.

f. Releases of funds from the Government source have been very erratic, while most of the Development Partner assisted projects have regular and stable releases. Due to the erratic nature of releases from government, payments for financed wholly by Government projects and the counterpart- funding requirement for Development Partner assisted projects are always in arrears. A typical example is the Kumasi-Anwiankwanta road project where payment of counterpart fund is still not settled to the contractor, after completion of the project about three years ago. Payment delays are due to releases of funds in a manner, which do not conform to the contract payment schedules. On this contract, the Government is paying a heavy premium on interest due to delayed payments.

g. The Payment Certification Process is too cumbersome, tedious and unduly long. The controls are highly subjective and cause considerable delays before final payments are made. The normal time period for certificates issued by the contractor to be paid is between 60 to 90 days from the date the certificate was presented. Payment certificates are initiated and signed by the Engineer's Representative. The whole process could take months. What is even worse is when rural contractors are forced to go to Accra and camp for payment. There is a big perception that large sums of money are paid as “facilitation” fees. The payments pass through the following process for endorsement and approval:

- i. District Assembly (if required) district foreman -site verification district planning officer -endorsement district co-coordinating director -endorsement district chief executive -endorsement by employer.
- ii. Regional Coordinating council - -employer, regional economic planning officer regional coordinating director regional minister, -site verification/endorsement -endorsement –endorsement, agency head office -engineer/employer,
- iii. Head of Department -Instruct Desk Manager, Desk manager - Instructs Engineering Department Engineering Department -Vets details and give advice to Desk Manager Desk Manager -Instructs Quantity Surveying Department Quantity Survey Dept. -Vet and advise Desk Manager Desk Manager, Head of Department Account Department Internal Audit Dept, Head of Dept./Accountant Account Department Endorses and recommend to Head of Dept.; -Endorses and instruct Accounts Dept to effect Payment -Prepares Vouchers and Cheques - Audits Vouchers.

- iv. MFEP needs to do review and revise the payment procedures to remove the delays and advise all Procuring Entities.

PUBLIC SECTOR MANAGEMENT

Overview of methodology of assessment

bbbb. The review of public sector management as it relates to the procurement function covered 20 out of the 25 selected institutions as on “Table 9: List of Institutions surveyed. The analysis used a combination of questionnaire, interviews and examination of records and documents, including observation of practice. The assessment included a brief review of salaries of procurement staff, status of procurement profession, culture of accountability, delegation of authority and responsibility of those involved in procurement processing. The assessment took into account on-going public sector reforms and determined the extent to which the reforms will impact on procurement staff. It also reviewed a number of relevant documents to substantiate information on relevant developments in public sector management. No empirical analysis has been done as such on the efficiency of the public service but from interviews and examination of available records, there is adequate information and general perception leading to credible conclusions.

Table 13: List of Institutions Surveyed

Central Management Agencies

Public Services Commission
State Enterprises Commission
Office of Head of Civil Service
Central Tender Board
Ministry of Finance
Ministry of Local Government and Rural Development

Ministries Departments and Agencies

Ministry of Roads and Transport
Ministry of Health
Ministry of Works and Housing
Ministry of Education

Subvented Agencies

Public Works Department
Council for Scientific and Industrial Research
Ghana Fire Service
Ghana Highway Authority
Ghana Institute of Management and Public Administration
Ghana Education Service
Ghana Civil Aviation Authority
Social Security and National Insurance Trust

Local Government Bodies

Accra Metropolitan Assembly

State-Owned Enterprises

Architectural and Engineering Services Ltd.

Development Partner Agencies

United Nations Development Programme
World Bank, Ghana Office

Main findings and recommendations

cccc. **Public Sector Reforms:** the Development Partner-supported reform programs have not yielded meaningful results. The civil service is still considered oversized. Public institutions and their roles need to be reorganized to enable government off-load to private sector roles that need not be with Government. The fiduciary and service delivery systems need to be modernized. Decentralization is not yet fully accomplished. The Government has now taken a bold move to organize the reforms itself. The Fiduciary bills (which include the Public procurement Bill) are evidence of these steps. The Office of the Senior Minister has been mandated to prepare the reforms. As a first step Government has organized a review by a consulting firm to assess past reform initiatives and see what has worked well and what has not worked well, what the constraints are and suggest the way forward. It is expected that this approach will yield quick and sustainable results, given the Government owns it.

dddd. **Efficiency of the public service:** no empirical analysis has been done on the efficiency of the public service but there is a general perception that the capacity of the public service is low¹³, that is it is not as efficient as it should be. This is due to a combination of factors. The key factors are low remuneration, vacant key managerial positions and unbundled roles of political and administrative authority, inadequate quality and numbers of technical staff, and weak oversight on staff performance. Some of these factors require urgent attention as they affect the efficiency of the fiduciary functions.

eeee. Government officials and stakeholders are reasonably familiar with the main dimensions of this subject. Public servants are de-motivated by such factors as inadequate working equipment/tools/transport, political interference and general mistrust by politicians. The issue of low salaries is related to that of corrupt practices linked to “survival”. The most affected cadre is middle management level that consists of technical staff that implements the bulk of public programs, including procurement. At management level, many key positions are either not filled or are filled on an acting capacity. For instance out of 35 Chief Director positions (the topmost administrative position in the civil service), only 6 are substantively filled, i.e. over 80 percent of Chief Director positions are vacant, including the all important Chief Director of the MFEP. The Head of Civil Service position was vacant for about 18 months. The most Senior Directors who act as Chief Directors do not have formal delegated powers; they act de facto and not de jure. Ministers tend to take over some key responsibilities of Chief Directors.

¹³ This is also acknowledged in the GPRS

ffff. There is evidence from other countries that politicians cannot achieve high efficiency level in public service by bypassing public servants. There is a perception that public officials lack inertia in responding to a changed way of doing business. The Scheme of Service of the Civil Service has no provision for the establishment of procurement units and tender committees. These constraints affect the efficiency of the fiduciary functions and are a major cause of issues raised under the aspect of contract management and slow customs and ports clearance of goods.

Recommendation. There is a need for Government to revisit job descriptions of key positions in the public service and re-establish performance targets (including their measurement) for senior managers and service agencies like Ghana Statistics Service. Government should be open to introducing non-financial incentives. It is desirable that all vacant senior positions in public service are filled so as to improve on the efficiency of public service, including procurement.

gggg. **The procurement function:** the volume of public procurement is substantial as evidenced by the amount of public expenditure that goes via procurement, i.e. about 14% of GDP. There are examples of public institutions with effective procurement units manned by qualified personnel with clear job descriptions. Nevertheless there is a general concern, perhaps a perception, that the procurement objective of achieving value for money is not fully met.

hhhh. A significant issue is lack of sanctions to public officials for poor performance, non-compliance with established procedures, meeting performance targets and abiding by code of ethics. Government officials and stakeholders are reasonably familiar with the main dimensions of this subject. In most public institutions the procurement function is diffused in administrative functions and unqualified staff (not adequately proficient in procurement) made responsible for procurement. There is a perception that senior management in the public sector does not pay adequate attention to procurement practices that ensure value for money and focused capacity building.

iiii. In most MDAs staff responsible for procurement are on loan basis in the absence of well-established procurement units. Often this staffs is transferred from these duties when they are beginning to acquire procurement skills. Qualified staff is lost to private sector. A major driver for retention will be the adoption of competitive motivation and reward systems to dissuade attrition to private sector employers.

Recommendation. Government and its major stakeholders must take a bold move to transform the organization and practices of the procurement function to enhance efficiency, oversight, coordination and monitoring.

jjjj. There are advocates of establishment of a central agency for procurement of common-user items, but many Procuring Entities because of the inherent risk of inefficiency and ineptitude do not prefer this option.

Recommendation. A better solution would be nominating one procuring entity to organize a term contract with suppliers from whom all procuring Entities could make

orders from time to time at agreed payment and delivery terms. Government should take actions to raise the profile of the procurement in the public service and make capacity building more focused and easily manageable. It is highly desirable that:

- (a) Each procuring entity establishes a procurement unit managed by procurement proficient staff.
- (b) Government establishes in the public service a procurement professional cadre with a clear job description and career progression. Public sector scheme of service must be amended to make provision for a “Cadre of Procurement Professionals” and make provision for a new Stores Inspectorate Division.
- (c) Government initiates extensive capacity building for the procurement function. The magnitude of the procurement function has imposed considerable demand for high-level procurement professionals and enhanced institutional capacity in the public sector.

kkkk. **Advanced procurement processes:** the public sector has advanced into major procurement functions, such as market research, green procurement, competitive selection of consultants, training and development of local industry etc. which were not envisaged in the current legal instruments. The FAR focused on goods purchasing and stores management. The processes of the procurement function in most institutions is based on manual systems instead of automated systems for managing the various stages of the function, resulting in timeliness of delivery, accuracy and reliability of monitoring data. Electronic procurement is still in its infancy.

llll. The anticipated Public Procurement Law will address gaps in the current legal framework and create institutions that will modernize the procurement function. Project Management Units (PMUs) have been established, as autonomous units in the public sector institutions to augment the capacity of the public institutions responsible for implementing Development Partner-financed projects. These Procurement Units are able to engage qualified personnel, acquire appropriate logistical support and follow best practices in the procurement function. The Units are however not sustainable and do not assist build internal capacity, so the 2002 CPPR adopted a policy of mainstreaming procurement functions.

mmmm. **Oversight** of the fiduciary management is a central function of the MFEP, i.e. ensuring proper use and accounting of public resources by all public Procuring Entities. Weak oversight on procurement system (including benchmarking¹⁴ and monitoring and evaluation of the procurement process) is making it difficult to identify areas not working well and therefore requiring improvements. The on-going efforts to build monitoring and evaluation capacity in the Office of the President is perhaps a measure to mitigate on the weakness of the MFEP to provide adequate fiduciary safeguards. MFEP already has much of the fiduciary oversight function by housing the budget preparation and disbursement of funds, the accounting function, internal audit,

¹⁴ OECD has agreed to assist Government on this aspect of oversight.

stores management (SMMC), the Central Tender Board, and the Public Procurement Oversight Group (PPOG), among others.

nnnn. The PPOG has spearheaded the procurement reforms effectively. It will be desirable for MFEP to appoint a senior official and a Task Force to oversee the implementation of the procurement reforms till the PPB is established. With the establishment of the Public Procurement Board (PPB) in the MFEP, the Ministry will sharpen its role by establishing uniform performance standards for all public Procuring Entities. The Ministry should ensure that the PPB focuses on three indispensable functions. The first is the oversight role to ensure Procuring Entities comply with the new procurement procedures under the law and any practice guidelines. A key ally to the MFEP in providing oversight is the Audit Service (see paragraph below). The second is the mediation that deals with disputes (appeals and complaints). The third is capacity building at all levels..

oooo. **The Tender Boards** (Central, Regional, Departmental and District) are mandated to review only works contracts. There is no evidence of undue delays by the Tender Boards, but the decisions for contract awards may be discretionary, given the unclear procedures followed, particularly with respect to criteria for bid evaluation and contract award. There is evidence that in some public institutions, these criteria are designed after bid opening. Prior to July 1 2002, CTB was in MFEP with a mandate to review all contracts over US\$ 2 million. From July 1, 2002, CTB was transferred to the Office of the President with a mandate to review contracts over US\$ 10 million, to open and evaluate bids¹⁵ and award contracts.

pppp. Ministers are key members of the Board, so it is doubtful Ministers would devote adequate time in these matters. Bid evaluation requires specialized skills, which often involve review of complex bid pricing, and bidder qualification reports. While in the Office of the President, July 1, 2002 to March 30, 2003 CTB has handled 14 contracts estimated to cost US\$ -----¹⁶ equivalent. It is estimated that all tender Boards see less than 40% of all public contracts, which is considered a low percentage to provide an effective oversight. The oversight function will be enhanced by implementation of the new Public procurement Law because works, goods and services contracts will be subject to review and approval by Entity Tender Committees and Tender Review Boards.

qqqq. **Decentralization:** the GPRS cites decentralization and devolution of power to the district authorities as pivotal to involvement of communities in poverty reduction programs. A program to strengthen the District Assemblies is therefore essential so that services can be brought closer to communities, including community participation in procurement under Community-Driven Development (CDD). Strong procurement system at DA level is essential for proper utilization of PRSC, HIPIC and MDBS resources, the bulk of which will be channelled directly to the Districts. There are already on-going CDD-type programs, which are showing results in providing

¹⁵ There was no clear information as to whether CTB evaluates bids or not.

¹⁶ Figure ascertained.

opportunities for consulting and contracting to more consultants, suppliers and contractors than when these programs are administered centrally from Accra.

rrrr. **Procurement audits:** the experience in the Ministry of Health (MOH) shows that procurement audits are invaluable tools in detecting non-compliance with procurement procedures, cases bordering fraud and corruption, and areas of procurement practice that require attention. The post-procurement audits conducted by the World Bank serve the same purpose, even though the coverage is usually low (20% of all non-Bank prior review transactions).

Recommendation: Government has no policy of procurement audits, so it would be desirable that procurement audits be introduced as a separate activity or within the financial audits, as long as procurement experts are used for the purpose. In any case the Audit Service is expected to cover all procurement transactions.

ssss. **Financial audits:** the internal audit in MFEP is only concerned with the expenditures from the consolidated fund. A new bill has been prepared to establish full internal audit service. The Audit Service does not cover adequately procurement transactions due to a combination of constraints; key ones being inadequate staffing (there are only 6 qualified accounts in the Service), inadequate operating budget and unclear procurement procedures against which to audit transactions. The Auditor General is required to produce eight reports¹⁷ and submit to Parliament each year's reports within 6 months of the preceding year. The latest report submitted to Parliament Accounts Committee (PAC) is for MDAs for year 2000 (others are as far behind as 1996). Any action on these reports is an action on historic events. MFEP is therefore not getting full support in exercising its oversight role on fiduciary management that ensures proper use and accounting of public resources. Audit is an effective monitoring tool for financial and procurement transactions. Sanctions taken against erring officials are powerful deterrents to malpractice, but often little action is taken on audit reports.

It is highly desirable and recommended that MFEP provide: Funds for the Audit Service to clear the backlog reports for years up to 2001 (preferably up to 2002); it is estimated that the Auditor General would require about US\$ 2.50 million and 6-9 months to rollup all backlog audit reports by use of private audit firms; and Adequate resources to enable the Audit Service complete reports in a timely manner. Ghanaians need to know how their taxes are spent. This is a mandatory responsibility of Government.

tttt. The Supplies and Materials Management Class (SMMC); this class with about 1100 staff posted to various MDAs was primarily established for manning supplies units, stores management and inspection of stores. The role of the class has been eroded over the years, with some staff doing only minor jobs in stores management. The low capacity of this class has relegated them to insignificance in most of the user-institutions. About 200 staff of this class can be trained for procurement and stores management.

¹⁷ The required reports are Consolidated Fund, MDAs, Pre-University Educational Institutions, DAs and Traditional Councils, DAs common fund, Parastatals and SOEs, BOG foreign exchange receipts and payments (two per year), and Audit Service.

Recommendation: The MFEP should abolish SMMC, transfer all staff of SMMC to Procuring Entities to be deployed as appropriate and re-establish a Stores Inspection Unit with qualified staff.

Analysis

uuuu. **Administrative Structure:** the public sector institutions are grouped into 5 main areas, allowing for overlaps in functions. These groups are Central Management Agencies, Ministries, Departments, and Agencies, Local Government Institutions, Constitutional Organizations, Statutory/Public Corporations and State-owned Enterprises or companies. Their functions and areas requiring attention are discussed the paragraphs below.

