ETHIOPIA
COUNTRY PROCUREMENT ASSESSMENT REPORT

August 1998
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AASWA</td>
<td>Addis Ababa Water and Sewerage Authority</td>
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<tr>
<td>ADB</td>
<td>African Development Bank</td>
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<tr>
<td>BOO</td>
<td>Build, Own and Operate</td>
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<td>BOOT</td>
<td>Build, Own, Operate and Transfer</td>
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<tr>
<td>BOT</td>
<td>Build, Operate and Transfer</td>
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<td>CPAR</td>
<td>Country Procurement Assessment Report</td>
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<td>CSRP</td>
<td>Civil Service Reform Program</td>
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<tr>
<td>DO</td>
<td>Development objectives</td>
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<td>EDI</td>
<td>Economic Development Institute of the World Bank</td>
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<td>ERA</td>
<td>Ethiopia Road Authority</td>
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<td>EU</td>
<td>European Union</td>
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<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<td>ICB</td>
<td>International Competitive Bidding</td>
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<td>IDA</td>
<td>International Development Association</td>
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<td>IP</td>
<td>Implementation Progress</td>
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<td>IS</td>
<td>International Shopping</td>
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<td>LIB</td>
<td>Limited International Bidding</td>
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<td>MEDAC</td>
<td>Ministry of Economic Development and Cooperation</td>
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<td>MOE</td>
<td>Ministry of Education</td>
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<td>MOF</td>
<td>Ministry of Finance</td>
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<td>MOWUD</td>
<td>Ministry of Water and Urban Development</td>
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<td>NBE</td>
<td>National Bank of Ethiopia</td>
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<td>NBP</td>
<td>No Bribery Pledge</td>
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<td>NCB</td>
<td>National Competitive Bidding</td>
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<td>NFIA</td>
<td>National Fertilizer Industry Agency</td>
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<td>NS</td>
<td>National Shopping</td>
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<td>NSIA</td>
<td>National Seeds Industry Agency</td>
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<td>PM</td>
<td>Prime Minister</td>
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<td>RTA</td>
<td>Road Transport Authority</td>
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<td>UDSS</td>
<td>Urban Development Support Services</td>
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<td>UNCITRAL</td>
<td>United Nations Committee on International Trade and Laws</td>
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Appendix 1. Lists of laws, regulations and other documents collected during CPAR preparation; originals are stored with AFTS1 (Mr. F. Sarno, Room J10-101).
Appendix 2. List of organizations, individuals who were contacted and provided information for CPAR
Appendix 3. Projects under implementation.
VOLUME II. DATA AND ANALYSIS

Country Procurement Assessment Report

List of Annexes

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A. Introduction.

1.1 Date of Report: August 5, 1998

1.2 Basis of Report: This report is the result of the joint efforts of the Government and the Bank and is based on the work of Mr. Narayanaswami Viswanathan, Consultant, International Development and Finance Inc., Washington DC, USA who visited Ethiopia in April/May 1998. Mr. Ashagre Awoke, Senior Procurement Expert, Ministry of Finance, Government of Ethiopia and Mr. Gebru Getahun, Disbursement/Procurement Officer, World Bank Resident Mission in Ethiopia associated themselves with the Mission’s field work in Ethiopia. This report includes inputs from Mr. J. J. Raoul, Lead Procurement Specialist, Mr. F. P. Sarno, Senior Procurement Specialist, the Ethiopia Country Team, and other staff and cleared by Mr. J.J. Raoul. Mr. Fayez Omar, Resident Representative, Mr. G. Getahun and Mr. Surjeet Singh of the World Bank Resident Mission in Ethiopia and Mr. Raoul participated in the final discussions held with H.E. Mr. Hailemelekot Tekle-Giorgis, Vice Minister of Finance on 4 May 1998. This report follows the format outlined in the World Bank’s interim instructions dated June 1, 1998 which replaces the World Bank Operational Directive 11.01 dated January 30, 1992. The list of documents used in preparation of this report is in Annex 1. The list of agencies and persons met is in Annex 2.

B. Summary of Findings:

Weaknesses of Present Procurement System

(see also Section H)

1.3 Legal and Regulatory Framework

- The public procurement laws and regulations, which have recently been promulgated under the new constitution - namely the “Federal Government of Ethiopia The Financial Administration Proclamation No. 57/1996” and the “Council of Ministers Financial Regulations No. 17/1997” - have not been made on the basis of international recognized public procurement legal documents such as the UNCITRAL Model Law on procurement of Goods, Construction and Services.
- Federal procurement law and regulations are weak and not comprehensive.
- Federal procurement law, regulations and directives are applicable only to procurement using Federal Government allocated budget. Therefore a legal and regulatory system to cover procurement by public bodies, parastatals etc. which does not involve federal budget should also be put in place.

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1 The Financial Administration Proclamation and the Financial regulations which are in force together with the drafts of the “Ministry of Finance Directives – Procurement and Contracts” (revised draft dated 9 June, 1997) and the “Procurement Manual” (revised draft dated 28 August 1997) have been taken into consideration in the preparation of this CPAR. The “Directives” and the “Manual” are not in force.
• No clear distinction is made in the rules between procurement of goods, works and consulting services.
• Consequent on the political and administrative decentralization following the coming into effect of the Constitution, the nine (9) autonomous (regional) states are responsible for their own procurement. They normally issue rules and regulations which are based on the Federal rules, with appropriate modifications to suit the local conditions. Since the Federal procurement code needs substantial revision to bring it in line with an acceptable public procurement system, the revamping of the regional procurement systems will have to wait for sometime.

1.4 Institutions

• Present procurement code does not address the issues of the need for a Central procurement oversight and policy body.
• Review by the Ministry of Finance (MOF) of proposals for award of contracts is limited to MOF allocated budget beyond specified financial limits and involves a departmental/bureaucratic review rather than by a Technical Committee.
• There are no institutional mechanisms for review of procurement decisions and/or process in the event of complaints or grievances from suppliers and contractors.

1.5 Procurement of goods and works

• Unacceptable procurement methods and the conditions of their use (viz. “selective tender” and “negotiated procurement”).
• Vague provisions regarding the procurement methods and the conditions of their use in the Directives provides great flexibility to the public bodies and the parastatals which could lead to the abuse of the system.
• There are no provisions relating to prequalification of bidders and the circumstances under which it would be applicable.
• Use of approved list of suppliers.
• Bid securities from institutions other than banks entertained.
• Inappropriate provisions relating to amount of bid securities.
• Bid opening not always on the same day as bid submission in regard to some organizations.
• No minutes of bid opening proceedings is prepared. The bid evaluation report prepared at a later date contains a brief report on the bid opening proceedings.
• Use of merit point system in bid evaluation in all cases with weights for technical attributes (40%), price tendered (40%), and service aspects (20%) is prescribed under the proposed procurement code, subject to a variance of 10% by the public body (i.e. the purchaser), to reflect the relative importance of each element.
• Use of two-envelope system under negotiated procurement which permits the obtaining of separate technical and price proposals at the same time, but which are opened sequentially in separate sessions and evaluated.
• Under the "Negotiated Procurement' method, negotiations with the lowest priced bidder with the objective of decreasing his/her price is permitted and consequently involves change in the substance of the bid.
• Contract award is to "best evaluated tender" and not to the bidder whose bid offers the "lowest evaluated cost" and is substantially responsive to the bidding documents.
• Postqualification of the lowest evaluated substantially responsive bid is not undertaken in most organizations, under procurement contracts for works and goods financed by external funding agency such as the World Bank etc..
• Negotiations permitted with the lowest priced bidder with the object of decreasing his/her submitted price permitted as a general rule.
• Project specific and/or procurement specific provisions as to "bidder qualifications" are not always specified in the instructions to bidders.
• Defective liquidated damages provision
• Lack of provision for pre-shipment inspection of goods even where payments are made against shipping documents under a letter of credit to the extent of 90% of the contract price.
• Delays in Customs clearance.
• No clear or formal rules regarding bidder suspension and debarment although debarment of bidders from participation in procurement is happening in public bodies and parastatals.
• There are no separate or special statute for domestic or international arbitration. Recourse for contractual remedies by suppliers, contractors and purchasers/employer is through the normal civil code.
• No special law, policies or procedures in place for award of concessions and BOO, BOT and BOOT and similar contracts for provision and operation of public facilities by private sector.

1.6 Human Resources

• Non-availability of skilled personnel and not keeping the available skilled staff for a long time due to low salary levels.
• Lack of experience and training of those in charge of procurement.
• High turn over of staff coupled with low salary levels in the civil service and the parastatals.
• Non- availability of training institutions.

C. Performance in Bank Assisted Projects:

1.7 The Bank’s experience with portfolio performance in Ethiopia is that out of a total number of 11 projects under implementation, 4 projects were determined as “actual problem projects”\(^2\). Of these four projects, two projects had “Implementation Progress” (IP)\(^3\) problems and three projects had “Development Objectives” (DO) problems.\(^4\)

\(^2\) Operations Evaluation Department FY97 ARPP Statistical Tables
\(^3\) Calub Energy Development Project and Emergency Recovery and Reconstruction Project
1.8 Project implementation has slowed down due to various reasons, namely (i) the civil strife in the 1980’s, (ii) followed by the change in the Government in the early 1990’s whose priorities were different from that of the previous regime and hence the projects had to be restructured and reformulated; and (iii) the regionalization and decentralization of the Government processes in the 1990s led to the situation that projects have been transferred to the regions and are now handled by a new set of persons who were not earlier associated with these projects. Cumulatively these events led to project implementation delays in the range of 2 to 4 years resulting in extension of the closing dates in a few loans, of which delays in procurement processes would account for about 4 to 6 months.