Central Management Agencies

vvvv. **The Executive Power** to apply public funds to procurement is vested in the President, subject to prior approval of Parliament. Once approved by parliament the Executive through public management agencies exercises the disbursement of public funds' including for procurement. Among the Central Management Agencies, the Cabinet and the Presidency may be singled out for comment. MFEP will be considered under MDAs for convenience.

www. **Cabinet** is the awarding authority for works contracts estimated to cost over US\$ 10 million. This is now done through the CTB, which was transferred to the Office of the President from July 2002. It is not yet clear who approves contracts between US\$ 2.00 to 10.00 million, which used to be approved by the CTB under the MFEP. Cabinet also considers loans and makes recommendations to the legislature for approval.

xxxx. **Office Of The President:** Procurement function at the Presidency level takes the form of approval exercised over the disposal of state interest in assets being divested by the DIC. The practice has also developed over many years for the office of the Chief of Staff to be responsible for the acquisition of vehicles for MDAs using Government funds and for disposal of certain category of state assets especially vehicles and other movables. No assessment was made regarding the efficiency of these functions but suffice to say some appear misplaced.

yyyy. **The role of the CMAs** is to regulate and manage the entire public sector and to ensure that the generic budget, personnel and legal policies as well as practices are carried out in a coherent and coordinated manner. There are on-going reform initiatives aimed at improving and rationalizing the public financial and administrative management system. The reform objective is to improve efficiency, effectiveness and accountability for resource use and quality of public service. This reform involves the design of a regulatory framework to effectively regulate the relationship between the Central Management Agencies, Sector Ministries, Departments and Subvented Agencies in order to establish a coherent operational governance structure, which addresses the major

weaknesses of the public sector. The financial and administrative management system is also under review.

zzzz. **Ministries, Departments & Agencies (MDAs)** are the main institutions through which the executive or central Government disburses public funds and undertake public procurement. Since the post independence era, all organizations, which are wholly financed or subvented from the public purse, secure public funds through budgetary or extra-budgetary allocations appropriated through the relevant sector ministry. The name, functions and total number of ministries and MDAs have varied from Government to Government¹⁸ during the term of a particular Government. MFEP has remained the dominant agency in relation to procurement related matters. MFEP is assigned statutory procurement functions under the Constitution to coordinate the disbursement of public funds by all MDAs.

aaaaa. The Financial Administration Regulations place the primary responsibility for procurement of goods on MDAs. Government departments are to obtain their supplies from the GSC, requisition common user stocks held in designated or Government departments or by departmental purchase from any other supplier. This is no longer the case as MDAs conduct their own procurement (except a few that still go to GSC) since GSC has become a private company and there is no arrangement for common user stocks. Although the FAR places responsibility for departmental procurement of goods on the head of department, this responsibility is some Procuring Entities taken over by Sector Ministers. In some MDAs committees have been set up to undertake the bid evaluation and make recommendations on the award of contracts. In some Ministries, procurement activities related to Development Partner-funded projects are in the main handled by Project Management Units (PMUs), which operate under the particular Development Partner's guidelines and procedures.

bbbbb. **Functions of the MFEP:** MFEP is responsible for the management and coordination of Government financial policies. As a result of its functions MFEP also issues guidelines on public procurement management by public sector as well as directives on composition of Tender Boards and thresholds of their authority. FAR provides for the CD-MFEP to be the chief authority relating to the procurement and use of public supplies and equipment subject to the directions of Government. The CD holds, in addition, a general power to inspect all financial transactions under FAR.

cccc. To enhance the performance of its functions the FAR has created two other institutions under the MFEP, namely the Supply Class (headed by a Director of Supply) and a Store Inspectorate Unit. In reality, these arrangements no longer work, as the CD does not monitor or control procurement by other MDAs and the Supply Class and a Store Inspectorate Unit ceased functioning over 10 years ago. The MFEP used to exercise the role of a coordinator of major contracts in the procurement of works through participation in the Central Tender Board. CTB has literally been transferred to the office of the President. In any case CTB was not set up to enable it monitor implementation of

¹⁸ The Constitution sets a range of ten (minimum) to nineteen (maximum) Ministries that constitute cabinet but it does not set a limit to the non-cabinet MDAs that may be set up.

contracts that have been approved by it. In reality MFEP is very weak in providing oversight of the procurement function. The procurement bill will reinforce the responsibilities of MFEP

ddddd. **Ministry of Defense:** circulars and directives issued by the MFEP apply also to the Ministry, but these have generally not complied with. This appears to be due to the fact that procurement by this Ministry borders on national security; there is a possibility that staff hide in national security to avoid following regulated procurement procedures, even for non-security items.

eeee. **Statutory Public Corporations:** these institutions are set up under various statutes or Acts of Parliament to perform functions defined by the statute of incorporation. It was observed that almost all institutions in this category used to procure goods through the GSC, and works through the Tender Boards when the need to procure works arose. The procurement of services was, however, infrequent but was done either directly by the organization concerned or through the sector ministry. The Corporations are now responsible for their own procurement, some without any formal procedures. There is some evidence of corporations awarding large contracts in very unethical way, thus putting public funds to high risk. It is common knowledge that most corporations could be more liquid if they exercised prudent procurement.

ffff. **State-owned Enterprises (SOEs):** generally, these are wholly or partially state owned companies set up to undertake some particular activity with the view to making profit. They are registered as companies under Act 179 and not as a direct creation of statute. Recently, the Government passed Act 461, which has a schedule under which the Government interest in such enterprises may be divested. The divestiture in some instances is only partial and Government has retained shares in the Procuring Entities. It was found that almost all the institutions in this category have internal mechanisms, mostly Tender Boards/committees, which process procurement. It was also observed that none of these organizations ever recourse to the district/Central Tender Boards for their procurement activity, except in the case of disposal of assets. In the case of disposal, it was observed that some of the firms in this category liaise with the office of the Chief of Staff when disposing of unserviceable vehicles. Divestiture of part or the whole of state interest in these organizations have, however, been carried out by the DIC. These companies may be Public¹⁹ or Private²⁰ companies. Examples of these companies are in Annex 6 of Inception Report. The extent of the application of the procurement legislation to such companies will be examined under the PRP.

ggggg. **Local Government Institutions:** through decentralization policy a number of Government functions have been passed on to local Government bodies. There are 110 District Assemblies set up under Act 462. Each of these is set up under separate legislative instruments. The Act also provides a list of central Government departments

¹⁹ A public company is a company set up under Act 179 whose number of shareholders is not restricted and fulfils requirements of a public company. A public company is allowed to solicit funds from the general public and publish its accounts and may be floated on the Stock Exchange

²⁰ A private company may have up to 50 shareholders only and cannot solicit funds from the general public and does not have to publish its audited accounts. It cannot be floated on the Stock Exchange.

and agencies, which are decentralized. DAS do not have procurement units; the procurement function is diffused in the administrative functions. While procurement of works is regulated by the District Tender Board procedures, there are no clear procedures for procurement of goods and services.

Procurement Policy/ Planning and standards formulation

hhhhh. **Central Government Institutions:** the Government performs procurement policy formulation mainly through the MFEP. MFEP has performed all these functions primarily through issuing of circulars to Tender Boards, the GSC and other public institutions. Procurement policy formulation, its implementation and monitoring will be greatly improved once the PPB is established and is operational.

iiiiii. **Ghana Statistics Service:** the data provided by this service is inadequate for any meaningful planning. The latest data published is of 1998. Accurate and timely data would be useful information for public procurement. The efficiency of this service needs to be improved.

jjjjj. **Ghana Standards Board:** national standards formulation is the responsibility of the Ghana Standards Board (GSB). The GSB has overall responsibility for quality infrastructure embracing Metrology, Standards, Testing and Quality Assurance (MSTQ). The operations of GSB are expected to ensure that products and services are of acceptable quality. The core business services of the GSB include the following:

kkkkk. Development of National Standards;

- x. Development of Company Standards for Organizations (both Government and Private);
- xi. Development of Standards for contractual services such as bulk commodity procurements/core works and other services;
- xii. Provision of information on standards;
- xiii. Testing Services;
- xiv. Calibration Services; and
- xv. Certification Services
- xvi. Despite its potential the GSB does not currently play a significant role in the country's procurement system.

lllll. **Development Partners (or Development Partner Agencies):** Development Partner Agencies in addition to being source of funds, generally review the procurement plans and processes of public institutions that receive Development Partner

funds. Development Partner funds are channeled through Central Government and assume the nature of “Public Funds” before any disbursement is carried out. In some instances Development Partner conferences are organized as a formal session during which procurement plans may be reviewed. In the case of World Bank, it is now common practice for public institutions implementing a World Bank-financed project to prepare a “Procurement Procedures Manual” for use under the project. This is to close the gaps in the national procurement procedures. This policy has proved very useful and in the case of MOH, where the procedures are used for use of all funds regardless their source.

Procurement processing, management and monitoring institutions

mmmmm. **Tender Boards (TBs):** these are Central Tender Board, Regional Tender Board, and District Tender Board. The Boards are primarily authorized to approving contracts, but TBs also open, evaluate bids and award contracts for works contracts and food supplies to Government institutions. The TBs have little role in monitoring implementation of awarded contracts. This is the weakest link in public procurement, having an independent monitoring mechanism for contract management.

nnnnn. **The Central Tender Board under the MFEP** was constituted as follows:

Hon. Minister for Finance	-	Chairman
Hon. Minister for Local Government	-	Member
Hon. Minister for Parliamentary Affairs	-	“
Deputy Minister Ministry of Finance	-	“
Deputy Minister, Ministry of Works & Housing	-	“
Chief Consultant, AESC	-	“
Solicitor-General	-	“
Representative of the Office of the President	-	“
Mr. Abbey Sam, Chief Director (MRT)	-	Ex-Officio Member
Chief Director, Ministry of Finance	-	Secretary

ooooo. **The Current CTB in the Office of the President** is constituted as follows:

Chief of Staff	-	Chairman
Head of Public Sector Policy Review	-	Member
Hon. Minister for Parliamentary Affairs	-	“
Hon. Minister for Local Government	-	“
Hon. Minister for Finance	-	“
Hon Minister of Ministry of Works & Housing	-	“
Managing Director, AESC	-	“
Solicitor-General representing Attorney General	-	“

The current CTB includes a lot of members from Procuring Entities that most process large works contracts, which may have a big risk of conflict.

ppppp. **The Regional Tender Board** is constituted as follows:

Regional Minister	-	Chairman
Deputy Regional Minister	-	Alternate Chairman
Regional Director, Ghana Highway Authority	-	Member
Regional Consultant, Architectural Services	-	

Limited (AESL)	-	“	
Regional Engineer, Department of Feeder Roads	-	“	
Regional Coordinating Director	-	“	
A Representative from the Attorney- Regional Economic Planning Officer	General’s Office-	“	Secretary

qqqqq. **The District Tender Board** is constituted as follows:

District Chief Executive	-	Chairman
Presiding Member of the District Assembly	-	Member
Chairman of the Technical Infrastructure Committee of the Executive Committee of The Assembly	-	Member
District/Metropolitan Engineer	-	“
Head of the District Development Planning & Budgeting Unit-	“	
District Coordinating Director	-	Secretary

rrrrr. **Tender Boards** may request the attendance of a representative of the organization with direct interest in the project for which bids are being considered. TBs may also co-opt persons to assist in their deliberations, when considered necessary, on grounds of expertise. TBs review bids from all public organizations except State-Owned Enterprise (SOEs) and some parastatals operating under own legal Acts, e.g. SSNIT. Financial Ceilings For Tender Boards effective from 1997 are given in Table 14:

Table 14: Approval Ceilings for Building & Road Construction

Building & Civil Engineering Works

Category of TB	Financial Ceiling	Approving Authority
District	Up to US\$100,000 (or Cedi equivalent)	District Assembly
Regional	Up to US\$1.00 Million (or Cedi equivalent)	Regional TB
Central	Up to US\$5 Million (or Cedi equivalent)	Central TB
	Above US\$10 Million	Cabinet

Road Construction Works

Category of TB	Financial Ceiling	Approving Authority
District	Up to US\$200,000 (or Cedi equivalent)	District Assembly
Regional	Up to US\$2 Million (or Cedi equivalent)	Regional TB
Central	Up to US\$10 Million (or Cedi equivalent)	Central TB
	Above US\$10 Million	Cabinet

These thresholds are assessed as reasonable to provide adequate checks and balances on the public procurement function.

sssss. **Departmental Tender Committees:** Some public institutions, including MDAs especially those, which fall in the category of public corporations, have in-house Tender Committees that process procurement. Generally these bodies are ad hoc and are constituted when the need arises.

ttttt. **Procurement of food supplies:** the Central Food Board became defunct, leaving only the Regional Food Tender Boards responsible for the award of contracts for

food supplies to Government hospitals and second cycle boarding institutions in the regions. The composition of Regional Food Tender Boards is as follows:

Deputy Regional Minister for Agriculture	-	Chairman
Regional Administrative Officer	-	Member
Representative of Ministry of Health	-	“
Representative of Ministry of Agriculture	-	Member
Regional Economic Planning Officer	-	
Member/Secretary		

uuuuu. **Regional Food Tender Monitoring Team** is responsible for conducting, on quarterly basis, random inspection of Government hospitals and second cycle boarding institutions to ascertain the quantity/volume of food consumption and the expenditure incurred thereon as against the bed occupancy rates in the case of hospitals and the number of boarding school students in the case of second cycle institutions. The team is expected to submit its report to the Regional Food Tender Board with copies to the Regional Minister and the Minister of Finance. There is no evidence that this team is effective. The membership of the Regional Food Bid Monitoring Team is as follows:

- The Regional Budget Officer
- The Regional Auditor
- Assembly Member for the area where the institution is located.

vvvvv. **Departmental Tender Boards:** a number of subvented organizations have set up bid committees to consider bids when necessary. One example is the Water and Sanitation Departmental Tender Board for projects. Generally all SOEs have company level Tender Boards/committees. These consider specific purchases referred to them by the Chief Executive. In some instances the Chief Executives exercised that prerogative.

wwwww. **Previous effort to reform Tender Boards:** Cabinet meeting of July 8, 1993 requested the Finance and Economic Sub-Committee to carry out a review of the tender system to take account of the prevailing circumstances at the time. Seven principal areas were identified for examination as follows:

- xvii. Structure and composition of TBs.
- xviii. Level of authority for approving contracts.
- xix. Financial ceilings for the award of contracts.
- xx. Scope of jurisdiction of TBs;
- xxi. Code of procedure for the award of contracts.
- xxii. Appeal procedures; and
- xxiii. Food Tender Boards.

- xxxxx. The sub-committee made the following major recommendations:
- xxiv. The scope of jurisdiction of the CTB should be widened to incorporate all non-commercial SOEs and Subvented Organizations, as well as Revenue Collecting Agencies.
 - xxv. In order to ensure openness, objectivity and transparency in the bid system a Code of Procedure for the award of Government contracts should be prepared and embodied in the new Legislative Instrument.
 - xxvi. To help reduce the incidence of complaints made direct to higher authorities by aggrieved firms, Appeal Procedures should be clearly spelt out in operational manuals and made available to all members of Tender Boards, at various levels.
 - xxvii. Regional Food Tender Boards should be strengthened and Monitoring Teams established at the Regional level, to help curb incidence of malpractices associated with the award administration of Food Contracts.

These recommendations were not implemented; they fall within the scope of the current reform project.

yyyyy. **Ghana Supply Company (GSC):** GSC has no mandatory role any more in public procurement. Using its long experience in public procurement, GSC is playing a vital role in procurement training and as a procurement agent providing service to public institutions, selected competitively or by direct contracting.

Supply and Materials Management Class (SMMC)

zzzzz. SMMC under the MFEP was established in 1960. The class was primarily established for manning supplies units, stores management and inspection of stores. Under the FAR, the SMMC has wide responsibilities in supplies procurement. As provided for in the FAR, the CD is to be assisted in the discharge of his functions by the Director of Supply responsible for general supervision of procurement of supplies, stores, materials, equipment and other moveable property, but this no longer works that way. The role of the class has been eroded over the years, with staff doing only minor jobs in stores management. A survey of this class indicates that about 200 can be trained for stores management.

aaaaa. The low capacity of this class has relegated them to insignificance in most of the user-institutions. They belong to the junior ranks of the administration departments and are far removed from decision-making in procurement. By giving mandate to the Ghana Supply Commission (GSC), the Director of Supply's functions whittled away. GSC is itself no longer has this mandate. New procurement organizational forms have emerged over time and have taken over the original functions of the SMMC in procurement of goods. The SMMC staffs have become demoralized and wasted and at

times antagonistic to the current procurement functions. The MFEP should abolish SMMC; transfer all staff of SMMC to Procuring Entities for deployment as appropriate.

bbbbbb. The Stores Inspectorate Division, which coexisted with the SMMC, used to be a watchdog for efficiency of stores management in the public sector. The Stores Inspectorate Unit was created to carry out physical verification of stocks and accounts in public stores, as well as ensure the supply of the right items. The Inspectorate was abolished through a public announcement, with no replacement, but the necessary legislative instrument was not passed to give effect to the announcement. In practice, the ban seems to be in force, as the activities of the Inspectorate appear to have ceased altogether. The vacuum left by the dissolution of the Stores Inspectorate function is evident.

Recommendation: For efficiency of the full procurement chain, the stores inspectorate function has to be restored and modernized. The Stores Inspectorate Unit should be reinstated and required to produce annual reports on status of public stores.

cccccc. A list of MDAs currently hosting supply officers/store keepers of the SMMC is presented in Table 15 below. The staff profile of the SMMC is also as follows (this information was compiled in 2002, so the numbers may have changed slightly):

Table 15: List of SMMC Staff

GRADE	NO.
Principal Supply Officer	19
Senior Supply Officer	56
Supply Officer	119
Principal Storekeeper	35
Senior Storekeeper	194
Storekeeper	392
Assistant Storekeeper	453
Total	1268

dddddd. A survey conducted by Messrs. Beacons Consultancy of Accra, to elicit the views of beneficiary MDAs (see Table 16 on deployment) of the services delivered by the SMMC concluded that:

xxviii. There is a need for the SMMC to intensify the education of heads of departments on the existence and functions of the class.

xxix. Heads of departments must work hand in hand with the stores personnel in the procurement of items in order to avoid over and under procurement as well as the supply of inferior materials.

xxx. Heads of departments should ensure that they establish fruitful working relationships with the stores personnel so that delays in the issuing of requisitioned items would be brought to the barest minimum depending on stock levels.

- xxxi. There should be regular monitoring of the inflow and outflow of goods.
- xxxii. Establishment of a stock verifiers unit within the SMMC to be responsible for conducting unannounced checks.
- xxxiii. The need to computerize in order to facilitate stock maintenance and also ensure efficiency in the administration of stores.
- xxxiv. Periodic transfer of staff.
- xxxv. Recruitment policy that encourages employment of qualified personnel; and
- xxxvi. Institution of effective training policy that encourages regular skills upgrade.

Table 16: List of MDAs with staff of the SMMC

	MDA		MDA
1.	Regional Coordinating Councils	23.	Minerals Commission
2.	District Assemblies	24.	Ministry of Lands & Forestry
3.	Ministry of Agriculture	25.	Veterinary Services
4.	Ministry of Finance	26.	Meteorological Services Department
5.	Ministry of Health	27.	Ministry of Defense
6.	Public Department	28.	Town & Country Planning
7.	Electoral Commission	29.	Registrar-General's Department
8.	Archives	30.	Ministry of Trade
9.	Ministry of Education	31.	Ministry of Roads & Transport
10.	Ministry of Employment & Social Welfare	32.	Ministry of Works & Housing
11.	Public Services Commission	33.	Ministry of Local Government & Rural Dev.
12.	Head of Civil Service	34.	Dept. of Rural Housing & Cottage Industries
13.	Accountant General's Department	35.	National Theatre
14.	Council for Law Reporting	36.	Labor Department
15.	Department of Feeder Roads	37.	Oncho. Department
16.	Department of Urban Roads	38.	Ministry of Youth & Sports
17.	National Lotteries	39.	Ministry of Interior
18.	Korle Bu Teaching Hospital	40.	Department of Social Welfare
19.	Komfo Anokye Teaching Hospital	41.	Ministry of Mines & Energy
20.	Wildlife Department	42.	Ministry of Foreign Affairs
21.	Land Title Registry	43.	Vehicle Examination & Licensing Dept. (VELD)
22.	Lands Commission	44.	Non-Formal Education Division
		45.	State House

Project Management Units

eeeeee. Sector Ministries put PMUs in place to be responsible for the implementation of projects financed by Development Partners including the World Bank. PMUs have complete authority for the procurement and management of goods, civil works and services. Personnel of the PMUs indicated that they seek guidance from and are supervised by officials of the resident mission of the World Bank and officials of

other Development Partner agencies in their procurement activities. Out of 20 World Bank financed projects, there are 6 PMUs.

PMU	MDA
Funds & Procurement Management Unit	Ministry of Education
Gateway Secretariat	Ministry of Trade & Industry
Village Infrastructure Project	Ministry of Agriculture
Public Sector Reform	Office of the Head of Civil Service
Government Project Support Unit	Ministry of Local Government
Public Financial Management Reform Project	Ministry of Finance

fffff. To the extent that these PMUs are guided by the procurement policies, guidelines, procedures and best practices in their activities, they could be a positive influence on public sector procurement in general. However the PMUs tend to operate in insular fashion. The benefits of such good practices generally do not spread to the host MDA. In the CPPR of 2002 a policy decision was taken that all existing PMUs be wound up when the projects close and that procurement functions be mainstreamed into public service. This policy is being implemented with all new projects.

ggggg. **Auditor-General and Audit Service:** the functions and powers of the Auditor-General and the Audit Service are enshrined in the 1992 constitution. The Auditor-General audits and reports on the public accounts of all public sector Procuring Entities including public corporations or organizations established by an Act of Parliament. Reports of the Auditor-General are submitted to Parliament. Audits include among others, an examination of Government/public programs and activities to ensure that they have been undertaken with due regard to economy, efficiency and effectiveness in relation to the resources utilized and results achieved. Due to the lack of adequate resources and inadequate skilled personnel, the service is not able to undertake procurement audits of public sector institutions in an adequate and timely manner.

Recommendation: The Services should be given the resources to undertake procurement audits as part of their financial audits following overall objectives, which include:

- (a) Establish whether there is documentation supporting the procurement system operating within MDAs.
- (b) Evaluate and assess the adequacy of internal controls.
- (c) Examine compliance with the procurement procedure prescribed.
- (d) Ensure that funds provided for procurement are spent efficiently, and
- (e) Report on weaknesses identified during the audit.

hhhhhh. The CFAA and the PRSC Policy Matrix are dealing with the issue of clearing the backlog audits and enabling the Audit Service perform to full potential. The status is presented in Table 17.

Table 17: Status of Audit Reports by the Audit Service as on April 23, 2003

	Report	Last Report Issued	Date Submission of Parliament	Performance since Issue of Last Report
1.	Public Accounts (Central Government) Financial Statement of the Consolidated Fund)	31/12/99	26/3/02	Draft for 2000 ready, 2001 in progress
2.	Ministries, Departments and Agencies	31/12/2000	11/11/02	Year 2001 in draft
3.	Pre University Educational Institutions	30/6/96	27/3/98	1997-8 in final draft, 1999-2000 under Consolidation
4.	District Assemblies and Traditional Councils	30/6/96	20/7/98	1997-8 in final draft, 1999-2000 under Consolidation
5.	Public Banks, Corporations and Other Institutions	31/12/97	19/6/000	1998-1999 final Draft ready
6.	Foreign Exchange Receipts & Payment Bank of Ghana	31/12/98	24/5/01	Draft for 1999 to 2001 ready
7.	District Assemblies Common Fund	31/12/96	18/4/00	Draft for 1997-8 in final draft 1999-200 under audit

Enforcement and grievance redress institutions

iiiiii. There are no specific institutions set up under our laws to enforce procedures of procurement. Bidders with complaints can take them to Procuring Entities as matter of course. The MFEP role in enforcement is provided for in the constitution and in FAD & FAR, but little is done using these two instruments. There is no evidence of a public official sanctioned by the MFEP for non-compliance with any procurement procedures. The proposed Public Procurement Board will take this role.

jjjjjj. **Office of the President:** the Office of the President had gradually become an enforcement and grievance redress setup for disposal of state assets; i.e. disposal of movable assets especially vehicles. The principal officer who performs the oversight function here is the Chief of Staff at the Presidency. Disposal of state interest in an organization is the prerogative of the DIC. Upon coming into force of the 1992 constitution, the Presidency continued to perform this function. There is really no reason why the Office of the President should be performing these roles, except that it is a routine from previous Governments that wished to have power over these responsibilities, perhaps for gains to derive from them. These should be reverted to MFEP.

kkkkkk. **The Judiciary system:** the courts system is an effective tool for enforcement and grievance redress institution. There have been attempts to prevent the judiciary from enquiring into procurement cases, but this was ruled as unconstitutional. However, that the numbers of cases the courts have had to redress are few both as a result of the absence of clearly laid down justiciable procurement guidelines and as a result of the deliberate refusal of the aggrieved to complain for reasons bordering on fear of victimization.

llllll. **Commission For Human Right And Administrative Justice (CHRAJ):** this body is set up as a constitutional body to among others in investigate complaints against public officers in the exercise of their official duties. It is a venue that many people with grievance against public officials have reported and the public appears to repose confident in the CHRAJ. The scope of complaints handled by the CHRAJ include procurement related complaints though CHRAJ has not been used very much in the past for reasons similar to that for the non-use of the judiciary.

mmmmmm. **Serious Fraud Office (SFO):** the SFO is set up under ACT 466 to among others, conduct investigations into procurement related matters. Clearly its scope covers the investigation of procurement related issues. Records indicate that the SFO has investigated several procurement related cases mainly as a result of public outcry and not the result of formal complaints from those who took part in a particular procurement process. It was difficult to ascertain the outcome of the procurement related cases because the results of the investigation have not yet been made public.

nnnnnn. **Other set ups:** there are several non-profit (commonly called NGOs organizations) devoted to facilitating the legal process. Prominent among these are the Ghana Arbitration Center (GAC), Center For Public Interest Law and others. Some of these NGOs especially the GAC have developed in-house mechanisms for resolving

disputes, which may be enforced by the regular courts under our existing laws²¹. Some of these set ups could be strengthened to play an enhanced role under the PRP. There are also profit oriented set ups consisting of private legal practitioners who may solicit, counsel or advocates on behalf of clients in procurement related cases. The private practitioners have been used effectively in the past in Ghana in a few procurement related cases. The promulgation of a Public Procurement Law will enhance their ability to perform especially because it will leave a lot less to the discretion of judges.

ooooo. **Parliament:** Parliament is an investigative institution on public procurement because parliament has general oversight body can enquire into the acts of any public officer. Parliament may also summon document of any procurement function²² for scrutiny. The proposed procurement law, when passed will enhance this role of Parliament.

ppppp. **Ad-hoc institutions:** under the laws of Ghana, the Presidency may set up an ad hoc body to investigate any subject and this includes procurement issues. In the past this has been used to investigate both general and specific²³ cases. MDAs have set up ad hoc committees to investigate some specific allegations on procurement; e.g. in the Road Sector an investigation was carried out by an ad hoc committee in respect of a top official who was accused of having awarded to road contract to a company in which he had interest.

qqqqq. **Stakeholder institutions:** this category includes prominent associations such as Ghana Institution of Engineers, Ghana Association of Consultants, Ghana Bar Association, Ghana Institute of Architects, Ghana Institute of Surveyors (Most especially the Quantity Surveyors Division), that impact the process of public procurement in overseeing the performance of contractors, suppliers and consultants. They are valuable pressure groups on public procurement issues.

rrrrr. **The Public Sector Reforms:** It is the Government's view that previous reform programs have not yielded expected results; after several years of implementation the impact of these reforms on the systemic and institutional weaknesses of the public sector has been marginal. The Government has launched an independent review of all relevant public sector programs, including those supported by the Development Partners. The results of the review (likely to be completed before June 2003) will provide the basis for future reforms.

sssss. The Development Partners expect (and try to transfer good practices to public sector) prudent procurement practices to give assurance that resources extended to the Government make the intended social and developmental impact. Prudent organization and management of procurement inevitably confers significant social and economic benefits on the developmental objectives of the state. Public sector reforms will address the low capacity of the public sector. The reforms will include Budget and Public

²¹ Vide The Court Act, Act 459 and Arbitration Act, Act 38 of 1961.

²² Vide the recent debate on the acquisition of the Presidential jet last year (2000).

²³ As happened in the recent investigations into the procurement of works and goods for the Africa Cup of Nations Tournament, known as the Stadium Probe.

Expenditure Management System (the CFAA will provide details on the reforms in public financial management) and Medium Term Expenditure Framework, and audit systems, all of which have a direct effect on efficiency of public procurement.

Organization of procurement function in MDAs and DAs

ttttt. Three organizational forms have emerged as permanent or temporary arrangements for procurement functions in the public sector. Since the public sector institutions have assumed all responsibility for procurement, the challenge for increased diligence and for deployment of cutting edge procurement practices has become imperative in the public sector institutions, compelling their hiring trained procurement professionals for Development Partner-financed projects. The models of organization form are identified, co-existing with different magnitudes. The first model is using a **Procurement Management Unit (PMU)**, established to augment the institution's capacity to conduct procurement functions.

uuuuuu. To ensure their efficiency, PMUs are structured as semi-autonomous units with the public organization. They are often funded from project resources, they are adequately equipped and are efficient, and their staff are qualified and well paid. Through PMUs report to the Heads of their Procuring Entities, their activities are monitored and controlled by Development Partners. The major problems with this set up is that PMUs are costly (relative to public salaries), they cause de-motivation of regular public servants, they are not sustainable and they do not transfer knowledge or build capacity in the client institutions. The 2002 CPPR made a policy decision to bring to a closure all PMUs.

vvvvvv. The **second model** is using **mainstreamed procurement units** with full responsibility for procurement. The Units are staffed with professional personnel who have acquired training in procurement. The Units often lack independence as they are saddled with the administrative and control procedures of the organization. Depending on the assertiveness of the Head of Unit, the procurement function may not be encroached upon by higher management or political authority. Though personnel of these units retain the conditions of service of the parent organization, they enjoy special professional status and job satisfaction.

wwwwww. The **third model is use of first and second models** for Development Partner funds and for non-Development Partner funds respectively.

xxxxxx. The **mainstreamed Procurement Unit model is the preferred model for the public sector**. Examples of this model are the procurement units in Ministries of Health, Agriculture, Roads and Transport and Education (Ghana Education Service), and it is the arrangement in most parastatals and SOEs. Since most of the staff of these Procurement Units is not originally employed as procurement experts, there is often intensive training to upgrade their competence. The well-qualified procurement staff is often lost to the private sector as happened in Ministry of Health. It is therefore unlikely that, under the current conditions of service, the public sector can be self-sufficient with

competent procurement personnel. Outsourcing services to procurement agents to complement the few competent staff should be encouraged so as to give procurement staff room to manage the processes.

yyyyyy. In most MDAs and in all DAs there are no procurement units specifically responsible for procurement. The procurement function is diffused in other administrative functions, so there is no emphasis on expertise. Procuring Entities with PMUs, i.e. Ministry of Education and Ministry of Agriculture have in addition to PMUs, mainstreamed procurement units. Procurement in Procuring Entities without procurement units is often very poor. Procuring Entities should be required to have procurement units staffed with qualified personnel.

zzzzzz. The efficiencies of each of the three models above i.e. the PMUs, the mainstreamed semi-autonomous unit, and the diffused function model are compared for economy, transparency and efficiency as in Table 18.

Table 18: preference analysis of procurement organization forms

	Cost Efficiency	Expertise	Motivation	Sustainability	Score
Procurement Unit (PMU)	L	H	H	L	8
Mainstreamed Procurement Unit	H	M	M	H	10
Diffused Procurement Function	M	L	L	M	6

Score Points: High = 3; Medium = 2; Low = 1.

aaaaaaa. This comparison is based on the interviews and data collection done on the public institutions. The items ranked are explained as follows:

- xxxvii. Cost efficiency denotes expectation of high success of the procurement function.
- xxxviii. Expertise denotes the relevant quality of personnel and professionalism in the setup.
- xxxix. Motivation denotes the ability of the reward and sanction system to retain skilled personnel.
- xl. Sustainability means the prospects for retention of knowledge and skills and for future follow-up of actions.
- xli. Score is the sum of converted points.

Mainstreamed Procurement Units are the most advantageous for sustainability and proper profiling of the procurement function.

bbbbbbb. **Decentralized procurement system:** the procurement function is highly decentralized to the Procuring Entities. It is desirable that all senior managers of the Procuring Entities and the members of the Tender Boards be trained in procurement principles and practices. In the case of the Central Tender Board, there has been no formal training to date.

Recommendation: There is urgent need for special training in procurement principles and methods to prepare the officials for efficient service.

ccccccc. **Organization of procurement in Subvented Agencies and State-Owned Enterprises:** organization varies from SOE to SOE. Most Subvented Agencies and State-Owned Enterprises have procurement units, and sometimes procurement or tender committees. In most cases, the Head of the institution is directly responsible for the procurement function, assisted by a procurement unit, which is usually located within

the Finance and Administration Department. The Ghana Civil Aviation Authority, Ghana Institute of Management and Public Administration, Council for Scientific and Industrial Research, Architectural and Engineering Services Limited, and Social Security and National Insurance Trust has effective procurement units.

ddddddd. A committee system, either permanent or *ad hoc*, is used for taking major procurement decisions. The Director of Finance and/or Administration usually chairs these committees. In other institutions, the Chief Executive or his/her Deputy is chairman of the procurement committee. The procurement function is internalized but is often not manned by competent personnel nor is it independent. In some Procuring Entities, procurement function is an add-on responsibility; hence the responsible personnel may not have undergone required training. Where special skills are demanded, inter-organizational arrangements are used to fill those gaps temporarily. In exceptional cases, short-term consultants are engaged to carry out specialized procurement actions.

eeeeeee. The majority of institutions have developed their procurement procedures, defining the regulations, norms and procedures. Most of these institutions are on performance contracts with the Government, and also because their budgets are constrained, strict measures are included in these norms and regulations to ensure prudence, transparency, efficiency and economy. In the case of Ghana Civil Aviation Authority, the administrative controls for procurement are extremely restrictive. The Director- General is involved in every step of the procurement process, from the approval of needs to final payment. This has slowed down the procurement process on a number of instances.

ffffff. **Financing of procurement:** a major success factor of the procurement function is the timely availability of funds to execute contracts. The survey observed that procurement needs are made as part of annual budgets but funds are often not available when needed to make payments or sign contracts. In several cases, procurement actions, which are initiated on the basis of assured funds, end up stagnated because the earmarked funds become diverted to other purposes. The situation is better in the case of Development Partner-financed procurement.