D. Organization and Resources

1.9 The Procurement function is decentralized in that the various Ministries of the Federal Government, public bodies and parastatals do their own procurement planning, prepare bidding documents, issue invitation for bids, receive and evaluate the bids and make recommendation for award of contracts. The Federal Government’s Financial Proclamation, Financial Regulations and the “Ministry of Finance Directives - Procurement and Contracts” are applicable only to federal agencies in so far as the procurement is financed by the Ministry of Finance allocated budget. In the event the procurement contract in question involves the use of funds allocated from the Ministry of Finance budget, these agencies have to obtain the approval of the Ministry of Finance in regard to the bidding documents and the proposed decision to award contract where the contract value (a) exceeds Birr 500,000 under local bidding and (b) exceeds Birr 2 million under international bidding. For this purpose, procurement made from funds provided external funding agencies’ credits, loans and/or grants are not treated as being from MOF budget allocation as the funds are released through the Treasury Department.

1.10 Parastatals have their own rules governing procurement and these are applicable to procurement financed from their funds. If the parastatals have projects financed by external funding agencies such as the IDA, ADB, EU etc., they follow the rules of the funding agencies for such procurement. If the parastatals use the funds allocated from the Ministry of Finance (MOF) budget for their procurement, for such procurement the parastatals will have to follow the Federal Government rules and have to obtain the approval of the Ministry of Finance in regard to individual procurement contracts (a) exceeding Birr 500,000 under local bidding and (b) exceeding Birr 2 million under international bidding. Such MOF review comprises of two parts, namely clearance of the

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4 Second Addis Ababa Urban Development Project, Market Towns Development Project and Calub Energy Development Project
5 Under the current directives of the Ministry of Finance, their approval is required for individual contracts involving more than Birr 250,000.
6 Under the current directives of the Ministry of Finance, their approval is required for individual contracts involving more than Birr 250,000.
draft bidding documents prior to issuance and prior review of the proposed decision to award contract.

1.11 Further as a temporary measure, all procurement contracts for (a) goods and works exceeding Birr 10 million and (b) consulting services contract exceeding Birr 1 million require the approval of the Prime Minister’s (PM) Office. In such a circumstance the line Ministry’s recommendation for award of contract goes directly to the PM’s office without going through MOF. The recommendation to award contract is subject to a procedural and technical review by a technical committee in the PM’s Office, before PM’s approval is accorded to the award of contract.

1.12 It should be mentioned here that (i) the Ethiopia Road Authority (ERA), the Ministry of Education (MOE) and the Road Transport Authority (RTA) have all been granted special exemption from the requirements as to review by MOF and /or PM’s office, wherever applicable and (ii) the Addis Ababa Water and Sewerage Authority (AAWSA), the National Seeds Industry Agency (NSIA), and the National Fertilizer Industry Agency (NFIA) do not obtain funds from the Federal Government allocated budget and hence they do not require any approval from MOF.

1.13 The nine (9) autonomous states are vested with powers of self administration and the Federal Government’s rules and regulations are not applicable to their procurement.

E. Anti-Corruption Measures:

1.14 A Bank mission visited Ethiopia in December 1997 to support the Government’s effort to combat corruption and to investigate the use of a “No Bribery Pledge” (NBP) in Bank procurement as a means of supporting the Government’s anti-corruption program. The Government’s focus was to eliminate or prevent grand corruption which it anticipated might increase as contracts with foreign firms fueled by international assistance increased. The Government is concerned with petty corruption but did not give it the specific priority in the short term. The factor’s contributing to poor economic governance and corruption are:

(i) a poorly functioning legal and judicial structure, characterized by inadequate capacity and laws that are not wholly consistent with the provisions of its 1995 Constitution.;
(ii) an overly controlling bureaucracy, emphasizing the enforcement of a maze of regulations rather than stressing accountability and the provision of service to the public;
(iii) a poorly paid civil service;
(iv) a new system of government based on a federal structure with nine regions, introduced without proper training or any prior modification in the civil service

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7 See para 1.16 of the Guidelines: Procurement under IBRD Loans and IDA Credits (dated January 1995 revised September 1997)
rules and regulations that governed a unitary state in the imperial and Derg eras; and

(v) a weak system of budgetary and financial controls and an outmoded procurement structure accompanied by inadequate numbers of trained financial staff.

1.15 The Government’s program to improve economic governance and combat corruption is embodied in a Civil Service Reform Program (CSRP) which embraces judicial, legal and financial management reform. The CSRP is being prepared by a team of UNDP consultants assisted by Ethiopian officials. The Bank mission considers that the reform measures regarding public procurement are ambitious and comprehensive that it will take decades to accomplish and that the short term activities should be prioritized and sequenced so as to launch the anti-corruption program, to establish its credibility, and to demonstrate the Government’s commitment to undertaking reforms in the legal, civil service, financial management, procurement, civil society and the media.

1.16 No Bribery Pledge (NBP): Government was cautioned against using the NBP in Bank financed procurement until progress has been made on some of the reforms under its anti-corruption program mentioned above. Other legal issues would not be resolved in an efficient, even-handed and expeditious manner and petty corruption would flourish. In addition, in the present circumstances, firms may avoid bidding on Ethiopia’s procurement, they may increase their prices significantly to deal with delays that may materialize if facilitation payments are not made, or they may simply ignore the NBP and take their chances. It was therefore considered that using the NBP in Bank financed procurement should wait until progress has been achieved on the reforms noted above.

1.17 However the Government would introduce the NBP in government financed procurement, starting with a large contract for a World Bank assisted project, once a number of preliminary measures have been adjusted providing a better opportunity for NBP to have an impact. If successful after a trial, the NBP would be introduced to all government procurement.

1.18 The Bank mission has proposed that the Bank could assist with three inter-related approaches:

(i) Technical Support for legal and judicial, financial management and civil service and procurement reform. The World Bank support would be complementary to the support of other donors, and financed by one or more of several instruments; Grants for Institutional Development Fund, a Learning and Innovation Loan and Adaptable Program Lending.

(ii) Engagement of Civil Society and the Lessons of International Experience. In order for the Government to strengthen its links with civil society and the private sector to identify critical areas relating to corruption, establish priorities and monitor progress, The Economic Development Institute’s (EDI) support ranging from national integrity workshops, to support for Parliamentary oversight bodies,
monitor progress, The Economic Development Institute’s (EDI) support ranging from national integrity workshops, to support for Parliamentary oversight bodies, to journalist training, to participation in regional and global workshops on anti-corruption issues is available and should be utilized by the Government.

(iii) Research: The Bank could support programs of research into the locus, nature, causes and effects of corruption which are required to orient Government activities effectively to expose and combat corruption.

F. Public Sector Procurement.

1.19 **Legal and Regulatory Framework:** Currently, that is following the change in Government in 1992, public procurement is being undertaken on a decentralized basis by the public bodies and the parastatals. Only procurement by these organizations involving the use of Government allocated budget requires prior approval of the Ministry of Finance (MOF) in regard to contracts involving Birr 250,000 (US$ 35,920 equivalent).

1.20 The coming into force of the new Constitution with effect from August 1995, has resulted in the creation of 9 autonomous (regional) states and 2 administrative zones, each responsible for its own procurement.

1.21 The Federal Government is now embarking upon reform of the public procurement system by (i) the enactment of the Federal Government Financial Proclamation No. 57/1996 (Part Eleven- Procurement Contracts) which constitutes the procurement Law; (ii) the Council of Ministers Financial Regulations No. 17/1997 (Part Thirteen- Procurement Contracts); (iii) the draft MOF-Directives on Procurement and Contracts (dated 9 June 1997) and (iv) the draft Procurement Manual (revised 28 August 1997). The Financial Proclamation and the Financial Regulations are weak and not comprehensive in regard to procurement. The meat of the proposed reform is to be addressed through the Directives and the Manual, which are mere administrative instructions emanating from MOF, which could be amended from time to time based on administrative convenience as distinct from a law passed by the House of Peoples Representatives.

1.22 The proposed Directives lack clarity and transparency in the procurement procedures. Briefly stated the following are areas of concern, which needs to be addressed urgently:

(i) The Directives should distinguish clearly between procurement of goods, works and consulting services, rather than treating them in an omnibus framework with separate guidelines being issued for (i) works by the Ministry of Works and Urban Development in consultation with MOF; (ii) consulting services by the Ministry of Economic Development and Cooperation (MEDAC); and (iii) vehicles by the Road Transport Authority.
suppliers registered with the Government for the procurement of goods would restrict competition unless the system is well maintained and applications for entry of new firms into the approved list is processed promptly and fairly. The objectives underlying the use of a list of approved suppliers could be realized more efficiently and transparently through the applications of the post-qualification procedure in regard to the lowest evaluated substantively responsive bidder.

(iii) One of the approved methods of procurement, namely “negotiated procurement” is to be “used where the end product is difficult to define”, and is a mix of various methods namely “direct contracting without competition”, “consulting services”, “turnkey contracts”, “two-stage bidding” and “two envelope procedure where technical and price proposals are solicited at the same time and opened in separate sequential sessions”. Under this procedure, negotiations with the lowest evaluated substantively responsive bidder with the objective of decreasing the submitted price are permitted. As this involves a change in the substance of the bid, this is not conducive to the integrity and transparency of the procurement process. Negotiations prior to contract awards in tenders for goods and works should remain very exceptional and should be restricted to specified situations. Otherwise the system would be subject to abuse.

(iv) A bid evaluation procedure based on the merit point system, that is technical attributes (40%) split into essential attributes and desirable attributes, price tendered (40%) and service aspects, such as availability of spare parts, maintenance facilities and delivery time (20%) which is applicable to all contracts for goods would result in the subjective evaluation of bids. Price should be the determining criteria for procurement of most goods and works. The use of merit point system would be justified only in regard to certain categories of equipment and the relative weights for the non-price factors, which have to be quantified, would be significantly less than 30%.

(v) Contract award is to “the best evaluated tender” as per the criteria stated in the bid document. During discussions MOF explained as to why the contract award should not be to “the lowest evaluated bid” substantially responsive to the bidding documents but to “the best evaluated tender” determined by the purchaser as per the criteria specified in the bidding documents. This is unacceptable from the point of view of integrity and transparency expected from a public procurement system.

(vi) Bid securities are to be provided from a financial institution approved by the National Bank of Ethiopia (NBE), which would mean that bid securities could be provided by insurance companies specified by NBE. In terms of the Bank’s

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8 Public bodies are empowered to vary the weightings by plus or minus 10% to reflect the relative importance of the element.
Guidelines: Procurement under IBRD Loans and IDA Credits (dated January 1995 and revised September 1997), bid securities should be accepted only from Banks and this would be the case where procurement is under international competitive bidding, limited competitive bidding, international shopping etc. However given the local situation that certain local suppliers would have access only to such instruments from insurance companies rather than banks, it may be possible to give due consideration to a proposal to permit local bidders, under procurement effected through National Competitive Bidding or National Shopping procedures, to furnish bid securities from insurance companies, provided it is proven through documented evidence that such securities are easily encashable as bank guarantees and provides reasonable protection to the purchaser against irresponsible bids.

(vii) The draft Directives, as it is written now, divides the contract spectrum into three (3) ranges of contract values and establishes the amount of the bid security as a separate and distinct fixed sum expressed in Birr for each range of contract values. This leads to irrational situations. It would be better to redraft the provision and specify the amount of the bid security as a specific amount to be determined as a percentage of the estimated contract value and expressed in the bidding documents. The percentage could be different for each range of contract value, going down from 3% to 1% as the estimated value of the contract increases.

(viii) The draft Directives specifies that for each day of delay in the delivery of “the main good or service and accessories beyond the delivery date stated in the bid document”, the supplier will pay liquidated damages at the rate of one-half of one percent (0.5%) of the CIF value of the undelivered item per day of delay. The ceiling for liquidated damages is linked to the performance security. These provisions should be revised to state that the amount of liquidated damages per day of delay would be one-tenth of one percent (0.1%) of the contract price, or one-half of one percent of the contract price per week of delay, subject to maximum of 10 percent. It should be noted that performance security and liquidated damages serve different purposes.

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9 Birr 1000 for contracts estimated to be below Birr 30,000; Birr 10,000 for contracts estimated to be between the value of Birr 30,000 and Birr 1,000,000 and Birr 50,000 for contracts estimated to exceed the value of Birr 1,000,000.

10 However the bidding documents currently issued by the public bodies and the parastatals clearly lays down the amount of the bid security as a fixed sum, which is calculated as a percentage of the estimated contract price varying from 1% to 3% depending on the organization doing the procurement and the nature of the contract.

11 A maximum of five percent of the contract price could be prescribed in the case of certain contracts for supply of goods.

12 The “performance security” is to protect the “purchaser” or “employer” against the non-performance of the contract by the supplier/contractor; while “liquidated damages” is to compensate the purchaser/employer for extra cost or loss of revenue which would arise due to the delays in the delivery of goods or completion of works or failure of the goods or works to meet performance requirements specified in the contract.
G. Private Sector Procurement

Commercial Regulations:

1.23 The Commercial Code of 1960 expanded and consolidated the existing commercial laws which regulated the constitution and activities of all business organizations to encompass new provisions relating to the “carriage of passengers and goods” and “negotiable instruments and banking transactions”.

1.24 Until the trade liberalization which began in 1993, imports were channeled through state undertakings. There are now no national restrictions or preferences or countertrade agreements regarding the source of imports. The private sector now operates in almost all areas.

Commercial Practices:

1.25 In the private sector, there are no established practices as practiced in a competitive market place. Private sector industries and firms use commercial procedures by placing orders with known suppliers. Only very few companies buy goods on the basis of competition by obtaining quotations from three firms. The use of competitive processes in regard to procurement of goods is very rare. Private sector does not have even limited competition for procurement of works.

1.26 In regard to imports, the private firms needs an import license from the National Bank of Ethiopia (NBE) and has to get an allocation from the weekly foreign exchange auction on the basis of open competitive bidding. These procedures require that the application to NBE for an import license should be accompanied by the submission of two proforma invoices, together with the applicant’s proposal to award contract.

1.27 Most purchases are done through direct contracting, unless they are required by foreign exchange allocation/import trade licensing regulatory mechanism to obtain two quotations for their imports. Negotiations are focused on price and not on quality and specifications. The competitive nature of the procurement by the private sector could be improved to get the best value for money.

1.28 Most private sector procurement is inefficient and uneconomic. They buy their requirement container by container and open L/C piece by piece without doing any planning. They have inefficient logistics in handling and transportation. They do not have procedures in place to require pre-shipment inspection.

1.29 Very few companies have an approved list of vendors based on market analysis. Many private firms do not even ask the commercial counselor of the concerned embassy to give them the information on list of suppliers for any particular import they plan to make form that country.
1.30 Few companies have professional or educated staff who studies the international market. Most companies purchase their requirements of commodities from whomever they meet first. They do not use brokers or link their purchase price to the international market.

1.31 About 90 percent of the private sector companies do not monitor contract implementation efficiently. They do not have access to contractual remedies like liquidated damages for delays in deliveries and/or delays in completion, performance securities etc. in place.

1.32 About 90 percent of the private sector companies do not keep any accounts. Of the remaining 10 percent, 5 percent maintain accounts according to accepted modern accounting principles and the other 5 percent maintain books of accounts but not on the basis of accepted accounting principles.

1.33 Most companies are family owned. They sink or swim with what they do. They do not have any procedures and so their procurement officers are not accountable.

H. Recommended Action Plan.

Procurement Reform: Strategic Approach

1.34 The Government should develop a comprehensive procurement reform strategy encompassing policies, organization and procedures with emphasis on accountability, integrity and transparency of the process coupled with considerations of economy and efficiency of the procurement. The strategy should encompass the procurement of goods, works and consulting services. Regional States level strategies should also be addressed.

Improvements in Procurement Procedures

1.35 Areas of public procurement procedures where improvement is needed in order not only to guarantee the long term validity and transparency of the procurement system but also to reduce the causes of delays and inefficiency have been detailed in paras 1.5 and 1.22 supra. These will be addressed through the procurement law and rules, the standard bidding documents, the Central policy making body and institutional reforms as appropriate, which are detailed in the following paras.

Procurement Code

1.36 The legal and regulatory framework of the proposed public procurement reform based on four instruments namely the Financial Administration Proclamation, the
Financial Regulations, the MOF Directives, and the Procurement Manual¹³, no matter how well they are formulated, would involve overlapping and conflicting provisions and hence would be confusing to both public officials and bidders. As the substantive content of the procurement law will be contained in the Regulations, the Directives and the Manual and not in a statutory enactment, they lack permanence and would not give a feeling of security to potential bidders. The Government is advised to replace it with a modern and transparent procurement code, based on principles and norms generally accepted by the international community, such as the UNCITRAL Model Law on Procurement of Goods, Construction and Services. Several of the Bank’s borrowers have, with the help of IDF grants and/or IDA Credits/Bank loans, financed specialized legal procurement experts, introduced new procurement rules - namely have a new procurement law enacted by Parliament, supplemented by more detailed regulations issued by the Council of Ministers (rather than by one Ministry). This approach, would address most of the concerns raised in para 1.3 and some of the major concerns raised in paras 1.4 and 1.5 of this report.

Central Procurement Policy Body

1.37 An autonomous Central Procurement Policy Office - which would be an oversight and policy making body - should be established either under the proposed procurement law or under a special enactment. It would have responsibilities to prepare and issue mandatory standard bidding documents for different types of procurement, to be followed by all Government departments and parastatal agencies. These bidding documents would address most of the concerns raised in para 1.5 of this report, while others will be addressed through procurement law reform mentioned in para 1.36 above. This Office would also address issues of integrity and transparency of the procurement process, and entertain complaints or grievances and adjudicating on them under procedures established by it. The mandatory procurement documentation to be issued by this Office should meet the requirements of transparency and fair play by prescribing appropriate procedures in regard to settlement of disputes between the contractors and suppliers on the one hand with the Employer/ purchaser on the other.

Other Recommended Initiatives

1.38 The Government should take appropriate steps to establish Management Information Systems in the various project implementing agencies and to project monitoring.

1.39 Attention should be focused on establishing appropriate training facilities in areas of project management and procurement related fields.

¹³ Only the Financial Administration Proclamation and the Financial Regulations are in force. The drafts of the "Ministry of Finance Directives - Procurement and Contracts" (revised draft dated 9 June, 1997) and the "Procurement Manual" (revised draft dated 28 August 1997) are being finalized by the Ministry of Finance.
1.40 The Chambers of Commerce and the Ministry of Trade and Industry should organize seminars for private trading firms and manufacturers in regard to adoption of competitive practices in procurement, appropriate procurement documentation to safeguard the purchaser's rights vis a vis sellers, adoption of appropriate commercial mechanisms/practices to ensure the quality of imports made by these traders.

1.41 The Bank should conduct procurement work shops and seminars to project implementing units to improve the understanding of bank procurement procedures and timely completion of Bank financed projects.

1.42 The following Table lists the areas of assistance needed.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Name of Agency</th>
<th>Proposed Technical Assistance</th>
<th>Objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>World Bank /MOF</td>
<td>IDA credit and/or IDF grant to finance specialized legal and procurement experts to draft (i) the procurement law based on UNCITRAL Model Law, (ii) detailed Procurement Regulations; and (iii) standard bidding documents for goods, works and consulting services.</td>
<td>To improve accountability, integrity, transparency, efficiency and to reduce the scope for corruption in public procurement.</td>
</tr>
<tr>
<td>2</td>
<td>MOF</td>
<td>Seminars on new procurement rules, bidding documents and procedures.</td>
<td>Dissemination of new procedures for public procurement.</td>
</tr>
<tr>
<td>3</td>
<td>Line Ministries, public bodies and parastatals</td>
<td>Assistance in reorganizing and streamlining of the purchasing and contracting divisions of the Project Implementation Units (PIU).</td>
<td>Improving efficiency and effectiveness of the organization and ensuring better performance in public sector procurement.</td>
</tr>
<tr>
<td>4</td>
<td>MOF</td>
<td>Training of personnel involved in purchasing in PIUs.</td>
<td>Improving technical skills of purchasing officers.</td>
</tr>
<tr>
<td>5</td>
<td>MEDAC, MOWUD</td>
<td>Capacity building of local consultants.</td>
<td>Improving opportunities and quality of outputs of national consultants.</td>
</tr>
<tr>
<td>6</td>
<td>MEDAC</td>
<td>Management information systems and Monitoring</td>
<td>Modernization of organization; improving transparency and management monitoring.</td>
</tr>
<tr>
<td>Item No.</td>
<td>Name of Agency</td>
<td>Proposed Technical Assistance</td>
<td>Objectives</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>7.</td>
<td>MOWUD</td>
<td>Seminars to private sector contractors, surveyors and consulting firms on works contracts with particular emphasis on contractor’s qualification criteria, bid evaluation criteria, price adjustment formula, payment arrangements and mechanisms for conflict resolution.</td>
<td>Improving understanding and use of contractor’s eligibility/qualification criteria, bid evaluation process and the use of price adjustment formula in civil works contracts.</td>
</tr>
<tr>
<td>8.</td>
<td>Ministry of Trade and</td>
<td>Seminars to private sector importers on procurement planning, market surveys, introduction of elements of competition in purchasing, provision for contractual remedies for delays in deliveries, enforcement of warranties etc.</td>
<td>To improve the quality, efficiency and economy of private sector procurement.</td>
</tr>
<tr>
<td></td>
<td>Industry and Chambers</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>of Commerce.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>World Bank /MOF</td>
<td>Procurement workshops and seminars</td>
<td>Improving the understanding of the Bank’s procurement procedures and to speed up the procurement process in Bank financed procurement resulting in expeditious and timely project implementation.</td>
</tr>
</tbody>
</table>

1.43 The timetable for implementation of the recommendations made in relation to technical assistance detailed in para 1.43 above are suggested below.