PROCUREMENT PROFICIENCY, CAPACITY BUILDING AND TRAINING

Overview of the methodology of the assessment

ggggggg. The main purpose of the assessment was to determine whether Ghana has the required training program to support a modern procurement system. The assessment started by reviewing procurement training policy and standards established for procurement staff. It analyzed the status and numbers of the purchasing and supplies management class of procurement professionals and made recommendations to increase their numbers. It then examined the capacity, output and curriculum of training institutions and the role of professional institutions and the extent to which they meet the needs of public procurement. Further, the assessment covered capacity building activities available for staff involved in public procurement at all levels. The assessment reviewed the capacity building plans under the on-going procurement reforms.

hhhhhhh. The methodology followed was interviewing personnel in selected institutions, completing a questionnaire and examining some records. The following institutions were visited; Crown Agents, Ministry of Finance, Ministry of Education, Ministry of Health, Ministry of Roads & Transport, Director of Supply, Office of the Head of Civil Service, the University of Ghana, Ghana Institute of Management & Public Administration (GIMPA), Management Development and Productivity Institute (MDPI), two polytechnics and the Chartered Institute of Purchasing and Supply (Ghana Branch). A questionnaire was administered to 200 members of the SMMC to ascertain their educational background, age and salary levels.

Main findings and recommendations

iiiiiii. **Procurement proficiency:** Ghana has a good procurement professional base as reflected by the number of CIPS students, and other professional (engineers, pharmacists, economists, surveyors etc) working in various public and private sectors. Like the private sector, most parastatals and SOEs have recognized the value of procurement and have distinct units for procurement, staffed with appropriately trained staff. A lot of public officials have taken procurement courses but a good number is not engaged in procurement.

jjjjjjj. Staff that is not adequately trained in procurement often carries procurement in MDAs and DAs. Because of low remuneration, public sector loses qualified staff to the private sector.

Recommendation: With the introduction of a new Public Procurement Law, there will be a need to ensure that all stakeholders (public and private sectors including civil society) are aware of the requirements of the new law, and the changing way of procurement business. Managers as well as members of the Entity Tender Committees and Tender Boards will require orientation. Standard Bidding Documents, copies of the law and any practice manuals will need to be distributed and explained. Implementation of capacity building plans already prepared by PPOG should be started.

kkkkkkk. **Hands-on Training:** Ghana has good education facilities and a sophisticated private sector with regard to contracts and consultants. Local training facilities exist. Procurement training is adhoc as there is no specific procurement-training program. Capacity for institutional training is low. The Bank supported procurement training courses at GIMPA are recognized regular training. Polytechnics offer courses in purchasing and supply but at lower levels of the profession.

Recommendation: Government should encourage GIMPA, the local chapter of Chartered Institute of Purchasing and Supply, and the Polytechnics to scale up procurement training in order to meet the private sector needs and overflow into public sector.

lllllll. The Universities should be encouraged to include procurement courses in such faculties as economics, commerce, engineering and technology since the bulk of public sector new graduate employees going into procurement management would be from those faculties. Opportunities to achieve professional procurement qualifications are limited. Staff can only achieve professional qualifications by passing examinations organized by the Chartered Institute of Purchasing and Supply (CIPS). Students who are studying for professional qualifications also face difficulties in obtaining the required funds to register for their examination. Demand for training will depend on the Government:

- xlii. Creating a procurement cadre in public sector, and
- xliii. Unbundling/un-diffusing public functions to give procurement professionals opportunity to work in procurement.

The PPB will be expected to have clear strategy for short-term, medium-term and long-term procurement training.

mmmmmmm. **The institutional training:** Polytechnics offer courses in business and procurement practice, but the procurement syllabus needs to be broadened to include public sector procurement. The Polytechnics have produced 1302 procurement graduates since 1996. The University of Ghana has a business school, but it does not offer courses in procurement and contracting at any level. The University would be willing to discuss the possibilities of introducing a course in public sector procurement with the Government.

nnnnnnn. **Purchasing and Supply:** although procurement now envisages procurement of works and selection of consultants, the profession of purchasing and supply continue to be at the center of the procurement profession. The bulk of staff that manages procurement units are trained in the Purchasing and Supply, which includes the all-important function of stores management and supply chain. Ghana has a good procurement professional base²⁴. Currently, there are about 270 Corporate Members of the Purchasing and Supply Institute and about 420 individuals actively pursuing foundation and professional procurement qualifications. Due to lack of employment opportunities and incentives in the public sector, only about 20 corporate members work in the public sector, majority of them in non-procurement positions. It is estimated that the public sector needs about 200 of these professionals and hundreds of associate level individuals to man the procurement units and stores management.

Analysis

ooooooo. Ghana has a good procurement professional base. Currently, there is about 340 professionally qualified (CIPS) procurement staff in the country. In addition there are about 420 individuals who are actively pursuing foundation and professional procurement qualifications. However, due to lack of employment opportunities and incentives in the public sector, majority of these individuals work in non-procurement jobs. The numbers are summarized in Table 19. While the numbers reflect Ghana is not very badly off compared with other African countries, the numbers for UK reflect the level at which CIPS graduates are used to support the procurement function (see Table 20).

Table 19: Numbers of procurement professionals

Level of Professional Qualification	Numbers
Graduate Diploma (MCIPS)	70
Associates (Foundation Stage)	220
Students	200
TOTAL	760

Source: CIPS, UK

²⁴ Comparison of numbers of CIPS Corporate Members: Ghana 70, Zambia 117, Kenya 104, Malawi 26, Zimbabwe 52, UK 10144.

Table 20: Comparative numbers of CIPS membership in selected countries

COUNTRY	Chartered	Associates	Students	Total
Ghana	340	220	200	760
Kenya	104	321	434	861
Zambia	117	167	770	1058
Zimbabwe	52	114	303	471
Uganda	19	35	118	173
Malawi	26	71	216	315
UK	10144	5286	7318	25250

Source: CIPS, UK

ppppppp. Often staff without professional qualifications carries out procurement in MDAs and DAs. The exact figures are difficult to obtain without a countrywide survey. A recent study indicated that there is about 1062 staff classified as Supplies and Materials Management Class (SMMC) in MFEP have little training. Engineers, pharmacist, nurses, general administrators and accountants perform most of the procurement duties, with or without training in procurement.

qqqqqqq. MFEP is responsible for overseeing public procurement operations, including setting procurement training policy and career strategy for developing procurement professionals. In practice, there is no clear procurement training policy from the MFEP to the other Ministries. There is no particular office responsible for procurement capacity building. Sector Ministries are responsible for own training plans; there is lack of institutional direction and training strategies to drive procurement professionalism. There are adequate educational institutions to support professional procurement training. The Public Procurement Oversight Group in MFEP responsible for overseeing the implementation of the procurement reform appears weak as it lacks proper leadership from within the MFEP. Perhaps MFEP need a more robust task force to carry out the job more efficiently. It is envisaged that the PPB will drive the procurement professionalism in Ghana. The PPB will be expected to focus on:

- xliv. A detailed training needs analysis.
- xlv. A scheme that will attract qualified procurement professionals into the public sector.
- xlvi. A National Procurement Certification Scheme and a program that will encourage professional development of individuals.
- xlvii. Procurement-training modules for the following target groups; procurement staff, public sector managers (including Chief Directors, Heads of Departments and the Auditor General staff), private sector groups (including business community, trade associations, the Media, Anti-corruption Groups and Civil Society Groups), Ministers and their Deputies, Members of Parliament, and Staff of the Office of the President.

rrrrrrr. Procurement is often viewed as a routine downstream, clerical function and given only a subsidiary role during the early design and final implementation stages of public programs. The traditional focus has been on the monitoring role procurement plays during the bidding, evaluation and contract award stages of the procurement cycle – something natural since that is when crucial decisions are taken, triggering the release of scarce Government budget or Development Partner funds. Government has tended not to dedicate adequate attention and financing to procurement training, delegating untrained staff to even complex procurement activities. Untrained staff lacks the full range of procurement planning and implementation skills and experience needed. Training should be appropriately targeted. However the World Bank recognizes the need for training and hence it holds procurement seminars, supports GIMPA training and financing for institutional training.

sssssss. Reports on past studies invariably cite weak capacity of procurement staff as one of the key factors inhibiting effectiveness and efficiency of public procurement. While the Government will continue to rely significantly on assistance from the World Bank and other Development Partners for both developmental and non-project specific purposes such as budget support and poverty reduction support, a deliberate effort must be made by Government to vote adequate funds to support procurement training. This role of MFEP will be greatly enhanced by the establishment of PPB.

ttttttt. An attempt to obtain data on the total number of staff involved in public procurement activities and their qualifications, skills and remuneration was difficult. According to the Director of Supply, there has not been any coordinated training for his staff for well over 10 years. Some institutions do not view procurement as an established profession and as such there is no standard certification or clear careers path. Different information was obtained from institutions on procurement capacity and training requirement. Some Ministries like Roads and Transport, Ministry of Health and Ministry of Education, at the Headquarters/regional level have vast experience of local and international procurement under Development Partner funded projects. Some practitioners have benefited from World Bank procurement training. Procurement capacity at the regional and district levels are minimal. The PPB will establish a database of staff trained in procurement.

uuuuuuu. Investigation conducted into the educational background of 200 SMMC staff was not encouraging (Table 21). The broad conclusions are that:

- xlvi. Staff has low educational qualifications and do not follow a clear professional training programme. Over 50% of the 200 SMMC only possess Middle School Leaving Certificate.
- xlvi. Only 2% have professional procurement qualifications Chartered Institute of Purchasing and Supply, (CIPS).
- 1. About 23% of the SMMC are aged between 46-50 years, and may not have incentive for further training.

- li. About 52% on the average earn ₵6,000,000 (six million Cedis) (\$700), per annum. This means that it would be difficult to attract qualified personnel to fill future procurement positions.

Table 21: Educational level of SMMC staff (Based on a Sample size of 200).

Highest Educational Level Achieved.	Percentage of Sample
(1) Middle School Leaving Certificate	52%
(2) GCE 'O' Level or equivalent	25%
(3) GCE 'A' Level/DBS/RSA III/SSSCE or equivalent	5%
HND (Purchasing & Supply)/CIPS Foundation	9%
(5) CIPS Professional Diploma/Bachelor Degree	2%
(6) MBA/MSc	0%
(7) Other (i.e. NVTI, Government Secretarial School Certificate, etc.	7%
TOTAL	100%

vvvvvvv. Government needs to establish a national standard procurement certification for the public sector. Recruitment for procurement jobs in the civil service does not always take account of procurement qualifications and experience. Currently Ghana Institute of Management and Public Administration (GIMPA) and Management, Development and Productivity Institute (MDPI), presently run courses in public sector management. These institutions have facilities that can be used to run short-term and long-term procurement training. GIMPA has made significant progress in offering short-term procurement training, supported by the World Bank. In the past five years, (i.e. 1998-2002), a total of 627 participants were trained in the World Bank Public Procurement Guidelines as Table 22 below portrays.

Table 22: Numbers of staff trained

PROGRAM TYPE	1998	1999	2000	2001	2002	TOTAL
Works	39	42	15	28	22	146
Goods/Equipment	32	28	25	31	21	137
Consultants' Service	26	52	122	80	64	344
Total/Year	97	122	162	139	107	627

Source: GIMPA (Consultancy Service)

	1998	1999	2000	2001	2002	TOTAL
Public Sector participants	9	16	18	3	7	53
Private Sector participants	4	7	7	2	5	25
Total/Year	2011	2022	2025	2006	2014	78

Source: MDPI

PRIVATE SECTOR PARTICIPATION IN PROCUREMENT

Overview of the methodology of the assessment

wwwwwww. The objective of the review of procurement in the private sector was to establish current practice and approaches in relation to private sector procurement in the country so as to determine whether there are good practices that can be used by the public sector. A questionnaire was used to gather information from selected private sector firms (Table 23). The firms were randomly selected from various databases and publications including Ghana Club 100 and Year 2000 Edition Directory of Association of Ghana Industries (AGI). The questionnaire was supplemented with interviews with key officials of the selected firms and review of relevant literature and documentation that were provided. The efficiency, competitiveness and credibility of the private sector in executing public contracts were also assessed by way of questionnaire. Selected MDAs were contacted to furnish contract specific information for this purpose.

Main findings and recommendations

xxxxxxx. Ghana has a relatively large private sector (foreign and local) that is responding adequately to public procurement business estimated to be on the average US\$ 640 million per annum or 13%²⁵ of GDP. The climate for private sector development is enhanced by liberalization of the economy. It is difficult to obtain data²⁶ on the quantity of business that goes to local and to foreign firms, but using a rule of thumb, local firms take a fair share of the procurement business. There were concerns that contracts under Development Partner-financed projects are only accessible to foreign firms. The office of the Vice-President commissioned a study in 2002, which proved there being no bias against local contractors. The study found that the local firms have severe capacity limitations to undertake large contracts. The study also showed that foreign firms take nearly all large contracts (usually financed by Development Partners) and local firms take the larger share of small contracts. The study confirmed that local and foreign firms to competed equally for all public contracts.

yyyyyyy. The capacity of local contractors and suppliers to take large contracts is constrained by lack of adequate and easily accessible credit, proper management skills, fiscal discipline, and equipment. Commercial Banks charge high interest rates and service fees and require collateral for credit. Local firms supplying foreign goods need credit to open LCs for foreign manufacturers. The burden of the high interest costs is transferred to the public sector via higher bid prices for procurement goods, services and works. The local engineering firms do not have capacity (in terms of numbers, size of firms and competencies) to undertake large contracts. However unlike contractors, they benefit from taking subcontracts, by forming associations and joint ventures with large foreign

²⁵ In Developed countries public procurement would be about 7-9% of GDP.

²⁶ The Statistical Service does not compile such data and it is difficult to get from Procuring Entities.

firms. There is a need for Government to take macro-economic measures to lower interest rates and to improve on land titling so as to increase access to collateral. Government should also initiate an intensive capacity building program to improve on the management capacity of the private sector.

zzzzzzz. The assessment looked at the procurement practices by private sector procuring entities like Ashanti Goldfields Corporation, Poly Products (Ghana) Ltd, and Afariwaa farms & Livestock Products Ltd and found that there are good practices (e.g. planning, use of qualified staff and market survey) that can be learnt by the public sector. On the other hand, private sector often follow partnering arrangements as opposed to competitive arrangements in the public sector.

aaaaaaa. The efficiency of the private sector is low. Most contractors and suppliers are inefficient and their performance is unacceptable, as they do not adhere to contract terms particularly to delivery schedules. This is a result of poor supervision on the part of public officials and consultants. The procurement methods used would not make the contractors and suppliers competitive. Tax on raw materials renders local manufacturers uncompetitive against foreign competition. In addition, unqualified contractors are awarded contracts on political basis.

bbbbbbb. Most MDAs and DAs do not have competent staff to supervise consultants; this has led to consultants not giving proper services. The Insurance Companies have scaled down offering insurance to contractors and suppliers due to high default rate. Sound supervision of contracts and action on defaulting contractors and suppliers encourages improvements and performance standards.

Recommendation: While it is recognized that the private sector (contractors, suppliers, professional association, consulting firms, manufacturers, service providers etc.) need to develop themselves to take advantage of business generated by the public sector via procurement, the Government needs to create an enabling environment to ensure that:

- (a) Sole contractors are encouraged to form partnerships and joint ventures.
- (b) Procurement training include private sector.
- (c) Payments for contracts are paid in a timely manner.
- (d) Contracts are packaged to the extent possible in packages that would be manageable by local contractors.
- (e) Ports and ports clearance processes are improved to eliminate unnecessary delays; and
- (f) Encourage importers and exporters to use the port of Takoradi port so as to reduce congestion at Tema.

Table 23: List of firms surveyed

	Firm/institution	Position of contact person	Questionnaire completed & returned
1	Ashanti Goldfields Corporation	Head of Supplies / Procurement	Yes
2	Poly Products (Ghana) Ltd	Managing Director	Yes
3	Afariwaa farms & Livestock Products Ltd.	Executive Chairman	Yes
4	Amalgamated Bank Ltd	Deputy Manager (F&A)	Yes
5	Mechanical Lloyd Company Ltd.	General manager, Sales & Marketing	Yes
6	Interplast Limited	Controller	Yes
7	Standard Chartered Bank	Strategic Sourcing & Property Manager	Yes
8	Construction Pioneers Ltd,	Managing Director	No
9	Domod Company Ltd.	Chief Executive Officer	No
10	Parakuo Limited	Managing Director	No
11	Cocoa Processing Company Ltd.	Managing Director	No
12	Aluworks Heavy Industrial Area,	Managing Director	No
13	Fan Milk Ltd	General Manager	No
14	Sambus Company Ltd	Ex Chairman/ Managing Director	No
15	CDH Financial Holdings Ltd	Managing Director	No
16	Digitronix Systems Limited	Managing Director	No
17	Golden Tulip Hotel	General Manager	No
18	Cadbury Ghana Ltd	Managing Director	No
19	Agricultural Development Bank	General Manager	No
20	Unilever Ghana Ltd	Managing Director	No
21	National Investment Bank Ltd	Managing Director	No

ccccccc. Most of the officials of firms were prepared to be interviewed rather than fill out a questionnaire; perhaps they were cautionary that written information might be used against them. So of the 21 firms selected, only 7 responded to the survey questionnaire (a poor 33 % response). A review of the answers provided by the seven firms provided useful information on firm organization and procedures and practices of procurement function in the private sector.

ddddddd. The general conclusion is that the non-limited companies tend to be very informal on their procurement processes. There is use of partnerships, i.e. suppliers that the company deals with regularly, mostly for supply chain. Procurement function is regarded as an important function, encompassing every aspect of the purchasing process from determining the need for goods and services, to buying, delivering and storing. Firms intimated that the way in which procurement of goods, services and works is managed could impact on the performance of the firm as a whole. They stressed that a firm's ability to meet user needs, and financial requirements and objectives, can be

influenced significantly by the degree of effectiveness and efficiency with which procurement is managed. A key lesson for public sector is the need for procurement units and procedures to be followed, including monitoring staff performance.

eeeeeeee. With the exception of common-use items and services, much of a firm’s procurement is delegated to individual service departments directly involved in the delivery of a service. The reason given for this is that those closest to the point of delivery should have a good understanding of the user needs and knowledge of the market for that service. Where a firm has a central procurement unit (86 % of firms have procurement units), the unit coordinates procurement of common-use and other contracts. In all cases corporate procurement strategy, use of standardization of documents and specifications, monitoring and oversight are used to advise management on what is procured and expenditures. They also recognize the value of approved lists, capacity building and training, use of qualified personnel and consultants. The survey indicates that 86% of respondent firms measure their procurement performance.

ffffff. **Partnerships:** partnership has been defined in the questionnaire as “the creation of a long-term relationship with a contractor/supplier on principles such as shared objectives, trust, good communication, proactive problem solving, joint investment, continuous improvement, sharing of risks and rewards, pooling of knowledge and resources etc.” 29% of the firms surveyed use partnerships as an approach to supplier relationships and a further 14% intend to introduce them in future.

gggggggg. The survey suggests that firms are reluctant to forgo the security of a contract, as 43% of firms are currently involved in contractually based partnership arrangements. The differences between partnering and other approaches of contracting as seen by the firms surveyed include, ease of management of suppliers, faster service delivery time, cost effectiveness of the contracting process, improvement and consistency in quality of products and support from supplier. While partnerships would pose big risks in public procurement, term contracts awarded competitively on open tender for one to two years can benefit from the advantages of partnerships.

hhhhhhh. **Market survey:** Almost three-quarters (71%) of the firms surveyed conduct market research or consultation before deciding a contract strategy. Table 24 below indicates how the private sector gets information on items available in the market, sources and prices. This is a practice that should be encouraged in the public sector as information enables Procuring Entities to budget and determine most economic options.

Table 24: Information Source For Market Research

Source of information	Percentage of conducting market survey.
Discussions with contractors	57%
Surveys of contractors	57%
Drawing on experience of other firms	43%
Consultants	57%
Trade Journals	43%
Databases	29%
Internet	57%

iiiiiii. Performance of contractors: about twelve agencies in the public sector (Table 20) were approached to provide information and data on the efficiency and competitiveness of private sector firms and individuals that participate in public procurement. Very useful and comprehensive information was provided by only two agencies, i.e. Monitoring & Evaluation Department of the Ministry of Roads & Transport and Gateway Secretariat. All others were reluctant to do so. The reason for this is that public sector rarely keeps data on contractor performance. Though the sample was little it gives a reflection of how the private sector responds to public contracts. The sample reflected satisfactory performance, which is different from the sample of MRT. This does not tie well with the findings of contract management survey, perhaps due to the variance of sample. The findings emanating from the analyses as well as information and issues relating to contractor performance obtained from interviews with various public sector officials and the contractors themselves are presented in Tables 25 and 26.

Table 25: List of PMUs and MDAS contacted

	PMU/MDA
1	Ghana Trade & Investment Gateway Project
2	Local Government PMU
3	Community Water & Sanitation Agency
4	Village Infrastructure Project
5	Divestiture Implementation Committee
6	Ministry Food & Agriculture (Project Coordination Unit)
7	Funds & Procurement management Unit – Ministry of Education
8	Ghana Immigration Service
9	Ghana Highway Authority
10	Ministry of Roads & Transport
11	Ministry of Works & Housing
12	Ministry of Technology

Table 26: Contractor²⁷ performance information (works contracts)

	A	B	C
<u>A. PERFORMANCE HISTORY</u>			
1. Adherence to contract delivery schedules	2	3	3
2. Timely submission of required reports & docs	2	3	3
3. Accuracy & adequacy of contractor's reports & docs	2	3	3
4. Ability to solve contract performance problems without guidance	3	3	3
5. Display of initiative in meeting requirements	3	4	4
6. Timely & adequate resource commitment to solve problems	3	4	3
7. Timely submission of required proposals	N/A	N/A	N/A
8. Contractor response to technical directions, etc.	3	4	3
9. Accuracy, timeliness & appropriateness of contractor's problem tracking/reporting	3	3	3
10. Effectiveness in interfacing with Government staff	3	3	3
<u>B. TERMINATION HISTORY</u>			
11. Contract terminated for default or convenience	NO	NO	NO
12. Pending terminations?	NO	NO	NO
<u>C. EXPERIENCE HISTORY</u>			
13. Effectiveness of contractor in identifying user requirements	3	4	3
14. Effectiveness in subcontractor management		4	2
15. Provision of timely technical assistance by contractor	3	4	3
<u>D. COST MANAGEMENT</u>			
16. Extent of meeting proposed cost estimates		3	3

Legend: Very Good = 4, Good = 3, Fair = 2, Unsatisfactory = 1

²⁷ Contractors name not given for confidentiality.

Table 27: Contract Performance Rating

	No of Contracts	Contract Sum	Amount Spent	Performance Rating
		(GHC)	(GHC)	
1	45	65,828,000,000	61,306,250,000	Completed
2	20	133,770,240,000	5,904,000,000	Good
3	16	24,712,310,000	4,973,010,000	Fair
4	336	1,322,122,700,000	564,277,000,000	Slow
5	326	323,657,000,000	162,614,850,000	Very Slow
6	23	9,485,000,000	2,988,000,000	To Determined
7	15	45,197,000,000	37,057,580,000	Determined
8	48	102,347,660,000	2,861,000,000	Mobilizing
TOTAL	829	2,027,119,910,000	841,981,690,000	

Source: Data extracted from database of the Monitoring & Evaluation Directorate of the Ministry of Roads and Transport.

Works contracts

jjjjjjj. Summary information on the performance of contractors engaged on various road contracts throughout the country as at January 3, 2003 is presented in Table 27 above. The performance ratings of “Slow”, Very Slow” “To Determine” and “Determined”, indicate various unacceptable levels/degrees of contract execution by contractors in terms of the time spent as well as the amounts spent on the projects at the time of contract evaluation. Three hundred and eighty seven (387) contractors were engaged in the execution of the contracts, which comprised periodic maintenance of roads and minor works including the construction of small and medium bridges. Eight hundred and twenty nine (829) contracts with a total contract sum of GHC2,027,119,910,000 were evaluated. As at January 3, 2003, a total of GHC841,981,690,000 representing about 42% of the contract sum was spent.

kkkkkkkk. The analyses indicate that the performance of the contractors in the execution of 700 contracts, representing over 84% of the total contracts in the class of “periodic maintenance and minor works” in the project portfolio of the Ministry of Roads and Transport was found to be unacceptable. Possible reasons for the “below-average” performance of the contractors were adduced to include weak managerial capacity of most contractors, inadequate and obsolete equipment, weak financial capacity, inability to motivate professional staff, and contractor overload. Even though other possible external factors could be adduced, including issues relating to late payment, the contractors’ performance as reviewed above, provides a useful insight regarding their competitiveness, efficiency and credibility.

lllllll. The absence of a reliable central database (as in the best practice case of the Ministry of Roads & Transport) on Government contracts relating to civil works other than roads, poses a great constraint on the assessment of contractor performance and credibility in this regard. However, a review of the status report of other ministries and agencies in respect of other civil construction works would also seem to largely confirm

this pattern of “below-average” performance by the private sector in the execution of Government contracts. This analysis confirms the conclusions under “contract management”.

mmmmmmmm. Extracts from the Status Reports of the Local Government Project Support Unit of the Local Government Development Project (Table 28) confirm this observation in respect of five contracts, which were randomly selected. All the five projects could not be completed on schedule and the monitoring on each occasion was concerned with the poor workmanship of the contractors and the use of substandard construction materials.

Table 28: Extracts from Local Government Project Support Unit

	Overall Progress	Elapsed Time	Remarks (Comments by LGPSU Monitoring Team)
Asamankese Market Reconstruction	75%	150%	Poor quality materials in use; Incompetent site supervisor; Delayed payment for work done
Ejura Storm Drain	60%	160%	Slow pace of work; Unacceptable workmanship of contractor
Ejura Toilet Rehabilitation	85%	160%	Slow pace of work; Poor workmanship
Akwatia Lorry Park Rehabilitation	100%	130%	Use of sub-standard sand-concrete blocks; inability to adhere to contract deliver schedules
Berekum Lorry Park Rehabilitation & Toilet Construction	100%	130%	Inability to adhere to contract deliver schedules

nnnnnnnn. The contractor performance evaluation questionnaire was employed by the procurement staff of the Gateway Secretariat and the Immigration Service to evaluate the performance of three contractors currently engaged in civil works contracts at the Free Zones site in Tema and in the premises of the Ghana Immigration Service. The result of this evaluation exercise suggests an “above-average” contractor performance in the following key areas of adherence to contract delivery schedules and standards of good workmanship, reasonable and cooperative behaviour and commitment to customer satisfaction, and ability to forecast and control costs in order to meet proposed cost estimates.

oooooo. Success factors attributable to this exemplary performance have been cited to include contractors’ access to credit from reputable financial institutions, adequate equipment at project site, and prompt payment for work completed. Perhaps these should serve as useful pointers towards a more efficient contractor performance as well as effective contract management by the public sector. This collaborates the findings of the study by the Vice Presidential Committee referred to in paragraph 149 that Development Partner-financed contracts are perform well as payments are also timely.

Goods Contracts

pppppppp. Currently there are three methods by which a supplier is chosen by MDAs in purchasing with Government funds, single sourcing, shopping (sometimes requesting for prices by telephone), and open tender c), and by competitive tender if supplies are obtained by Ghana Supply Commission or under Development Partner-funded projects. Although it is prohibited, Ministries increasingly purchase on credit to avoid having to wait until official communication of availability of funds.

qqqqqqqq. There are two main parallel procedures currently in practice when it comes to purchasing with Government funds. The first is the “Emergency” procedure whereby single sourcing is used outside allowed circumstances. The second is the “Stop-order” procedure whereby to avoid losing uncommitted funds at the end of the budget year procedures are bypassed by finalizing all documents before actual delivery. The bending of procedures to allow Government machinery to function opens the door to abuse at all levels and also compromises a fair assessment of the competitiveness, efficiency and credibility of the private sector in the supply of goods to Government. The performance assessment of private sector suppliers to Government, especially where Government funds are involved would thus have to be considered within the above context.

rrrrrrrr. It was not possible to assess the performance of suppliers, as Supplier Performance Records were not kept. However anecdotal reports would seem to suggest that most suppliers do not adhere to contract delivery schedules and are not committed to customer satisfaction. In view of the regulatory vacuum and the unacceptable procurement practices that characterize purchasing for the conduct of Government business, one could assume that suppliers would also not be competitive with their offers. As indicated earlier, only one respondent was able to provide contract specific information on the performance of seven suppliers under the World Bank sponsored Ghana Trade & Investment Gateway Project. The information provided in the completed questionnaires has been processed and presented in Tables 29 and 30.

Table 29: Performance rating of the seven contracts

	No of Respondent Suppliers			
	Very Good	Good	Satisfactory	Unsatisfactory
Adherence to contract delivery schedules	3	1	2	1
Reasonable and cooperative behaviour	1	4	1	
Commitment to customer satisfaction		1	1	
Financial efficiency		7		

ssssssss. The analysis indicates that three (i.e. 43%) of the suppliers were very good at adhering to contract delivery schedules whilst only one (14%) could not meet with delivery schedules in a timely manner. All the suppliers in this instance were found to be credible and cooperated well with the client. The supplies were also all delivered within

the proposed cost estimates. A comprehensive national analysis is required to provide a complete picture on supplier performance.

Table 30: Supplier Performance Information

	NAME ²⁸ OF SUPPLIER & CONTRACT TYPE						
	A	B	C	C	D	E	D
A. PERFORMANCE HISTORY							
1. Adherence to contract delivery schedules	4	1	2	4	3	4	2
2. Timely submission of required reports & docs	N/A			N/A	N/A		
3. Accuracy & adequacy of contractor's reports & docs	N/A			N/A	N/A		
4. Ability to solve contract performance problems without guidance		2	2	4		4	3
5. Display of initiative in meeting requirements	4	2	2	4	3	4	
6. Timely & adequate resource commitment to solve problems	3	3	3	4	3	4	3
7. Timely submission of required proposals	N/A			N/A	N/A		
8. Contractor response to technical directions, etc.	N/A		1	N/A	N/A		
9. Accuracy, timeliness & appropriateness of contractor's problem tracking/reporting	N/A						
10. Effectiveness in interfacing with Government staff	3	3	2	4		3	3
B. TERMINATION HISTORY							
11. Contract terminated for default or convenience	NO	NO	NO	NO	NO	NO	NO
12. Pending terminations?	NO	NO	NO	NO	NO	NO	NO
C. EXPERIENCE HISTORY							
13. Effectiveness of contractor in identifying user requirements			2				3
14. Effectiveness in subcontractor management	N/A				N/A		
15. Provision of timely technical assistance by contractor		1	1			2	
D. COST MANAGEMENT							
16. Extent of meeting proposed cost estimates	3	3	3	3	3	3	3

Legend: Very Good = 4, Good = 3, Satisfactory = 2, Unsatisfactory = 1

²⁸ The real names of the companies have not been given for confidentiality.

ttttttt. Discussions with the client and the suppliers (the local suppliers and the representatives of the foreign suppliers) suggest that this exemplary performance could be attributed to credibility of the funding source as perceived by the suppliers, prompt payment to suppliers, a clear and transparent procurement process as perceived by the suppliers, effective oversight and supervision by the representatives of the funding source (i.e. the World Bank), and reasonably well motivated procurement staff of the implementing agency (i. e. the Gateway Secretariat). These elements were however found to be largely missing in the procurement processes and activities when Government funds are solely employed in purchasing for the public sector.

uuuuuuuu. **Consultancy Services:** in reviewing the performance of private sector consultants so as to determine their efficiency, competitiveness and credibility, it is worth quoting from the report of an earlier work undertaken by the Team of Consultants of the Public Procurement Reforms i.e. *“Apart from special agencies like GHA and ECG and also those MDA with PMUs, most other MDAs do not have qualified personnel capable of effectively supervising the consultants. This has led to instances of consultants not giving clients their monies worth. Some of the complaints against consultants include, low technical competence, being overstretched and therefore not giving adequate attention to assignments, failure to meet deadlines and poor quality of delivery”*.

vvvvvvvv. The effect of ineffective supervision of procurement of services causes several problems. Ineffective supervision of contractors who carry out works leads to shoddy work and/or delay in contract execution. Particularly, it was noted that in some cases, consultants who supervise works, recommended extensions to completion dates under circumstances that left much to be desired though in some instances MDAs condoned such practices. Another major effect is that inappropriate instructions lead to high cost of projects. *“For some reason, clients have almost always ‘tolerated’ these lapses without seeking redress”*.

wwwwwww. Interviews with selected staff MDAs and PMUs of Development Partner funded projects indicate that the situation as described above has not changed at all. Value For Money (VFM) assessment of selected contracts by Crown Agents in respect of three single-sourced contracts amounting to US\$ 129 million identification of savings of US\$ 18 million equivalent to 14% of the aggregate value of contracts reviewed. This reflects that the consultants negotiating these contracts did not do a clean job. In addition it reflects the trustworthiness of the suppliers of credit in giving government reasonable prices and terms.

The Role of private sector facilitating procuring Entities

xxxxxxx. 164. Consultations were held with the executive members and senior officials of the under-listed private sector facilitating procuring Entities (see Table 31) in order to assess their role in the public procurement process.