<table>
<thead>
<tr>
<th>Timetable for Implementation</th>
<th>Specific Area of Technical Assistance Reference to Item No. in Para 1.43 above</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Short term</td>
<td>1, 2, 4, 6, 7, and 9.</td>
</tr>
<tr>
<td>2. Medium term</td>
<td>3, (4) and 8</td>
</tr>
<tr>
<td>3. Long term</td>
<td>(9)</td>
</tr>
</tbody>
</table>

**Recommended Supervision Approach for the Bank**

1.44 As part of the Country Assistance Strategy (CAS) for Ethiopia, Bank supervision of the recommendations to be implemented during the short term and medium term should be budgeted on the basis of a phased implementation plan. The Government in the Ministry of Finance will implement the program in
cooperation with the various lead agencies and will prepare an action plan and the proposed time schedule for implementation. The Bank will do the monitoring of the implementation of the various elements of the plan. The Government (MOF) will submit a status report on the progress of implementation of the action plan to the Bank at mutually agreed intervals.
List of Laws, Regulations and Other Documents Collected During CPAR Preparation


5. Civil Code: Proclamation No. 165 of 1960


7. Civil Procedure Code Decree No 52 of 1965


20. Ethiopian Trade Point Establishment Council of Ministers Regulations No. 20/1997 (dated 20 October 1997)


22. The Re-establishment and Modernization of Customs Authority Proclamation No. 60/1997 (dated 13 February 1997)

23. Ethiopian Customs Authority: Customs Clearance & Control Instruction Manual (dated October 1994).


**B. Procurement /Tender Documents**


32. Ethiopian Roads Authority - Construction of Indasellassie- Sheraro - Humera Feeder Road - Tereza - Humera Section (Contract No. 3) - Volume 1 Tender Document. (Dated April 1996)


36. Ethiopian Roads Authority - Prequalification Document for Debre Markos- Gondar Road Upgrading Project (dated April 1977)

37. Ministry of Transport and Communications - Roads Transport Authority (RTA) - Bid Document - Invitation to Bid No. RTA 3/97


June 5, 1998
List of Organizations, Individuals Who Were Contacted and Provided Information for the CPAR

A. Ministries

Ministry of Finance
1. H.E. Ato Hailemulekot Tekle-Giorgis, Vice Minister
2. Mr. Ashagre Awoke, Senior Procurement Expert, Government Procurement Unit
3. Mr. Asrat Kelemework, Head of Budget Department

Ministry of Economic Development & Cooperation
1. Mr. Kifle Asefaw, Head, Multilateral Cooperation Department

Ministry of Agriculture
1. Mr. Negusi Tefera, Head, Administration & Finance Department
2. Mr. Amare Tebekew, Head, procurement and Property Administration Division
3. Mr. Melkamu Cherinet, Procurement Section

Ministry of Education
1. Mr. Girma Asfaw, Head, Project Preparation and Monitoring Panel
2. Mr. Dejene Getachew, IDA VII Procurement Unit Coordinator

Ministry of Trade and Industry
1. Mr. Solomon Kebede, Director, Trade Point

Ministry of Works and Urban Development
1. Mr. Wondwossen Kiflue, Chief Engineer, Contracts Administration.

B. Public Bodies and Parastatals

Addis Ababa Water and Sewerage Authority
1. Mr. Haile Koyas, Head, Planning & Projects Department

Central Procurement Cell
1. Mr. Abebe Asrat, Head, Central Procurement Cell
2. Mr. Tigabu Adane, Head, International Procurement Division

Ethiopia Road Authority
1. Mr. Tesfamichael Nahusenay, General Manager

National Fertilizer Industry Agency
1. Mr. Yemenu Tirfe Yemenu, Acting Project Coordinator
2. Mr. Abay Kebede Gebremariam, Procurement Officer
3. Mr. Fibre-Selaasie Beyene, Project Accounts and Disbursements Officer
National Seeds Industry Agency
1. Mr. Amdemariam Yohannes, Project Coordinator
2. Mr. Endale Girma, Procurement Officer

Road Transport Authority
1. Gebre Selassie Tissue, Government Vehicles Procurement Department

Urban Development Support Services
1. Gutema Bulcha, General Manager
2. Tsegai Ghebrezghi, Head, Technical Support Services

C. Other Organizations

Addis Ababa Chamber of Commerce
1. Mr. Michael, Asfaha, Secretary General
2. Mr. Hussein Shibeshi, Head, trade Information Department

Commercial Bank of Ethiopia
1. Mr. Hailu Legesse, Vice President (Finance)
2. Mr. Getachew Gashaw, Head Guarantee Department

Customs Department
1. Mr. Fekadu Bekele, Manager, Leghar Customs, Addis Ababa.

Ethiopian Authority for Standardization
1. Mr. Mesai Girmai, General Manager
2. Dr. Mulat Abegaj, Head, Standards & Research Department

Ethiopian Insurance Enterprise
1. Mr. Haile Michael Kumsa, Managing Director
2. Mr. Habtamu Hailemariam, Deputy Managing Director, Operations

National Bank of Ethiopia
1. Mr. Elias Loha, Deputy Exchange Controller
2. Mr. Gebeyehu, Deputy Exchange Controller
3. Mr. Dange Bollola, Import-Export Division Cell

Oromiya Water, Mineral and Energy Resources Development Bureau
1. Mr. Bayu Nuru, Director

D. Consultants, Contractors and Supplier.

Almeta Impex Private Limited
1. Mulu Solomon, Commercial Manager

Emlalelu Wordade Construction
1. Emlalelu Wordade, General Manager

Shawel Consult International SC I
1. Dr. Dembel Balcha, General Manager
## PROJECTS UNDER IMPLEMENTATION

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Sector</th>
<th>Date of Approval</th>
<th>Date of Effectiveness</th>
<th>Closing Date</th>
<th>Principal Amount in US$ Million (less Cancellations)</th>
<th>Undisbursed US$ Million(^1)</th>
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<tbody>
<tr>
<td>Education VII</td>
<td>Human Capital Development</td>
<td>01/26/1988</td>
<td>07/13/1988</td>
<td>09/30/98</td>
<td>64.06</td>
<td>56.7</td>
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<td>Second Addis Ababa Urban Development</td>
<td>Water, Urban &amp; Energy</td>
<td>06/20/1990</td>
<td>11/12/1990</td>
<td>06/30/99</td>
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<td>22.2</td>
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<td>Market Towns Development</td>
<td>Water, Urban &amp; Energy</td>
<td>03/13/1990</td>
<td>10/24/1990</td>
<td>06/30/99</td>
<td>40.20</td>
<td>34.0</td>
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<tr>
<td>Road Rehabilitation</td>
<td>Infrastructure</td>
<td>11/19/1992</td>
<td>06/14/1993</td>
<td>09/30/98</td>
<td>96.00</td>
<td>47.5</td>
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<td>Calub Energy Development</td>
<td>Water, Urban &amp; Energy</td>
<td>03/29/1994</td>
<td>09/21/1995</td>
<td>12/31/00</td>
<td>74.31</td>
<td>8.3</td>
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<td>National Fertilizer Project</td>
<td>Agriculture</td>
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<td>02/16/1996</td>
<td>12/31/00</td>
<td>120.00</td>
<td>41.8</td>
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<td>National Seeds Project</td>
<td>Agriculture</td>
<td>06/13/1995</td>
<td>06/26/1996</td>
<td>12/31/00</td>
<td>22.00</td>
<td>3.4</td>
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<td>ESRF1</td>
<td>Human Capital Development</td>
<td>04/09/1996</td>
<td>08/08/1996</td>
<td>12/31/01</td>
<td>120.00</td>
<td>16.8</td>
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<td>Water Supply Development &amp; Rehabilitation</td>
<td>Water, Urban &amp; Energy</td>
<td>04/09/1996</td>
<td>01/14/1997</td>
<td>06/30/00</td>
<td>35.73</td>
<td>7.6</td>
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<td>Road Sector Development</td>
<td>Infrastructure</td>
<td>01/15/1998</td>
<td>May 1998</td>
<td>05/31/03</td>
<td>309.20</td>
<td>0.0</td>
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<tr>
<td>Energy II</td>
<td>Water, Urban &amp; Energy</td>
<td>12/11/1997</td>
<td>April 1998</td>
<td>01/31/04</td>
<td>200.00</td>
<td>0.4</td>
</tr>
</tbody>
</table>

\(^1\) Source: World Bank "Statement of Loans /Credits - Loan/Credit Accounts List as of July 31, 1998."
VOLUME II. DATA AND ANALYSIS

Country Procurement Assessment Report

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Annex B: Trade Practices
Annex C: Financial Framework
Annex D: Public Sector Procurement of Goods/Works
Annex E: Public Sector Selection of Consultants
Annex F: Procurement Performance
Annex G: Private Sector Procurement
Annex H: Checklist Comparing National Competitive Bidding Procedures and World Bank Policy
Annex A – Legal Framework

1. **Legal System (i.e. Common/Civil Law; Socialist; Shari’a; other)**

   Civil Law.

2. **Form of government (i.e. federal or centralized)**

   Ethiopia has a federal structure of government comprising of the Federal Government and nine (9) autonomous states vested with powers of self-administration under the 1995 Constitution.

3. **Does the Constitution contain any provision directly bearing on public sector procurement? (If so, describe)**

   None.

4. **Is the country a signatory to the World Trade Organization (WTO) Agreement on Government Procurement?**

   Ethiopia is not a signatory to the World Trade Organization Agreement. Since 1997 it has been granted observer status in WTO.

5. **Does basic contract law contain any provision directly bearing on public sector procurement? (If so, describe)**

   The provisions of “Title XIX – Administrative Contracts” under the Civil Code of Ethiopia (Proclamation No. 165 of 1960) have applicability to procurement by public bodies, without limiting the special provisions made for public procurement under the Financial Administration Proclamation No. 57/1996 and the “Council of Ministers Financial Regulations No. 17/1997” (See answer to Item 6 below).

6. **Is there a separate body of law, which regulates public sector procurement? (If so, identify and specify whether it is a law, ordinance, presidential or ministerial decree, etc.)**

   The “Federal Government of Ethiopia The Financial Administration Proclamation No. 57/1996” (hereinafter referred to as “the Financial Proclamation”), which took effect from 19 December 1996 deals inter alia with “procurement and contracts” by public bodies and public disbursements. This Financial Proclamation constitutes the Procurement Law issued pursuant to Article 55(1) of the Constitution of the Federal Republic of Ethiopia. Articles 68 and 69 of the Financial Proclamation authorize the issuance of “Regulations” and “Directives” by the Council of Ministers and the Ministry of Finance respectively. Pursuant to the above-said Financial Proclamation, the “Council of Ministers Financial Regulations No. 17/1997” (hereinafter referred to as “the Regulations”) – effective 1 July 1997 - have been issued, which contains more detailed provisions on “Procurement – contracts” and deals with procurement principle, “supplier’s list”, “bids”, “bid security”, “contract security”, “Loan and Aid”, “Progress Payment” and “Retention of Records”.

   The “Ministry of Finance Directives – Procurement and Contracts” (hereinafter referred to as the MOF- Directives”) is presently being finalized. The Bank has provided to the Government its comments on the draft MOF-Directives dated 9 June 1997 and none of these comments have been accepted by the MOF.

   1 Article 73 of the “Council of Ministers Financial Regulations No. 17/1997 refers.
A draft of the “Procurement Manual” (revised 28 August 1997) has been prepared to provide guidance to public bodies in the organization and undertaking of procurement of goods and services and the Bank has provided comments on the draft Procurement Manual. Considerable work remains to be done in regard to the draft Manual.

7. Do other bodies of law regulating associated aspects of procurement contain provisions, which are directly related to problems identified within the local system (e.g. labor, tax, customs, insurance, national standards, banking, foreign exchange laws or controls, etc.)? (If so, describe)

Under the Commercial Registration and Business Licensing Proclamation No. 67/1997, a businessperson shall before starting a commercial activity shall make an application to the Ministry of Trade and Industry or such other appropriate authority for the issuance of a license to undertake the commercial activity.

Under the Ethiopian Foreign Exchange Control Regulations, the business person who is registered to undertake a commercial activity, who desires to import goods and services, should make an application to the Exchange Control Department of the National Bank of Ethiopia (NBE) for the issuance of an import license and for the purchase of foreign currencies needed for the import. The importer will furnish to the Exchange Control Department of NBE, the details of the proposed purchase price to be paid with copies of at least two price quotations received for the import. The Market Intelligence Department of NBE checks whether the price for the proposed import is fair and then authorizes the participation of such applicant in the foreign exchange auction, while at the same time issuing business firm an import license. In some cases, where NBE considers that the price is not fair, it asks the importer to search for alternative sources and gives the addresses of firms who can supply the alternatives. However in the case of a public body or parastatal, an import license is not required; and they would apply to the National Bank of Ethiopia (NBE) for an import permit and for the requisite amount of foreign currency through the MOF with the statement that they have enough budget to cover the foreign currency required. Following issuance of the import license/permit by NBE, the importer, whether private or public organization, participates in the weekly public auction held by NBE for sale of foreign exchange and purchases his requirements of foreign exchange.

Under Ethiopian Customs Regulations read with the “Re-Establishment and Modernization of Customs Authority proclamation No. 60/1997”, import duties are payable on goods imported, unless exemptions to government or non-government organizations to import duty free all capital goods machinery, equipment and initial spare parts have been authorized by the Ethiopian Investment Authority under Proclamation No. 37/1996 and/or special exemptions granted by the Federal Government based on international agreements etc. The required documentation for clearance of imported goods from the Customs Authority are (i) the import license or permit, called the Bank permit, (ii) the bill of lading, (iii) the packing list, and (iv) other necessary documents as may be asked by the Customs Authority. All the items that enter Ethiopia through the authorized transit routes either from Djibouti or from Bure, a customs checkpoint at the Eritrean border, are cleared expeditiously. Although the public bodies and the parastatals claimed that it takes about three to four months to clear the items from the Customs Authority, the Manager Leghar Customs claimed that as per their study 80 percent of the cases are cleared in 5 days or below, while the remaining 20 percent took more time due to incomplete documentation.

Under the Ethiopian Authority for Standardization Establishment Proclamation No. 328/1987 read with the Standards Marks and Fees Council of Ministers Regulations No. 13/1990, all the standards to be used in Ethiopia were compulsory standards to be prescribed by the Ethiopian Standards Authority (ESA). However such standards need not be Ethiopian standards. With a view to set the matter very clear, a new proclamation,
called the Reestablishment Proclamation has been approved and is now under printing. Under this proclamation, the areas where standards are applicable are broken down into two parts, namely compulsory standards and optional standards. Compulsory standards will address health and safety concerns and will cover few items. In areas where optional standards are prescribed, the end user or the importer can choose his own standards and not be obligated to follow Ethiopian Standards. Because of this provision, public bodies, parastatals and private organization can choose their own applicable standards in those areas, which could be international standard or a national standard of another country. Be this as it may, due to incorrect understanding of the legal requirements as to standards, all the public bodies and parastatals reviewed, have required in regard to procurement not financed by external funding agencies, the use of Ethiopian Standards in their bidding documents and have allowed the use of international standards only where national standards are not available. This situation will stand corrected in the near future after the release of the new Proclamation.

Under the Ethiopian Licensing and Supervision of Insurance Business proclamation No. 86/1994, marine insurance is compulsory for imports and should be obtained from Ethiopian Insurance Corporation (EIC), a 100 percent state-owned parastatal organization, or other Ethiopian insurance companies. EIC and other Ethiopian companies provide transit, marine, erection all-risks, contractor's all-risks, workmen's compensation etc. policies. Ethiopian organizations are required by law to obtain their insurance policies from these Ethiopian companies. However the cover is not presently being provided in foreign currency by these companies, but EIC could do so, if an applicant has a necessity under an international agreement to obtain the same. Public bodies and parastatals, where they have the responsibility for insurance, are required to obtain insurance through the EIC. In regard to project imports financed by external funding agencies, the applicable provisions of the external funding agencies will govern in matters of insurance.

The laws relating to personal income tax (Proclamation No. 107/1994) and the corporate income tax are not directly related to procurement problems.

The rate of sales tax is 5 percent on selected agricultural products and essential goods and 12 percent on all other products and is paid by the producer, importer or the person rendering the service as the case may be. Excise tax is levied on selected items when produced locally or imported from abroad and ranges from 10 percent to 200 percent and is paid by the local producer or the importer, as the case may be. These provisions have no direct bearing on the procurement problems.

Do different laws govern the procurement of goods, works and consultant services? (If so, describe)

The Financial Proclamation and the Financial Regulations are applicable to procurement of goods, works and consulting services. While the provisions of the MOF-Directives are applicable to procurement of goods (except for vehicles) in its entirety, its applicability to procurement for works, construction and procurement of consultancy services are restricted for reasons detailed below.

In regard to procurement of vehicles, they will have to be made through the Road Transport Authority, who have special prescriptions.

In regard to "certain areas as defined by Proclamation 4/1995, the Ministry of Works and Urban Development (MOWUD) is responsible for providing guidance to public bodies in consultation with MOF.

In regard to procurement of consultancy services by public bodies, the Ministry of Economic Development and Cooperation (MEDAC) has the responsibility for preparing the list of approved consultants and has responsibility for preparing the directives relating to selection and appointment of consultants by public bodies.
In regard to procurement of works, MOWUD has informed that the applicable procurement method is open competitive bidding, with or without prequalification, depending on the size of the contracts. For all contracts exceeding the value of US$ 10 million, prequalification of bidders procedure is followed. For contracts below the value of US$10 million, no prequalification of bidders' procedure is followed, but the bidding documents prescribes the grade of the contractor. Foreign contractors are allowed to participate under the terms of the local competitive bidding procedures. The evaluation criterion is price amongst bids, which are substantively responsive to the bidding documents. In regard to contracts financed by externally funding agencies, the rules of such agencies are followed. In cases, where the implementing Ministry and MOWUD determine that there is an urgency for the works by a public body, the invitation and related document for prequalification of contractors and the bidding documents for the works are issued in tandem and proposals are invited in two envelopes, to be submitted at the same time, which would be opened sequentially in separate sessions. At first, the prequalification material will be opened and evaluated on the basis pass/fail test. The bids for construction contracts of those bidders, who pass the prequalification exercise, will be opened and contract will be awarded to the lowest evaluated substantially responsive bid. And the evaluation criteria will be price. This procedure is followed only where funding is provided by Ethiopian resources. It would be pertinent to point out that this procedure is unacceptable under the Bank’s Guidelines for Procurement. Sometimes shortlisting of contractors is resorted to, where the implementing ministry/public body and MOWUD establish urgency for the works.