Table 31: List professional institutions industry associations contacted

	INSTITUTION/ASSOCIATION	CONTACT PERSON
1	Association of Ghana Industries	Mr. Andrew Lawson; Executive Director
2	Ghana Institution of Surveyors	Mr. B. A. Neequaye; President
3	Ghana Institute of Architects	Mr. Steve Akuffo; President
4	Ghana Institution of Engineers	Engr.
5	Ghana Road Contractors Association	Mr. Twumasi Mensah; President
6	Ghana Insurers Association	Mr. Wilson Tei; President
7	Private Enterprise Foundation	Dr. Osei Boeh-Ocansey

yyyyyyyy. **Ghana Insurers Association:** by law, all underwriting companies are expected to be members of the Ghana Insurers Association (GIA), which currently comprises 18 insurers and 2 reinsurers. The aims and objectives of the association include:

- lii. The establishment and maintenance of an efficient insurance industry in Ghana and maintenance of standards, honour, discipline and integrity in the industry.
- liii. The creation of awareness and better understanding of insurance and supporting a sound insurance education in Ghana.
- liv. The protection and advancement of the common interest of Insurers and Reinsurers transacting insurance business in Ghana.

zzzzzzzz. The insurance industry has over the years facilitated Government business by providing contractors and suppliers with various facilities in order to enable them participate in the public procurement process. However, as noted by the President of the Ghana Insurers Association, the unacceptable default rate of 60% on the part of these contractors and suppliers has created difficulties for the industry. The total exposure of the insurance industry in terms of the facilities offered in support the public procurement process amounted to GHC92.6 billion in local currency and about US\$10million in foreign currency as at June 30, 2003. The total claims served on the insurers as a result of the non-performance of the contractors and suppliers at the time amounted to GHC2,746,870,000 in local currency and US\$86,555 in foreign currency.

aaaaaaaa. Ghana Reinsurance has stopped offering reinsurance to support public sector procurement because of the high default rate on the part of contractor and suppliers. This situation has severely affected the facilitating role that the insurance industry could play in support of the public procurement process. Another factor affecting the effectiveness of the insurance industry relates to the judicial process for enforcing default remedies, which has been found to be too cumbersome, expensive and time consuming. A legal stipulation, which would require either amendment or enforcement provisions, relates to PNDC LI 153, which makes it mandatory for all

imports into Ghana to be insured with local insurers. The law in present form does not provide for any consequence for default thus rendering compliance effectively optional with the result that the intended benefit in the form of premium that otherwise would have come to Ghana does not come. Another provision in the legislation that has a bearing especially on works procurement relates to the Workman's Compensation Act. The law in its present form requires employers to provide compensation for industry employees without expressly requiring employers to purchase insurance to guarantee such compensation as is provided, for example, under the Motor Third Party Act.

bbbbbbbbb. **Ghana Institute of Architects:** The Ghana Institute of Architects regulates the architectural profession in Ghana and all practicing architects are obliged to be properly registered with the Institute. The Institute seems to derive its authority from the Architects Decree, 1969 (NLCD 357), which provides for the establishment of an Architects Registration Council (the Council) to be concerned with the architectural profession and charged with the responsibility of securing the highest practicable standards in the practice of architecture in Ghana. Membership of the Council is to consist of ten (10) members, with five (5) members nominated by the Ghana Institute of Architects.

cccccccc. The Institute indicated that there is a lack of consultation in the design of public buildings and that the criteria for sourcing architectural services for public buildings are not necessarily the best at present. The Institute also advocates for a shift away from purely sectoral planning and for more collaboration and coordination among the various public agencies in the design of public projects. It is the view of the Institute that it could play a more effective and beneficial role in the public procurement process if it were consulted in the initial design phase of public buildings. In order to address these concerns, the institute proposes formulation of a set of evaluation criteria for design services, composition of evaluation panel for architectural designs to include eminent architects nominated by the Institute, and regular consultation between the public and private sector architects to address issues relating to the public procurement process as it affects the architectural profession.

ddddddddd. **Ghana Institution of Engineers;** the Ghana Institution of Engineers (GIE), which was founded in 1968, is an autonomous professional body. It has as its mission the facilitation, development and promotion of sound engineering practice in Ghana, comparable with any competent engineering practice anywhere in the world. Its main objectives are to advance the science and the profession of engineering to the benefit of Society and establish and manage a register of Engineers qualified to practice in Ghana. GIE has launched an Engineering Innovations and Research Foundation (E. I. R. F.) to mobilize engineers, technologists, allied professionals and development partners for wealth creation, poverty reduction and accelerated national development.

eeeeeeee. The Institution could play a more effective role in the Public Procurement process if it was consulted on public procurement issues relating to the profession of engineering. The issue of delayed payments for services rendered by the members of the GIE working on Government projects was raised as one issue, which is negatively affecting the professional effectiveness of their members. The GIE has indicated in its

Anniversary Brochure in 2000 (30 years of the GIE) that it is in a position to define its public role. The issues it identified as being able to address to help define this role include establishment of links with organizations which fight corruption and participation in efforts to coordinate and formulate views on major issues, developments, and works, to influence decision makers for the benefit of the public. A key issue raised with the GIE was enhancing value engineering and economic technical options in designs. These issues are clearly in consonance with the principles of the current public procurement reform efforts.

ffffff. **Ghana Institution of Surveyors (GIS):** GIS seeks to practice and ensure the advancement of the profession of Surveying in Ghana. The Governing Council of the GIS highlighted a number of issues, which if addressed, could enhance the effectiveness of the Institution in the public procurement process. These issues include definition of the term “Engineering Services” in the public procurement literature in Ghana. It is the view of the GIS that the current definition seems to exclude or has the potential to exclude the surveying profession from effectively participating in the public procurement process.

gggggggg. The Institution has therefore proposed that a more generic definition to include all relevant professions be adopted, that is, the need for procurement Procuring Entities to consult stakeholder-professionals before specifications incorporating professional services are written and put out on bid, and a much wider advertising of procurement opportunities and the need to include recognized professional bodies in the circulation/ mailing list for procurement opportunities, the need to allow for adequate processing time in the bid evaluation process in order to enhance effective quality assurance and to have detailed designs based on sound feasibility studies in the procurement process for works projects.

hhhhhhhh. **Road Contractors Association of Ghana:** the Road Contractors Association of Ghana currently has more than five hundred (500) members comprising various classes and sizes of firms. The governing Council Members of the Association is concerned about its inability to assist Ghanaian contractors play a more effective role in the public procurement process as a result of general lack of access to working capital and the very high cost of the limited assistance available and lengthy and cumbersome certification procedure for processing payment claims for work done. The association is very concerned about centralized nature of the payment system, and lengthy waiting period (3 – 8 months or more) after completion of work done to time of receipt of payment and award of contracts to unqualified contractors perhaps due to political influence/interference.

iiiiiiii. The Association indicated that because they know the capacities and capabilities of their members, it would be prudent to involve them in the contract evaluation and award process. The view is strongly held by the Association that their foreign counterparts should be registered with them before being considered for the award of Government contracts and to that effect, they would want a Government directive or legislation on the issue. The Council advocates enactment of an enabling law to regulate the industry, assistance for capacity building to train its members on the

public procurement process and assistance to contractors acquire the necessary equipment at reasonable cost.

jjjjjjjj. Private Enterprise Foundation (PEF): PEF is a non-profit, non-political, autonomous institution, incorporated in 1994 with the main objective of facilitating the coming together of business associations, as partners in the Economic Development of the Country, in order to exert greater influence on policy initiatives for the creation of an enabling environment in which private sector businesses can thrive. The Director General of PEF indicated that the has a role in facilitating the public procurement process for the benefit of the private sector. An important contribution in this regard was a study and advocacy workshop organized by PEF to examine Government policy on the procurement of “Made-in-Ghana Goods” after 20 months of its implementation. The study and the report on the advocacy workshop provide useful indications that could aid the implementation of one of the principles that underpin the current public procurement reform initiatives, “Local Industry Development”.

Recommendation: PEF should be involved in the implementation of the current Public Procurement Reforms on behalf of the private sector, especially in the areas of advocacy and capacity building.

kkkkkkkk. **Association of Ghana Industries:** the principal objective of the AGI is to help the industrial sector by advocating for a better business climate in Ghana. It has an active membership of 300, made up of small, medium and large-scale manufacturing industries as well as members in support service industries such as transport, construction, utilities information technology, telecommunication, banking and advertising. Over the years AGI has played an active role in attempting to enhance the effective participating of local firms in public procurement. Specifically, it was through the efforts of the AGI that the Government adopted the policy of public Procuring Entities buying “Made in-Ghana Goods”. Currently, AGI is in dialogue with the Government towards a review of the tax and incentive regimes that discriminate against local industry and thus renders local firms non-competitive in bidding for Government tenders.

llllllll. These incentive barriers include application of Value-Added Tax (VAT) on both raw materials and finished goods manufactured locally. Imported goods (e.g. school textbooks) procured under Government contract do not attract these levies whereas locally manufactured goods are liable, the high rate of the VAT and other levies, period of validity of the Tax Clearance Certificate required by firms for Government business, the cumbersome and ineffective duty drawback system, and the high interest rate regime of the financial system, which seems to be a result of the macroeconomic situation of the country. AGI is eager to utilize public procurement as tool for developing the capacities of their members and would therefore wish to be considered in the Capacity Building Plans of the Public Procurement Reform initiative.

Financial Institutions

mmmmmmmm. Two Commercial Banks, Amalgamated Bank and Standard Chartered (out of five banks contacted) were assessed and they represent a fair status of other major Commercial Banks. **Amalgamated Bank Limited (Amalbank)** has been in operation for less than three years. It is a privately owned bank and the shareholders are all Ghanaians. Even though less endowed in comparison to its competitors, Amalbank has ventured into the challenging area of supporting contractors participating in the public procurement process. The bank offers Bid Security, Bank Credit Letters/Letters of Intent, Advance Payment (Mobilization) Guarantee, Performance Security and Retention Guarantee to qualified applicants. Due to the prudent measures it has put in place, i.e., the terms and conditions precedent to the grant of these facilities, Amalbank indicated it has not faced any serious problems regarding non-performance by its client contractors. The volume of transaction undertaken for the period in the year 2002 is indicted in Table 32 below.

Table 32: Guarantees Issued to Contractors By Amalbank in 2002

	Type of Facility	No	Value (GHC)
1	Bank Credit Letters	845	N/A
2	Bid Security	784	4,823,642,712
3	Advance Payment Guarantee	1,502	5,001,783,531
4	Performance Bond	16	358,542,003
5	Retention Guarantee	5	88,978,712

nnnnnnnn. **Standard Chartered Bank:** Standard Chartered Bank (SCB) is estimated to have the largest asset base in the country. The profile of its clientele engaged in the public procurement business comprises mostly foreign firms involved in bidding for or executing large contracts. The Ghanaian counterparts are those who are relatively well established and are involved with medium and small type public projects. SCB offers all facilities offered by Amalbank, including working capital/loan. As is normal with any business venture the bank gives first preference to its clients, whose track record it can easily verify and authenticate.

oooooo. According to SCB, it encourages its clients to plan for their requirements annually or well in advance and to submit such requests for assistance early so that the bank can make the necessary standby allocations for them to utilize when the need arises. Even though the bank is only one of a few institutions offering working capital facilities to those engaged on public funded contracts, like all other banks, its interest rate is 30% – 35% per annum, considered to be very high by the beneficiaries. Statistics on guarantee facilities granted by the bank for the period January 1st to February 17th 2003 is provided in Table 33 below.

Table 33: Guarantee Facilities Granted by SCB (January 1st – February 17th 2003)

BID BOND		PERFORMANCE GUARANTEE		SUNDRY GUARANTEES	
No.	Amount	No.		No.	Amount

	30	US\$2,661,335	16	US\$724,857	24	US\$3,642,853
	25	GHC1,176,813,212	8	GHC272,031,616	11	GHC34,735,418,103
	03	EUR81,772	1	EUR8,883	5	EUR1,348,877
TOTAL	58	GHC24,687,786,687	25	GHC6,551,723,980	40	GHC78,358,921,536

ppppppppp. General observations

- iv. Private sector firms as well as public officials managing specific contracts should jointly ensure efficiency, competitiveness and credibility of the private sector in executing such contracts.
- lvi. Private Sector Firms should enhance their technical & management skills, firms executing Government contracts should be prevailed upon to recruit and maintain capable professionals. The lack of competent professionals and capable managers has been identified as contributory factors to poor performance.
- lvii. Private Sector Firms should strive to improve their credit rating. According to the banks and insurance companies, most private sector firms who participate in public procurement activities do not have good track records with them. This effectively limits any assistance that these firms can expect from these facilitating institutions thus negatively imparting on their performance in the public procurement function.
- lviii. Development of guidelines and enabling legislation to regulate tied-aid and private finance initiative contracts and development of capacity within the public sector to undertake value-for-money (VFM) assessments of these contracts and proposals.
- lix. There should be enhanced transparency in the bid evaluation and contract award process. This would ensure that only capable and qualified firms are considered for contract award. Also firms already overburdened would not be further burdened, as a transparent process would enable others to point this out.
- lx. More effective contract supervision; a contract manager should be designated for each contract and provided with the resources required for effective contract supervision.
- lxi. Contract administration skills of contract managers should be enhanced. Contract managers should be well trained for their job and should be supported by their supervisors in the course of carrying out their assigned duties.
- lxii. Development of capacity within industry and professional associations is key to improving their performance in public contracts.

ANTI-CORRUPTION MEASURES AND PROGRAMS

Overview of methodology of assessment

qqqqqqqq. The assessment was carried out on basis of interviews and questionnaires administered to 30 private sector organizations listed on Table 34 below and 12 public sector organizations listed below. A desk study of reports was conducted on relevant documents listed below, including the Public Procurement Bill. The findings drawn from the fieldwork and desk study informed the appropriate findings and recommendations made.

Table 34: Anti-Corruption - List of private sector organizations contacted

ORGANISATION/ INSTITUTION	REPRESENTATIVE/ CONTACT PERSON	DESIGNATION
Ghana Institution of Engineers (G.I.E)	Frederick Adu Nyarko	President
Ghana Chamber of Commerce and industry (GCCI)	Sal. D. Amegavie	Executive Secretary
Institute of Architects	Steve Akuffo	President
Mechanical Lloyd	Ebenezer Annan	General Manager, Sales and Marketing
Toyota Ghana	William Asamoah	Sales Manager
Forum of Religious Bodies (FRB)	Rev. Jonathan Ankrah	Secretary-General
GNPA Ltd.	Victor Opare Addo Kwame Dadjo	Senior Manager, Imports Head of Legal Dept. and Ag. Head of Administration
Ga District Assembly (GDA)	Mr. S.A. Attoh P.A.K Owusu Sekyere Victor Mensah G.G. Ackah David Collison Salisu Omaru	Dist. Chief Executive Ag. Dist. Co-Ord. Director District Engineer Dist. Planning Officer Budget Analyst Dist. Finance Officer
Association of Road Contractors	Ebo Newton	Vice Chairman
Association of Building & Civil Engineers	Samuel Obeng	President
Ghana Association of Consultants	Eva Monica Boateng	Acting National President
Institution of Surveyors	Naab Frank C.	Executive Secretary
Commission on Human Rights & Admin. Justice (CHRAJ)	Lawrence K. Lartey	Deputy Director
Serious Fraud Office (SFO)	Alhaji Mohammed Abdullah	Chief Controller
Ghana Integrity Initiative (GII)	Yaw Buaben Asamoah	Executive Secretary
Judicial Service, Fast Track High Court (FTHC)	Emmanuel Boadi	Manager
Centre for Democracy & Development (CDD)	Prof. Gyimah Boadi	Executive Director
Ghana Journalists Association (GJA)	Bright Blewu	General Secretary
Institute of Economic Affairs (IEA)	Dr. Yaw Saffu	Head, Governance
National Commission for Civic Education (NCCE)	Henry W. Tani-Eshon Napoleon Agboada	Director, Finance & Admin. Director, Public Education
Auditor-General's Office	Edward Dua Agyeman	Auditor-General
Public Accounts Committee of Parliament	Hon. Alban Bagbin	Chairman
Finance Committee of Parliament	Hon. E. Atta Agyapong	Chairman
Private Enterprise Foundation	Moses Agyeman	Senior Economist
Ghana Supply Company	Mrs. Jacqueline Angate	Head/General Procurement
Ministry of Works & Housing	Mrs. Rosemond Asante	Ag. Chief Internal Auditor
Office of the Head of Civil Service	Mr. K. Obeng Adofo	Chief Director

rrrrrrrr. The following public sector institutions were visited.

- lxiii. Ghana Institute of Management and Public Administration (GIMPA)
 - lxiv. Centre for Democracy and Development (CDD)
 - lxv. Ghana Integrity Initiative (GII)
 - lxvi. Institute of Statistical, Social and Economic Research (ISSER)
 - lxvii. Institute of Economic Affairs (IEA)
 - lxviii. Ghana Statistical Service (GSS)
 - lxix. Management Development and Productivity Institute (MDPI)
- ssssssss. The review included the laws governing financial administration by Ministries, Departments and Agencies in Ghana, as well as Educational institutions and subvented organizations. These are:
- lxx. The Fourth Republic Constitution, 1992
 - lxxi. The Financial Administration Decree, 1979 (SMCD 221)
 - lxxii. The Financial Administration Regulations, 1979 (L11234)
 - lxxiii. The Civil Service Law 1993 (PNDC Law 327)
 - lxxiv. The Local Government Act 1993 (Act 462)
 - lxxv. Instructions and Memoranda issued by Ministries, Departments and Agencies (MDA's).
- tttttttt. Other documents reviewed are:
- lxxvi. The Ghana Governance and Corruption Survey.
 - lxxvii. Evidence from Households, Enterprises and Public Officials – Aug. 2000.
 - lxxviii. Ghana Public Procurement Reform Report by G. Westring – Dec. 1997.
 - lxxix. Ghana – Country Procurement Assessment Report (CPAR) – March 1996.
 - lxxx. Republic of Ghana – Country Financial Accountability Assessment. Vol. 1 – May 2001
 - lxxxi. Various memoranda and circulars from Sector Ministries.