In regard to procurement of consultancy services, MEDAC has not yet come up with a set of directives, even in draft form. In regard to consulting services contracts, which are financed from out of the proceeds of loans and grants from IDA, ADB, EU etc., the selection procedures followed are those prescribed in the respective financing agreements. Consequently MEDAC’s instructions will govern those cases which are not financed by external funding agencies.

8. Is the system clear, comprehensive and consistent? Does it cover all essential aspects with no unduly complicated, conflicting or outdated regulations and are rules easily found within a well-coordinated legal framework? Are there an appropriate variety of procurement methods allowed in special cases? (Describe)

The proposed legal and regulatory framework does not follow the generally accepted principles and norms prescribed in UNCITRAL Model Law on Procurement of Goods, Construction and Services, or other recognized public procurement system. The specific deficiencies are in the areas of (a) the choice of various approved procurement methods and the conditions for their use; (b) the restriction as to the use of approved suppliers who are registered with the Government; and the need for bidders who are not on the approved list of suppliers to go through a qualification procedure for their registration as an approved supplier before their bids are taken into consideration for evaluation; (c) one of the approved method of procurement, namely "negotiated procurement" which "should be used where the end product is difficult to define", being a mix of "direct contracting without competition", "consulting services", "turnkey contracts", "two-stage bidding" and "two envelope procedure where technical and price proposals are solicited at the same time and opened in separate sequential sessions”; (d) a bid evaluation procedure based on the merit point system, that is technical attributes (40%), split into essential attributes and desirable attributes, price tendered (40%) and service aspects, such as availability of spare parts, maintenance facilities and delivery time (20%), which is applicable to all contracts for goods; (e) absence of provisions relating to “Settlement of Disputes”; and (f) absence of criteria for use of prequalification of bidders procedure.

2 Public bodies are empowered to vary the weightings by plus or minus 10% to reflect the relative importance of the element vide Article 26 of the draft MOF — Directives.
The draft MOF-Directives provide for four different methods of procurement, namely (i) "open tender", (ii) "selective tender from an approved list of suppliers", (iii) "negotiated procurement", and (iv) "direct requests for quotations from selected suppliers". Even in "open tender" method of procurement if a bid is received from a supplier who is not in the approved list of suppliers maintained by the Government, the public body in consultation with MOF should determine whether that supplier meets all of the criteria required for inclusion in the approved list, namely "technical competence"; "managerial competence"; "financial stability"; "level of resources"; "commercial standing"; and "reliability, including any previous record of corruption". If such supplier does not meet any of the above criteria, his/her bid is rejected from consideration. Procurement by "open tender" will be the norm, unless justification is provided for the use of other method of procurement by the application of criteria specified in the Directives and approved by the competent authority. The competent authority for this purpose is (a) the MOF where the value of the contract exceeds Birr 500,000 in the case of local procurement and Birr 2 million in the case of international procurement; and (b) the public body in other cases. [See answer to Question No. 7 under Annex A “Basis of Transparency” for more details on “procurement methods”].

9. Is the hierarchy of the sources of procurement rules well established?

Yes. The hierarchy of applicable procurement law and rules in the descending order of supremacy is as follows.

(ii) The “Council of Ministers Financial Regulations No. 17/1997”,
(iii) The “Ministry of Finance Directives – Procurement and Contracts” (revised draft dated 9 June, 1997)
(iv) The “Procurement Manual” (revised draft dated 28 August 1997)

Currently the draft MOF–Directives, namely item (iii) above, is in the last stages of finalization. It should be noted that these rules are applicable only to procurement financed by MOF budget and is not applicable to procurement financed by (a) external funding agencies, in which case the rules of the funding agencies will govern the procurement; and (b) local resources not allocated from MOF budget. Further these MOF-Directives will stand modified in regard to (a) works contracts where special rules will be made by MOWUD in regard to certain areas; (b) procurement of vehicles, where the procurement will have to be made through the Road Transport Authority, who have special prescriptions; and (c) procurement of consulting services, where special rules to be made by the MEDAC will be applicable.

10. Do the same rules apply to central and local governments?

No. The Financial Proclamation, the Financial Regulations and the MOF - Directives mentioned in answer to Question 6 above are applicable only to the Federal Government and its agencies. Although the state governments are not obligated to follow these provisions, all the nine (9) states have applied the provisions contained in the Financial Proclamation and the Financial Regulations, with minor modifications.

11. Do the same rules apply to parastatals?

No. Parastatals have their own rules governing procurement and these are applicable to procurement financed from their funds. If the parastatals have projects financed by external funding agencies such as the IDA, ADB, EU etc., they follow the rules of the funding agencies for such procurement. Further if the parastatals use funds allocated from the Ministry of Finance budget for their procurement, for such
procurement the parastatals will have to follow the Federal Government rules and have to obtain the approval of the Ministry of Finance in regard to individual procurement contracts (a) exceeding Birr 2 million let under international bidding and (b) exceeding Birr 500,000 let under local competition. Such MOF review comprises of two parts, namely clearance of the draft bidding documents prior to issuance and prior review of the proposed decision to award contract.

Further as a temporary measure all procurement contracts for goods and works exceeding Birr 10 million and consulting services contract exceeding Birr 1 million require the approval of the Prime Minister’s Office. In such a situation, the papers relating to contract award proposal proceed directly from the line Ministry to the PM’s office without going through MOF.

Addis Ababa Water and Sewerage Authority (AAWSA), the National Seeds Industry Agency (NSIA), and the National Fertilizer Industry Agency (NFIA) do not obtain funds from the Federal Government allocated budget and hence they do not require any approval from MOF. However, as a temporary measure, in regard to (a) individual procurement contract for goods and works exceeding the value of Birr 10 million and (b) individual consultancy contract exceeding the value of Birr 1 million, they have to obtain the approval of the Prime Minister’s Office for their proposed decision to award contract.

The Ethiopia Road Authority (ERA), the Ministry of Education (MOE) and the Road Transport Authority (RTA) has all been granted special exemption from the requirements as to review by MOF and/or PM’s office, wherever applicable.

12. Is the procurement function decentralized? (Describe basic structure and name the main procuring entities)

The Procurement function is decentralized in that the various Ministries, public bodies and parastatals do their own procurement planning, prepare bidding documents, issue invitation for bids, receive bids and evaluate the bids and make recommendation for award of contracts. However they have to obtain the approval of the Ministry of Finance in regard to the bidding documents and the proposed decision to award contract in the event the procurement contract in question involves the use of funds allocated from the Ministry of Finance budget (a) exceeding Birr 500,000 under local bidding and (b) exceeding Birr 2 million under international bidding. For this purpose, procurement made from funds provided external funding agencies’ credits, loans and/or grants are not treated as being from MOF budget allocation as the funds are released through the Treasury Department.

In regard to parastatals, as already stated in answer to Question No. 11, they are in total charge of their procurement, unless allocation from MOF budget is involved.

Further as a temporary measure, all procurement contracts for (a) goods and works exceeding Birr 10 million and (b) consulting services contract exceeding Birr 1 million require the approval of the Prime Minister’s Office. In such a circumstance the line Ministry’s recommendation for award of contract goes directly to the PM’s office without going through the MOF. The recommendation to award contract is subject to a procedural and technical review by a technical committee in the PM’s Office, before PM’s approval is accorded to the award of contract. It may be noted that ERA, MOE and RTA are exempted from the requirement as to MOF and PM’s Office approvals.

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3 Under the current directives of the Ministry of Finance, their approval is required for individual contracts involving more than Birr 250,000.

4 Under the current directives of the Ministry of Finance, their approval is required for individual contracts involving more than Birr 250,000.
The main procurement entities are the Addis Ababa Water and Sewerage Authority (AAWSA), the Civil Aviation Authority (CAA), Ethiopia Electric Power Corporation (EEPCO), the Ethiopia Road Authority (ERA), the Ministry of Agriculture (MOA), the Ministry of Education, the National Fertilizer Industry Agency (NFIA), the National Seeds Industry Agency (NSIA), the Road Transport Authority (RTA), the Telecommunications Corporation and the Urban Development Support services (UDSS). Most of them are parastatals and the rest are public bodies.

13. Is there an entity (or more than one) with oversight responsibilities for procurement functions throughout public administration (i.e. one responsible for harmonization of rules and the monitoring of compliance with primary regulatory powers)? Identify and describe responsibilities and structure. Is it operationally involved in procurement?

The Government Procurement Unit (GPU), comprising of three (3) experts, is placed in the Vice-Minister, MOF’s Office. GPU reviews the “non-standard” decisions taken by the public bodies and the parastatals involving the use of MOF budget funds in the following matters.

(i) The method of procurement adopted by the public body and/or parastatal is not provided in the MOF-Directives – Procurement and Contracts.

(ii) Contract award has been made to a bidder who did not submit the “best evaluated bid”.

(iii) A supplier, who is not in the list of approved suppliers, has been chosen to submit a bid.

As previously stated in different places, GPU’s responsibility also includes review of the bidding documents and the contract award proposals in regard to procurement (a) exceeding the value of Birr 2 million under international bidding and (b) exceeding the value of Birr 500,000 under local bidding. GPU decides on the matter acting on its own and may consult with the Vice-Minister, MOF, at its discretion and/or wherever appropriate.

GPU is not operationally involved in procurement. GPU does not currently monitor the compliance by the public bodies (and the parastatals wherever applicable) to the MOF Directives – Procurement and Contracts, but they may do so after a few years have elapsed after the coming into force of the MOF-Directives.

Where due to the value of the procurement, the contract award proposal requires the approval of the PM’s Office, as temporary measure, the proposal goes direct from the public body through the line Ministry to PM’s Office and there is no review by GPU/Vice-Minister, MOF.

Harmonization of the procurement rules is the concern of the MOF only in relation to procurement financed from funds made available from the Federal Government Budget Estimates.

14. Is there a Central Tender Board or a similar institution? What are its duties and responsibilities?

There is no Central Tender Board or Committee, which has jurisdiction over all public bodies and/or parastatals in regard to procurement. During the deliberations leading to the issuance of the “Financial Regulations” and the “MOF- Directives”, it was decided not to have one.

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5 Under the current directives of the Ministry of Finance, their approval is required for individual contracts involving more than Birr 250,000.
It may be noted that each public body or parastatal has its own Tender Committee, comprising of members selected from within the organization, with one exception. In the case of the Road Transport Authority (RTA), its tender committee called the Ministerial Tender Committee comprises of five (5) Vice-Ministers, a representative from the Ethiopian National Bank and the General Manager of the RTA.

The Tender Committee members are required to be present at the time of bid closing and bid opening to ensure the integrity of the procedures. They ensure that the minutes of the bid opening and the proceeding of the bid opening ceremony, and the evaluation of the bids by the bid evaluating committee and the contract award recommending committee, wherever applicable, are properly recorded. The Committee recommends to the General Manager, or the head of the organization as appropriate its recommendation for award of contracts. The Committee also proposes (a) the extension of the time allowed for submission of bids by extension of the deadline for submission of bids, where appropriate; (b) cancellation of the tender where it deems it necessary; (c) disqualification of any bidder under certain circumstances; and (d) the method of procurement “for all contracts above the limits of financial authority (specified) in Table 4” of MOF – Directives. (See the second paragraph of answer to Question No. 8 of Annex A- Legal Framework for details).

15. **Does the system allow/facilitate the introduction of new technologies and innovative contracting practices without compromising basic principles?**

The approved methods of procurement and the evaluation procedure contained in the draft MOF-Directives, read together with the appurtenant provisions in other documents, are neither for, nor against, the introduction of new technologies.

During discussions with the public bodies and the parastatals, they made clear that they do not favor the introduction of new technologies but would prefer to along with proven technologies, and this is acceptable for most sectors. However the system should permit innovative contracting practices, which reduces costs accompanied by increases in efficiencies of operation.

16. **Are there rules/procedures regarding bidder suspension and debarment?**

There are no clear or formal rules on this aspect; however debarment of bidders from participation in procurement is happening in most of the public bodies and parastatals. Some agencies maintain a negative list of bidders to whom they will not award contract and/or who’s participation they will not permit in selective bidding.6

17. **Is the country a member of any regional trade or customs agreement? (Specify)**

Yes. Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA) agreement embracing 23 countries in Eastern and Southern Africa. At its initial constitution, there was a common list of goods in which member states would enjoy preferential tariff rates. Presently there are no preferences applicable and COMESA promotes trade between member governments.

18. **Are there provisions regarding preferences for particular categories of suppliers of goods and services? (Specify)**

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6 The Construction contractors Association of Ethiopia have stated that they would like to be consulted when the rules are framed.
Preferences for domestically manufactured goods and for domestic contractors are provided in the bidding documents issued under the international competitive bidding procedure, only where financing is provided by external funding agencies such as the World Bank, ADB, etc., which permit such preferences. The amount of preferences is the maximum permissible under the applicable external funding agency’s guidelines. Otherwise no preferences are allowed.

19. Are the provisions for domestic/international arbitration codified? (Name statute(s))

There is no separate or special statute codifying the provisions relating to domestic/international arbitration. Article 3325 to 3346 (Arbitral Submission) of the Civil Code of Ethiopia (Proclamation No. 165 of 1960) contains the provisions relating to arbitration. The procedures to be followed by the arbitration tribunal are those prescribed in “Chapter 4. Arbitration” of Book IV and “Chapter 2. Appeal from and setting aside of arbitral award” of Book V of the Civil Procedure Code of Ethiopia (Decree 52 of 1965).

Some contracts let under local competitive bidding procedures, provide for arbitration under the rules of arbitration contained in Article 3325 et. Seq. (Arbitral Submission) of the Civil Code of Ethiopia, with the place of arbitration being Addis Ababa, the language of arbitration being English, and the substantive law applicable being the Ethiopian Law.

Where financing of the contracts for works by external funding agencies such as IDA is involved, the public bodies and parastatals, have prescribed Clause 67 of the FIDIC General Conditions of Contract, in which the Engineer or the Consultant act as arbiter of the first instance, followed by arbitration by the ICC arbitration clause, in most cases, and the prescription of a Disputes Review Board, in a few cases where the contract value is high.

In most cases involving international competition for works contracts, whether or not external funding is provided for such contracts, the public bodies and parastatals prescribe arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules, following the provisions contained in Article 67.3 of FIDIC Conditions of Contract for Works of Civil Engineering Construction.

In the case of works contracts, not involving financing from external funding agencies, where public bodies and parastatals follow the Ministry of Works and Urban Development Standard Bidding Documents for construction of Civil Works Contracts dated December 1994, the applicable procedure for settlement of disputes between the contractor and the Employer is for the matter to be referred to the Engineer for a decision. An appeal against the decision of the Engineer can be made within 90 days of the decision to the Ministry of Works and Urban Development, or his authorized representative, and this is called settlement of disputes by arbitration. This arrangement raises transparency issues and is totally unsatisfactory as the final arbiter in the dispute will not be perceived as an independent impartial authority.

In the case of procurement of goods under IDA credit, some organizations follow the UNCITRAL rules in regard to arbitration.

20. Are arbitration rules generally in line with established principles such as those embodied in the UNCITRAL rules? (Highlight major differences)
The provisions contained in the Civil Code of Ethiopia and the Civil Procedure Code of Ethiopia, mostly deal with the appointment, replacement etc. of the arbitrator(s), the applicable procedures etc. but is not as elaborate as the UNCITRAL Arbitration Rules of 1976 and does not address specific areas as “challenge of arbitrators”, “form and effect of award”, “settlement or other grounds for termination, “interpretation of award”, and “correction of award”. Provisions on these matters need to be included in the local law to have a meaningful document.

21. Is the country a member of the New York Convention on the Recognition of Foreign Arbitral Awards?

No.

22. Is there a separate law defining the policies and procedures for award of concessions and BOO, BOT, and similar contracts for provision and operation of public facilities by the private sector? (If so, identify law and describe basic features)

None.

BASIS OF TRANSPARENCY

1. Is there a requirement for public disclosure of procurement legal texts?

Yes. The Financial Proclamation and the Financial Regulations, having been published in the Official Gazette, are available to the general public. The MOF – Directives, when approved and issued, will also be made available to the public.

2. Are there requirements for mandatory written records of procurement?

The Regulations\(^7\) requires all public bodies to retain all financial information and records for a length of time adequate to cover all required references to that information by the public body itself and by external auditors, subject to a minimum of 10 years. As required under the Financial Regulations, MOF has a Directive on “Retention of Financial Records” which relates to the maintenance of financial information and financial records. However this Directive does not cover areas of preparation and maintenance of written records of procurement (e.g. public advertisements, pre-qualification documents (if used), the pre-qualification evaluation report documenting any decisions not to pre-qualify certain potential bidders, the bidding documents and any addenda, a record of any pre-bid meetings, the bid opening minutes, the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid, copies of bids, appeals against procedures or award recommendations, a signed copy of the final contract and any performance and advance payment securities issued etc.) and contracts administration records (e.g. contractual notices issued by the supplier, contractor, purchaser or employer; a detailed record of all change or variation orders issued affecting the scope, quantities, timing or price of the contract; certificates of inspection, acceptance and completion; records of claims and disputes and their outcome etc.)

Although there are no other rules governing retention of procurement records and contract administration records, as a matter of practice, all public bodies and parastatals retain these records for long periods, which exceed 10 years. There are no procedures in place for weeding of obsolete and unwanted records in any public body or parastatal.

\(^7\) Part sixteen of the Council of Ministers Financial Regulations No. 17/1997 refers.
3. **Are requirements for advertisement of contracting opportunities adequate?**

The draft MOF – Directives require the publication of the invitation for bid for procurement under the
“open tender” method financed under MOF budget, at least two times in one consecutive week in the
Ethiopian Herald\(^8\) and Addis Zeman\(^9\). There is no dissemination of procurement information in regard to
contract let under other methods of procurement through a mechanism similar to a “General Procurement
Notice” of the World Bank\(^10\). In regard to contracts financed by external funding agencies, the funding
agency’s rules are followed in addition to the requirement of the MOF – Directives.

4. **Are requirements regarding public bid opening, if any, appropriate?**

Some organizations do not have tender boxes (e.g. RTA, ERA, public bodies and parastatals in many
regions etc.). Even where an organization has in place an arrangement for tender box for receipt of bids, the
opening of the box and the size of the box are such that they cannot accept bulky bids documents for civil
works contracts. In all these cases the bid documents are securely kept in the General Manager’s Office in the
steel cabinet, till the date and time for bid opening.

In regard to the time and date of bid opening, the present requirements and practices are not appropriate
in regard to some public bodies and parastatals. The following are the details of the prevailing practices.

Only in the cases of MOE, NFIA, NSIA and UDSS are bids opened on the same day as the deadline date
for bid submission and often within less than 2 hours after the bid closing time.

In the case of AAWSA, bid opening takes place on the same day as bid submission in less than 50% of
the cases. In regard to the balance, which is more than 50% of the cases, bid are opened on the following
day.

In the case of ERA, only in regard to IDA financed procurement, bids are opened on the same day as
the deadline date for submission of bids. In regard to other procurement, which are not financed by IDA, on
some occasion bid opening may take place on the same day as bid submission; while on other occasions bid
opening may take place on the following day after bid submission in most cases.

In the case of MOA, bids are normally opened on the following day after the deadline date/time for
receipt of bids.

In the case of RTA, as they require a quorum of 4 members of the tender committee to witness the bid
opening ceremony, often bid opening is takes place from a few days after bid closing to 20 days after bid
closing. RTA notifies all the bidders of the place, time and date of bid opening.

It may be mentioned that the draft MOF-Procurement Manual requires that opening of bids should
follow immediately or soon after bid opening.

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\(^8\) A local newspaper in the English language.
\(^9\) A local newspaper in the Amharic language.
\(^10\) Para 2.7 of the *Guidelines: Procurement under IBRD Loans and IDA Credits* refers.
5. Are negotiations after bid opening or award selection generally forbidden?

Yes, in regard to procurement by "open tender", "selective tender" and "Direct requests for quotations from selected suppliers" (i.e. shopping).