Main findings and recommendations

uuuuuuuuu. Government and the civil society have on-going initiatives to fight corruption but these have not achieved tangible impact, as corruption is still endemic²⁹. The TI rating for Ghana is, which is relatively better than most African countries. This does not really auger with local perceptions that there is endemic corruption that mars relationship between the Government and civil society. The current Government assumed power in January 2001 and its President's "State of the Nation" address emphasized the Government's policy of "zero tolerance on corruption".

vvvvvvvvv. There is little evidence of the private sector initiatives to fight corruption. The procurement training programs by the World Bank aim to improve public procurement processes and to reduce procurement-related corruption. Civil Society organizations programs aim at creating awareness and raising the flag whenever a corrupt activity is identified or suspected. The Commission on Human Rights and Administrative Justice Report for year 2000 shows that fourteen cases on procurement related corruption have been investigated and dealt with within the past two years but little action against the culprits. There is a general perception that corruption is widely spread in the public service, including by politicians.

wwwwwwwww. There is little effort by the Head of the Civil Service and Head of the Public Services Commission, the Commission on Human Rights and Administrative Justice, as well as the National Commission on Civic Education, to create awareness of anti-corruption measures. The Civil Service Code is not enforced. The Audit Service is handicapped in reporting adequately on cases bordering fraud and corruption. The general conclusion is that the public sector is not in coalition with the civil society to fight corruption; the government itself is not represented in the Ghana Anti- Corruption Coalition.

An extract from GPRS on Corruption

Endemic corruption has a debilitating effect upon governance and leads to distortions in policy formulation and implementation. Government has demanded zero tolerance on corruption in both public and private sectors. Action is required on a broad front by both government and civil society effort. In the first instance the campaign should be targeted at the most palpable incidents perhaps in relation to construction contracts and land. Codes of conduct are required for the public service, corporate and non-profit making bodies and Traditional Authority. Monitoring mechanisms specifically related to corrupt practices jointly managed by the public sector and civil society should be established as soon as possible. Relations between government and civil society have been marred in the past by endemic corruption and by society's perception of corruption as indicated in the Ghana Governance and Corruption survey conducted by the Center for Democracy and Development. The Action plan prepared by the Ghana Anti Corruption Coalition must be implemented expeditiously and without fear. Law and order enforcement institutions require strengthening to enable them to tackle corruption effectively. Public disorder and anti social behaviour has greater adverse effect upon the poor than the affluent.

²⁹ Corruption is cited in the GPRS as endemic.

xxxxxxxxx. Conscious attempts should be made to involve the private sector in anti-corruption measures. The Freedom of Information Bill, the Public Procurement Bill will provide the private sector and civil society legal backing to challenge any corrupt activity. The Action Plan of the Ghana Anti-Corruption Coalition is still relevant and should be implemented by the government and the concerned agencies in a systematic and prioritised manner. There are suggestions that the constitution should allow private prosecution or an “Office Independent Prosecutor” to take on prosecutions in cases where the Attorney General is unwilling to prosecute.

yyyyyyyyy. The Commission on Human Rights and Administrative Justice, the Serious Fraud Office and the Ghana Integrity Initiative and the Ghana Anti-Corruption Coalition could be designated Public Complaint Centers with telephone hot lines where corrupt deals can be reported. This would be greatly enhanced if the Protected (Public Interest) Disclosure Bill were enacted. There are suggestions that there be unannounced audit checks with the auditors having access to all documents and records. The Audit Service should be allocated adequate budget and given financial autonomy so that it would not experience constraints in the performance of its duties. It is envisaged that the new Public Procurement Law will substantially reduce incidents of procurement-related fraud and corruption. Government should take bold measures to fight corruption as effective anti-corruption measures will greatly improve the image of the government and give it political leverage over its competitors.

A history of anti-corruption measures

zzzzzzzzz. In the 1960’s there was the Dawn broadcast by the first president of the country, Dr. Kwame Nkrumah, when he launched an attack on the insidious character of corruption. Since then Judicial and other Commissions of Inquiry have been held to investigate allegations of corruption against senior public officials. Justice Anin’s Commission of Inquiry quickly comes to mind. During the 1979 Revolution, key Government Officials, including three Heads of State were executed for offences, some of which bordered on corruption.

aaaaaaaaa. The establishment of the Commission on Human Rights and Administrative Justice and the Serious Fraud Office is a manifestation of the intention to confront corruption. For quite a while the war against corruption was generalized, but in the past decade or so, there has been a shift towards isolating aspects of public life where corruption is rife and instituting measures to deal with it. Public Procurement has received attention in this direction. Corruption took center stage in the Sessional Addresses of Flight-Lieutenant J.J. Rawlings in 1998; 1999 and 2000.

bbbbbbbbb. As mentioned above, His Excellency J.A. Kufuor, current President of the Country, also made mention of his Government’s determination to fight corruption in his 2001 Sessional Address to Parliament. Corruption was a subject of serious discussion at the National Forum on “Transparency and Accountability for Good Government” organized by the U.N.D.P., the National Institute Renewal Program (N.I.R.P.) and Parliament. The Commission on Human Rights and Administrative Justice also held a

“National Integrity Workshop” in October 1998. The Ghana Anti-Corruption Coalition has also mobilized its members to go on Walks and held work-shops to create awareness on the prevalence of corruption in Ghana, and to sensitize Ghanaians on the evils of corruption.

ccccccccc. By far the most comprehensive survey conducted on corruption in Ghana is the “Ghana Governance and Corruption Survey: Evidence from Households Enterprises and Public Officials”, commissioned by the World Bank and conducted by the Centre for Democracy and Development (CDD) in August 2000. The CDD report identified the causes of corruption, among others, to be low salaries of public officials compared to their counterparts in the private sector and poor internal management practices. The report proposed measures to fight corruption as strengthening and enforcing existing anti-corruption laws and regulations, a unified Code of Ethics for Public and Private Sectors, increasing awareness of official anti-corruption measures, and broadening the Ghana Anti-Corruption Coalition by involving a wider range of stakeholders, including the Government, to help build public confidence in anti-corruption initiatives. Most of these proposals are still to be implemented.

ddddddddd. **The current situation:** inspite of the initiatives taken by the Bank to improve on the procedures and processes in public procurement, most of the respondents from the private sector were not aware of these measures. Private Sector participation in anti-corruption initiatives is virtually absent. The Private Sector and the Civil Society Organizations have not yet formed a partnership to lobby the Government to adopt policies that will eliminate corruption in public procurement. Government Departments are not in a coalition with the civil society groups to fight corruption in procurement and this may be the reason why the Government is not represented on the Ghana Anti-Corruption Coalition. Figure 3 below indicates perceptions on government support to corruption to be low while Figure 4 gives a perception by majority that corruption is increasing.

Figure 3: Anti-Corruption Indicators

Approval rate of Government's support for Anti-Corruption Initiatives

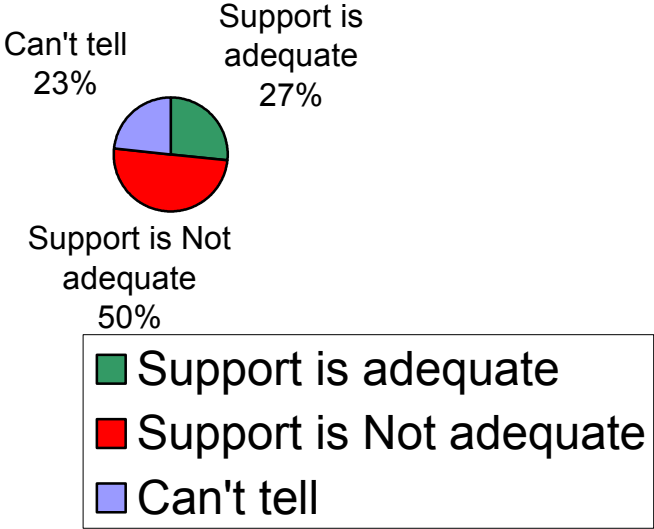
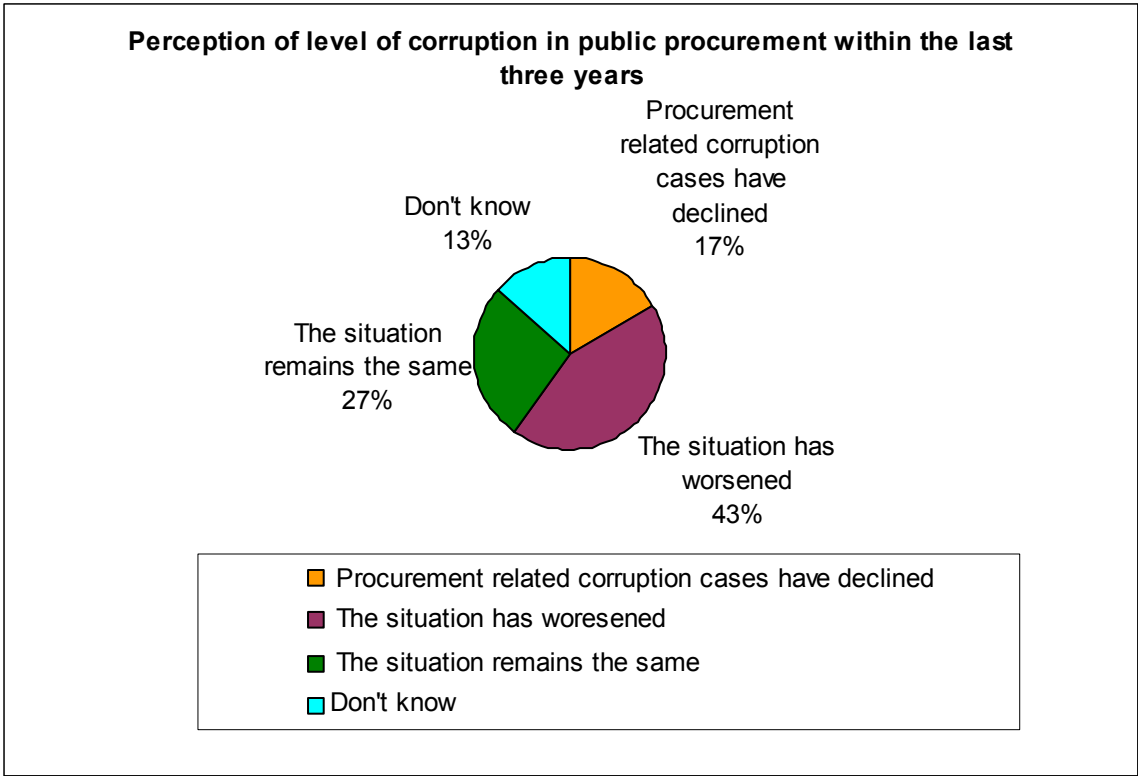


Figure 4: Public Perception of Corruption



eeeeeeeeee. The laws that check corruption are adequate but are not being vigorously enforced. Sanctions for offences are not swift and prompt. A codification of all the laws on bribery and corruption would be more appropriate. Figures released by The Serious Fraud Office in its current report to the President and Parliament shows that only four procurement related corruption cases have been investigated and dealt with within that year; while the Fast Track High Court had tried only one procurement related corruption case since it started sitting; three such cases are pending. The Commission on Human Rights and Administrative Justice Report for year 2000 shows that fourteen cases on procurement related corruption have been investigated and dealt with within the past two years. This figure is low and there is the need for the Government to resource the Commission to enable it performs its constitutional and statutory duties effectively and efficiently.

ffffffffff. The Public Procurement Bill meets the requirements for transparency, fairness, accountability and review of complaints by aggrieved bidders. The various legislations, circulars and internal memoranda that regulated public procurement will give way to a code that strengthens the procedures for the procurement of goods, works and services. The inclusion of public sector members on the various Review Tender Boards will assure the bidders of a fair deal since their members will be on the Review Boards. The procedures for bidding, evaluation and award are transparent and objective, and there is disclosure about the use of every method of tendering.

gggggggggg. The Head of the Civil Service and Head of the Public Services Commission, together with the Commission on Human Rights and Administrative

Justice, as well as the National Commission on Civic Education, should undertake activities to create awareness of anti-corruption measures among the citizenry. The Media would be a crucial partner in this exercise. Conscious attempts should be made to involve the Private Sector in this move.

hhhhhhhhh. The Freedom of Information Bill when passed into law would provide the citizenry with legal backing to seek information on Public officers. The provisions of the Procurement Bill should widely disseminate to all stakeholders. The Civil Society Organizations and the National Commission on Civic Education, with the collaboration of the Commission on Human Rights and Administrative Justice, should lead the crusade for the publication of the Code of Conduct for the members of the Public and Private Sectors.

Recommendation: The Action Plan of the Ghana Anti-Corruption Coalition is relevant to public procurement and should be enforced by the Government and the concerned agencies in a systematic and prioritised manner.

iiiiiiiiii. Sanctions ought to be visited on miscreants promptly and swiftly. It might be appropriate to consider the creation of an Independent Prosecutor who can initiate action against corrupt officials without recourse to the office of the Attorney General. This could be a long-term measure since it implies Constitutional amendments. The Commission on Human Rights and Administrative Justice, the Serious Fraud Office and the Ghana Integrity Initiative and the Ghana Anti-Corruption Coalition could be designated Public Complaint Centers with telephone Hot lines for leads and tip offs on corrupt deals to be reported. This would be greatly enhanced if the Protected (Public Interest) Disclosure Bill were passed.

jjjjjjjjj. Effective audit procedures must be applied to check corruption. There must be unannounced audit checks with the auditors having access to all documents and records. The Audit Service must have financial autonomy so that it would not experience constraints in the performance of its duties as a result of the late delay in the release of funds by the Ministry of Finance. The Conditions of Service and salaries of qualified accountants ought to be improved so as to attract and retain them in the service.

Organizations in anti-corruption activities

kkkkkkkkk. **Public Sector Institutions:** The Serious Fraud Office; the Judiciary, Commission on Human Rights & Administrative Justice and the National Commission on Civic Education are enjoined by the Constitution to check corrupt practices. The Serious Fraud Office investigates and prosecutes offenders while the Judiciary sanctions convicted persons. The Commission on Human Rights & Administrative Justice investigates cases of corruption and highlights them in its annual report to the President. The National Commission on Civic Education (NCCE) has the constitutional duty to educate the citizenry on their civic responsibilities. The NCCE submits annual reports of its activities to Parliament.

lllllllll. **The Public Accounts Committee** receives the reports of the Auditor-General for its comments; and the members spearhead debates on these reports in Parliament. The Public Accounts Committee and the Finance Committee play very important and useful roles in examining and checking public expenditure and this has a bearing as an anti-corruption measure.

mmmmmmmmmm. **The Private Sector:** Consultants should play a bigger role in checking the way contracting is done, the private sector is dormant. Conscious efforts should be made by the Civil Society Organizations to draw the Private Sector into their coalition to pursue the anti-corruption programs.

nnnnnnnnnn. **Civil Society Organizations:** this is the most vocal and visible organization engaged in anti-corruption activities. The drafting of the Freedom of Information Bill, the Protected (Public Interest) Disclosure Bill and the sensitization of the public on the need of government to mainstream anti-corruption measures in all government policies had inputs from the GACC. The GACC is lacks adequate funds to carry out its work.

Summary of findings:

ooooooooo. Findings can be summarized as follows:

- lxxxii. There is still lack of awareness of government's anti-corruption measures. The approval rate of Government support for anti-corruption initiatives is twenty-seven percent.
- lxxxiii. Private Sector participation in anti-corruption programs and initiatives is virtually absent.
- lxxxiv. Civil Society Organizations are more active in the anti-corruption crusade.
- lxxxv. The public sector organizations such as Commission on Human Rights and Administrative Justice, Serious Fraud Office, National Commission on Civic Education are members of the Ghana Anti-Corruption Coalition.
- lxxxvi. The Civil Service has a Code of Ethics. It deals with conflict of interest situations. Some of the Public and Private Sector institutions visited had no Code of Ethics.
- lxxxvii. There is the perception that bureaucrats and politicians are the most corrupt public officials.
- lxxxviii. There is the perception that the level of corruption in public procurement is still high because the same bureaucrats remain at the post despite changes in Government.

- lxxxix. Government is applying the Action Plan of the GACC, except that it is not being done in a prioritized and systematic manner. For example, the Freedom of Information Bill, the Protected (Public Interest) Disclosure Bill and the Public Procurement Bill are legislations that have a bearing on anti-corruption initiatives, and they are at various stages of being passed into laws. The (Public Interest) Disclosure Bill protects informants from victimization for disclosing corrupt practices while the Freedom of Information Bill gives access to official information, subject to some exemptions.
- xc. The general view that cut across all the sectors surveyed is the useful role the Press plays in informing and educating the public about allegations of corruption in public procurement.
- xci. Trials of accused persons in corruption cases, including procurement related corruption cases, are not fast enough. All the persons interviewed held the view that trials should be speeded up. Respondents approved of either the setting up of a separate division of the High Court to try corruption related cases, or the procedures of Court be reviewed to ensure speedy trials of corruption cases in the Fast Track High Court.
- xcii. Salary levels are still low in the public sector compared with the private sector, and this has the tendency to make public servants corrupt.
- xciii. The audit service lacks qualified staff.

Summary recommendations

pppppppppp. The following actions are recommended:

- xciv. The Ghana Anti-Corruption Coalition (GACC) should advocate for the strengthening of the Serious Fraud Office and the Commission for Human Rights and Administrative Justice. Both institutions and other key players of the GACC need to advocate for greater attention to civic education, with particular attention to anti-corruption. The GACC members also need to stress the need for attitudinal change within the society, such as to reduce tolerance for corruption.
- xcv. Sanctions for those who indulge in the corrupt practices should be swift; this is the duty of the adjudicating bodies. It may be necessary to codify all the laws on bribery and corruption and related offences scattered in various legislations.
- xcvi. A constitutional amendment to create the opportunity for private individuals to institute criminal proceedings independently of the Attorney General would be the clearest and practical manifestation of the need to

assure the citizens of a fair and objective prosecution of offenders, irrespective of their status and position in the society.

- xcvii. Government should strengthen all the traditional accountability and transparency institutions and systems.
- xcviii. The Internal management control systems in the public service (for example Internal Audit).
- xcix. The Audit Service: While noting the on-going support of the EU to the office of the Auditor-General, there is the need for the Auditor-General to associate with relevant key professionals in the conduct of audit of procurement activities that will be required under the Public Procurement Act (when passed).
 - c. The Public Accounts Committee of Parliament: Government should promptly implement management improvement measures including sanctions ,recommended by Reports of both the Auditor-General and the Public Accounts Committee.
 - ci. The Code of Conduct for Civil Servants should be enforced; also a Code of Conduct provided for in the Procurement Act (when passed) would require urgent attention to engender reform in the public sector.
 - cii. The Procurement Bill ought to be passed with minimum delay. It simplifies the procedures and regulations connected with procurement, eliminate monopoly power, and reduce the exercise of wide discretion by public officials.
- qqqqqqqqqq. Ghana anti-corruption coalition action plan³⁰.
 - ciii. Ensure demonstration of Political will by all stakeholders especially political leaders, institutional executives, business persons and Civil Society groups through endorsement of, and participation in, the process of forging anti-corruption agenda.
 - civ. Streamline key public sector institutions.
 - cv. Political leadership should commit itself to integrate anti-corruption elements into public sector reforms.
 - cvi. Improve public financial management systems and co-opt Civil Society representatives into public procurement structures.

³⁰ Reference to Ghana Anti-Corruption Coalition (GACC) Action Plan, September 2000.

- cvii. Strengthen Institutional and operational capacity of key oversight bodies e.g. Parliament, Auditor-General, Commission on Human Rights and Administrative Justice; Serious Fraud Office, by reviewing the enabling legislative instruments of these oversight bodies.
- cviii. Restore public confidence in the institutions for the maintenance of law and order; e.g. The Police and the Judiciary.
- cix. Involve Civil Society in anti-corruption strategies.

*Refer Ghana Anti-Corruption Coalition (GACC) Action Plan, September 2000.
Time frames for achieving these plans are provided in the Action Plan*

CUSTOMS AND PORTS CLEARANCE PROCEDURES

rrrrrrrrr. The GPRS proposes that cumbersome customs procedures be revised to reduce transactions associated with clearing and exporting goods. There are problems of under-developed infrastructure as typified by inadequate berthing space, under-capacity cargo handling equipment, bad roads, obsolete and largely inoperative railway system and an under-developed telecommunication system. The main problem is cumbersome procedures for clearing cargo, which invariably has always led to delays in clearance.

sssssssss. There are many controls intended to check on the widespread corruption and abuses but these controls have not lead faster procedures for clearing and exporting goods. There is evidence of under-invoicing import costs to avoid payment of the proper duty. “Facilitation” payments are made by fraudulent traders to get their way through dishonest officers and avoid paying duty. At the port of Tema, four companies conduct post-shipment inspection, two of whom are assessed as not efficient. Government has confirmed as these firms were engaged recently, their performance will be reviewed and appropriate actions taken.

ttttttttt. The Port of Tema is generally congested while there is idle capacity at Takoradi. There should be greater use of bonded warehousing and phased tax collection to decongest the ports. An inland terminal could facilitate decongestion of ports and facilitate more use of Takoradi port. The following recommendations are found appropriate³¹:

- cx. There should be total automation of document processing i.e. total application of GCNET to all major entry points;
- cxii. There should be greater use of clearance of cargo to bonded warehouses and duty scheduling to decongest the ports and facilitate clearance of goods by importers not able to pay immediately;
- cxiii. Working conditions and remuneration of CEPS officers should be improved so as to increase staff morale;
- cxiiii. Duty rates and taxes could be reduced with a view to eliminating smuggling, under-invoicing and under-declaration of size of imports. The impact of the elimination of these vices on total revenue even from reduced taxes may be positive; the success of this measure will depend on the degree of motivation of the workforce of CEPS and sanctions applied on erring officials;
- cxiv. The efficiency of the port can be highly enhanced by privatizing port handling operations;

³¹ The full report on “Customs and ports clearance procedures” is provided in **Annex 10** and it gives more details on the status and areas requiring improvements.

- cxv. There should be a system of monitoring service standards of the customs and ports clearance procedures so as to continually make improvements; and
- cxvi. Government should enhance the use of the port of Takoradi so as to ease congestion at the port of Tema.
- cxvii. An inland terminal would facilitate decongestion of port and more use of Takoradi port.

Other Areas

uuuuuuuuuu. **Electronic Procurement:** The interactions between purchaser and supplier are recorded in paper form to ensure use of "signature" for the legal enforceability of commercial transactions. E-procurement in Ghana is in its infancy across the public and private sectors, but there is a great potential for growth as evidenced by the number of public offices and businesses that use computers and access email. Email cafes are springing up in the commercial urban centers. Use of E-Procurement is constrained by poor infrastructure and access to technology, but it is limitedly used for electronic requisitioning, on-line catalogues, on-line ordering, and electronic submission of quotations and invoicing, and basic use of email. The Public Procurement Board will be expected to promote and prepare guidelines and legislation for which would create the enabling environment for E-Procurement.

vvvvvvvvvv. **"Green Procurement":** Green procurement refers to procurement with due regard to, and consideration of, the implications on the environment. This requires environmental considerations to be decided first, followed by a policy that bars procurement of environmentally harmful goods and works. At the Earth Summit in Rio de Janeiro in 1992, 150 nations (including Ghana) committed themselves to an action plan for sustainable development into the 21st Century. The Environmental Protection Agency (EPA) was formed in 1994 to co-manage, protect and enhance the environment, including ensuring implementation of government policies on the environment. EPA has programs on environmental education and practice notes on waste management, water management, industry, use of pesticides/chemicals and protection of natural habitat. However the EPA does not have a specific negative list of goods and works that should not be procured as they harm the environment. EPA should (as an interim measure) check from other countries information on items that have been found to harm the environment and take appropriate action.

RISK ASSESSMENT

wwwwwwwww. The procurement system is summarized in Part III, Annex 6 “Summary assessment forms of the procurement system”. The general risk is that contracts may not be economic (value for money) because sound technical options are not adopted, appropriate procurement methods are not followed, contract award may be discretionary and contract management flawed.

On the Contractor, supplier and consultant side

xxxxxxxxxx. For suppliers, contractors and consultants, the risk varies with the procuring entity, but there are three major risks. The **first risk** is that there may be no equal opportunity to bid for public contracts. This is a result of the use of selective and sole source tendering and unclear bidder qualification. The **second risk** is that payment may be delayed due to lengthy payment process and unavailability of funds. The payment risk is highest when the government wholly finances the contract; Development Partner-financed contracts have the lowest risk. Risks on Bank-financed projects are due to inadequate planning and contract management. The **third risk** is associated with corruption, which makes transactions costly due to payments of facilitation fees and rents.

On the public sector side

yyyyyyyyyy. For procuring Entities the major risk is that the contract may not be completed in time, within cost and in accordance with specifications and terms of the contract. This is as a result a combination of factors. The first factor is that often contracts may be awarded to unqualified contractors, suppliers or consultants due to use of non-transparent procurement methods, inadequate bidder qualification process and political interference. Political interference and the inherent risk of compromise makes it difficult for contract managers to terminate or apply contract remedies to poorly performing contracts. A second factor (common in works contracts) is on contractors diverting project money and thus losing working capital. The third factor is poor contract management. The fourth factor is more on public Procuring Entities that rely on Treasury budget releases that money may be delayed and therefore contract progression will be unpredictable.

Mitigation options

zzzzzzzzz. These risks will be mitigated by the implementation of the provisions in the proposed public procurement law. A strategy of a consistent dialogue, sound capacity building initiative and participation of stakeholders will be adopted to ensure a clear understanding on the need for sound fiduciary management. A second option is to strengthen the oversight role of the Ministry of Finance and Economic Planning and the audit functions.

Risks on the Public Procurement Reforms

aaaaaaaaaa. The reforms face three major risks.

cxviii. Delay in enacting the public procurement law; the bill is facing opposition, mostly due to misunderstanding of its objectives and the risk it poses to those benefiting from the current system. The risk is low and impact is high; it will be removed by providing for it in the PRSC policy matrix.

cxix. Poor implementation of the reforms; the risk is medium and impact is high. Government should establish a robust Task Force to oversee implementation prior to the take off of the Public Procurement Board.

cxx. Budget uncertainty; the risk is high and impact is high. The Audit Service is starved of funds regardless of its critical oversight role in fiduciary management. The same may happen to the reforms program. Government should confirm commitment.

THE ACTION PLAN

bbbbbbbbbb. The Action Plan in Part I of this report seek to establish a sound procurement system that ensures proper use of public funds and development of procurement capacity. The action plan more specifically takes into account:

- cxxi. Establishing a clear legal framework.
- cxxii. Clarifying the role of the procurement function in the public service that would facilitate focused capacity building and ensures clarity of responsibilities and accountabilities of staff.
- cxxiii. A robust enforcement, oversight and dispute resolution mechanism in public procurement.
- cxxiv. Assistance to development of private sector.

cccccccccc. The government has made a lot of progress in preparing the procurement reforms proposal and the bill, including sustaining the operations of PPOG. It is envisaged that prior to the enactment of the law, Government will on a priority basis begin to implement some of the items in the Action Plan and matrix of recommendations (e.g. create a cadre of procurement class, ensure quality stores management) that do not require the enactment of the law. The proposed Task Force will begin by preparing a work plan and budget for priority actions. Care has been taken to ensure that the activities in the Action Plan and the matrix of recommendations are within the reach of Government. The procurement items on the policy matrix depend on the passing of the law, which is critical to any meaningful reforms.

ddddddddddd. The Action Plan has taken account of existing technical expertise and financial resources the Government need to implement the action plans and other recommendations. According to the Government's (PPOG) calculations, it will require approximately \$5.05m to set up and operate Public Procurement Board for two years, and implement short-term national training on public procurement based on the new procurement law. Under PRSC 1, the Government will have access to \$5.05M to initiate the Action Plan.

IMPLEMENTATION AND SUPERVISION OF THE ACTION PLAN

eeeeeeeeee. The CPAR Action Plan will be an integral part of the procurement reforms. Effective implementation will depend on the ability of the government to secure quality technical assistance to oversee the setting up the Public Procurement Board and short- term national training programme. PPOG has already prepared a strategic plan for this. MFEP and PPB will be responsible for implementation of the action and for ensuring other agencies play their part.

fffffffffff. MFEP will start by establishing a robust Task Force that will oversee the establishment of PPB and initial capacity building activities, till the PPB is on its feet. The Task Force will oversee the establishment of PPB and its Secretariat and for providing it with office accommodation, logistical support and appropriate staffing. PPOG has prepared a capacity building program and training modules, which would be sharpened by the Task Force. The PPB will be supported for the first two years by consultants to assist in creating monitoring and evaluation systems, accounting and budget, website, publications and reporting formats, data bases, etc. including research and policy formulation guidelines.

Training Program

ggggggggggg. The capacity building plan is sequenced objectively. It will start by printing the law and all standard tender documents (STDs) and distributing them to stakeholders, particularly the Procuring Entities. Electronic copies will be made available. It will be necessary for all procuring Entities to have computer working stations in order to use the STDs. Almost all Procuring Entities have computer facilities, but some rural institutions may require assistance to acquire them. The Task Force will select a Communications Consultant to prepare and implement an awareness program by radio, television, print media etc to publicize the law, its objectives, and application and the role of the stakeholders in enforcing it. About 30-40 Procurement Specialists or 3-4 training institutions or firms will be selected and given a training of trainers course (with bias on the procurement law) to enable them carry out the training program.

hhhhhhhhhhh. Special training will be mounted for PPB members and staff of its Secretariat immediately after their establishment. This training will focus on the law, management, financial and procurement management, policy and standards formulation, monitoring and evaluation procedures, and modalities for handling appeals and complaints. A study tour will be conducted to one or two selected countries to familiarize themselves with operations of a central procurement oversight body like PPB and appeals and complaints mechanism.

iiiiiiiiiii. There will be awareness training for stakeholders to familiarize them with the law, its basic requirements. The training will cover an estimated 6000 persons from civil society, communities, manufactures, suppliers, contractors, etc. The objective of this

training will be to make them understand the basic principles of the law, the procurement process and their rights under the law. This will enable the public provide oversight on public procurement.

jjjjjjjjjj. There will be a training program for managers in procuring entities, members of Entity Tender Committees and Tender Boards to sharpen their procurement knowledge. The training will include the law, procurement process and hands on training on how to review bid evaluations and proposed contract awards, monitoring and evaluation and dispute resolution. A parallel training program will be for procurement staff that carry out the actual procurement work in the procurement units.

kkkkkkkkkk. The objective of this training will be to give participants hands-on technical skills for procurement processing. This type of training is already on going at GIMPA (the World Bank supported program) and the less intensive procurement seminars by World Bank staff. PPB will prepare organize sustainable institutional training for procurement professionals, in collaboration with professional associations and will be done by public and private institutions such as GIMPA, Universities, and Polytechnics. CIPS will play a great role in ensuring satisfactory training of professionals in purchasing and supply that provides a critical service in procurement units and in stores management.

llllllllll. **Annual Procurement Report:** the PPB will, as provided in the procurement law, produce on an annual basis a procurement report to the Minister of MFEP. The report will be a public document and would be available to stakeholders. The Report will give a general view of how public procurement was conducted over the year, highlighting any issues of concern, constraints and matters requiring attention. The report will contain indicative numbers of the volume of public procurement to inform the private sector of business opportunities. The report would show how public procurement is supporting poverty alleviation efforts and how it assists in creating business opportunities and breaking up monopolies and collusive arrangements. The actual format and content of the report will be prepared by the PPB.

mmmmmmmmmm. **Annual Procurement Forum:** the PPB will hold once a year an annual procurement forum for stakeholders. The purpose of the forum would be to discuss the Annual Procurement Report, inform the stake holders how the public procurement is progressing, share concerns and make recommendations for the future. A key objective of the forum is to sharpen the role of the PPB in capacity building, formulation of policy and standards, monitoring and evaluation and dispute resolution. The first report would be produced by September 30, 2004.

nnnnnnnnnn. **Budget:** PPOG has prepared a budget (which amounts to US\$ 5.05 million) for implementing the Action Plan over a two year period commencing immediately after the enactment of the law. Government will provide this budget in a dependable way from the proceeds of the PRSC or MDDBS or some other credit as agreed with the Development Partner providing the financing. The Budget estimate is broken down as follows, for guidance. The report of the first procurement forum would be produced by March 2005.

Item	Estimated cost (In US\$'000)
Establishment of PPB and its Secretariat, including 2-year staff and operating costs	1,200
Printing and distribution of the law and Standard Tender Documents	80
Consulting services to support PPB operations	250
Capacity building, including study tour	3,520
Total	5.050

oooooooooooo. **Implementation Support (supervision):** Implementation support of the action plan will be provided by the staff of the World Bank and other key Development Partners who will carry out common regular monitoring of the Action Plans. It is desirable that one of the major Development Partners assign specific staff for this work to work with the World Bank team to follow up on the implementation of the Action Plan and other recommendations in the CPAR and to assist Government teams follow a sound path of implementation.

pppppppppppp. **Thresholds for procurement methods and prior review:** The CPAR recommends the following thresholds:

Table 35: Recommended Thresholds for Procurement Methods and Prior Review

PROCUREMENT METHODS	US\$		
	WORKS	GOODS	SERVICES
ICB	Over 2,000,000	Over 400,000	N/A
NCB	50,000-2,000,000	30,000-400,0000	N/A
GOODS- SHOPPING WORKS –COMPARISON OF PRICES	N/A Below 50,000	Below30,000 N/A	N/A
QCBS	N/A	N/A	Over 200,000
PRIOR THRESHOLDS	REVIEW Over 2,000,000 for Roads Sector, Over 500,000 for all others	Over 400,000	Over 200,000

The recommended threshold for procurement methods is lower than those in the draft Procurement Bill.