However negotiations are permitted in regard to procurement under "negotiated procurement method" (for details see answer to Question No. 8 under "Legal Framework - General Features") involving more than one supplier. The use of the "negotiated procurement" method for procurement of equipment and goods may not be in line with the objectives of improving "the accountability, integrity and transparency of the procurement process and reduce the scope for corruption".

6. Do rules on negotiated procurement, if any, provide the basis for a fair and transparent process?

The MOF - Directives (Articles No 37 to 39) and para 4.3 of the draft Procurement Manual state that the technical specifications will not be as detailed as "open tender" specifications but should "note the essential aspects of the requirements". Bids should be called for from "those suppliers that it (public body) feels are capable of achieving the contract". Bids would be invited in two separate envelopes, one containing the technical proposal and the other containing the price bid, opened sequentially in separate sessions. The public body will evaluate all technical bids and identify those that meet the essential requirements. Thereafter the public body will open the priced bids of all those bids, which meet the essential technical requirements and negotiate with the lowest priced bid that meets all essential requirements. As the applicable procedures involve the submission of technical and price proposals in two envelopes, which are opened in separate sessions and evaluated, the procedures followed are not fair and transparent. Further, added on to this is the requirement of negotiation with the lowest priced bid for decrease in prices. (Article 70 of the MOF - Directives also refers).

7. Are conditions for use of various procurement methods clearly established?

There are four approved methods of procurement, namely "open tender", "selective tender from approved list of suppliers", "negotiated procurement" and "direct requests for quotations from selected suppliers" (which is usually termed shopping under the Bank's procedures). The open tender method is the norm. The use of other method is to be justified by specified criteria and approved by the Appropriate Authority. The criteria for the use of selective tender method (viz. "complex, important contracts, where the ability of the chosen firm(s) is of primary importance" and "there will be a limited number of possible suppliers") is quite broad. Application of the "selective tender" method would restrict competition, not promote economy and efficiency and may open the doors for abuse of the system. The "negotiated procurement" method is a mix of "direct contracting without competition" (or "single tender" procurement), "consultancy services", "turnkey contracts", "contracts involving the obtaining of separate technical and price proposals at the same time, but which are opened sequentially in separate sessions and evaluated. Negotiations with the lowest priced bidder under the "negotiated procurement" method with the objective of decreasing his/her price is permitted and consequently involves change in the substance of the bid. The classification of the methods of procurement and the criteria for their use needs to be reformulated. It should be clarified that "Open tender" method may be with or without prequalification, and may involve one stage or two stage bidding. The procedures relating to selection of consultants should be dealt with separately and not mixed with "negotiated procurement". "Direct Contracting without Competition" should be dealt with as a separate method. The use of "negotiated procurement" as a method of procurement of goods, equipment and/or works would not improve the accountability, integrity and transparency of the procurement process. The two-envelope system as detailed above should not find a place in the list of approved methods.

11 Ministry of Finance in the case of procurement contracts (a) exceeding Birr 500,000 in the case of procurement involving local bidders and (b) exceeding Birr 2 million in the case of procurement involving foreign bidders.
8. Is there a requirement for public notice of contract awards?

None. The general public is not notified of the description and amount of the contract, together with the name and address of the successful bidder.

Some of the public bodies (RTA) inform the other bidders who participated in the bidding process, the name of the winning bidder. Some organizations (e.g. AAWSA, ERA, MOA, NFIA and UDSS) do not even notify the participants in the bidding, the name of the winning bidder. However NSIA informs, upon request, the bidders who participated in the bidding but failed to win the contract, the name of the winning bidder and the amount of the contract.

9. Are requirements for bid and contract securities clear and appropriate?

As far as the bidding documents issued by the public bodies and the parastatals are concerned the answer is "yes" in regard to the amount of the bid security. The "invitation for bid" and the "Instructions to Bidders" clearly lay down the amount of the bid security as a fixed sum, which is calculated as a percentage of the estimated contract price varying from 1% to 3% depending on the organization doing the procurement and the nature of the contract.

However, the draft MOF - Directives laying down the guidelines\(^{12}\) on this aspect requires redrafting. The draft, as it is written now, divides the contract spectrum into three (3) ranges of contract values and establishes the amount of the bid security as a separate and distinct fixed sum expressed in Birr for each range of contract values. This leads to irrational situations. It would be better to redraft the provision and specify the amount of the bid security as a specific amount to be determined as a percentage of the estimated contract value and expressed in the bidding documents. The percentage could be different for each range of contract value, going down from 3% to 1% as the estimated value of the contract increases\(^{13}\).

In regard to the specification as to the financial institution that are eligible to provide the bid security the following are the details. Bid securities are to be provided from a financial institution approved by the National Bank of Ethiopia (NBE), which would mean that bid securities could be provided by insurance companies specified by NBE. In terms of the Bank's Guidelines for Procurement, bid securities should be accepted only from banks and this would be the case where procurement is under international competitive bidding, limited competitive bidding, international shopping etc. However given the local situation that certain local suppliers would have access only to such instruments from insurance companies rather than banks, it may be possible to give due consideration to a proposal to permit under procurement effected under National Competitive bidding, local bidders to furnish bid securities from insurance companies provided it is proven through evidence that such securities are easily encashable as bank guarantees and provides reasonable protection to the purchaser against irresponsible bids.

10. Are requirements for bidder qualification, if any, fair and transparent?

Bidder qualifications are not specified in the Instructions to Bidders etc. in regard to procurement of equipment, goods and works. In most cases of works contracts, often the "Employer" prescribes in the "Invitation for Bid" published in the newspaper advertisement, the minimum licensed category of the eligible bidder.

\(^{12}\) Para 32 of the draft MOF - Directives refers.

\(^{13}\) Birr 1000 for contracts estimated to be below Birr 30,000; Birr 10,000 for contracts estimated to be between the value of Birr 30,000 and Birr 1,000,000 and Birr 50,000 for contracts estimated to exceed the value of Birr 1,000,000.
11. Do requirements for preliminary bid examination and evaluation promote a fair and transparent process?

Yes.

12. Is there a conflict of interest policy in effect? Is it enforced?

Yes. In regard to contracts for works, bidders shall be not affiliated with firms which has provided consulting services during the preparatory stages of the works or of the project of which the Works' forms a part; or which has been hired as “Engineer” for the contract. Similar provision also obtains in regard to supply of goods.

BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICIALS

1. Is there a Code of Ethics based on generally accepted principles?

Yes. The MOF- Directives contain a “Code of Ethics” which is generally speaking acceptable. However the provisions contained therein needs to be strengthened. It requires procurement official to declare to the Tender Committee his/her personal interests that may impinge, or seem to impinge on the procurement decision making process. However, the “Code of Ethics” does not per se debar him/her from participating in such proceedings in such a circumstance. Further, it does not make it clear that the term “procurement staff” includes all persons, including members so the “Tender Committee”. Plugging these loopholes should tighten the “Code of Ethics”.

2. Do bidders have adequate access to administrative and judicial review?

No mechanisms or provisions as to administrative and judicial review of procurement decisions are in place.

There is no special statute, which provides remedies to bidders, who may have grievances and/or complaints against the “Purchasers” and/or “Employers”. However the bidders could avail themselves of the civil court procedure under the Civil Code of Ethiopia, where the proceedings will be protracted and time consuming.

Review by the procurement authority is done in practice, when complaints are received from an unsuccessful bidder; however there are no formal rules or guidelines in this regard.

3. Does Government carry out procurement/contract management audits? (Describe who does them and frequency)

None in place. However the draft Procurement Manual envisages that all “public bodies should ensure that there is a regular audit of procurement activities to ensure that controls are in place and are functioning”. It further suggests that such audits should be conducted by the Internal Audit function of that body, while additional audits can be carried out by “alternative members of staff”.

June 5, 1998
Annex B - Trade Practices

1. Is the flow of trade generally perceived as being efficient?

Currently Government has taken several measures to improve the flow of trade. Import and export licensing procedures have been streamlined, such that licenses are issued within two or three days from the date of the application to the National Bank of Ethiopia. There is a negative list of items that cannot be legally imported. Foreign exchange is auctioned every week to the public and private sector applicants to facilitate the imports. In regard to exports, the only problem seen is continuous supply of goods. Overall, trade is seen to be more efficient than a few years before, although it is not perfect.

2. Is countertrade used? In what percentage of the country's total trade? For which commodities?

None.

3. Are local staff familiar with import planning, importation procedures, shipping and other trade documents?

Yes; local staff is familiar with import procedures, shipping and other documents. However traders do not have adequate skills in import planning.

4. Must goods meet national standards, or are recognized international standards (e.g. BS, ASME, API, ISO etc.) also accepted?

Most public bodies and parastatals use national standards; where there are no national standards and/or the national standards are silent on certain aspects, they use international standards. Only in regard to procurement funded by external funding agencies, the use of alternate international standards is permitted.

Under the Ethiopian Authority for Standardization Establishment Proclamation No. 328/1987 read with the Standards Marks and Fees Council of Ministers Regulations No.13/1990, all the standards to be used in Ethiopia were Compulsory standards to be prescribed by the Ethiopian Standards Authority (ESA). However such standards need not be Ethiopian standards. ESA stated categorically that public bodies and the parastatals were free to propose the use of international standards, wherever appropriate and the use of national standards of other countries if there were no available international standards. As a matter of fact they were in favor of developing national standards only in situations where there was unavailability of appropriate international standards or national standards of other countries, based on health and safety considerations. With a view to set the matter very clear, a new Proclamation, called the Reestablishment Proclamation has been approved and is now under printing. Under this Proclamation, which will be in public's hands within 15 days, the areas where standards are applicable are broken down into two parts, namely Compulsory standards and optional standards. Compulsory standards will address health and safety concerns and will cover few items. In areas where optional standards are prescribed, the end user or the importer can choose his own standards and not be obligated to follow Ethiopian Standards, Because of this provision, public bodies, parastatals and private organizations can choose their own applicable standards in those areas, which could be international standard(s) and/or national standard(s) of another country.
5. If national standards are customarily applied, is information about them easily accessible to outside bidders? Can licenses/certificates be obtained quickly and at low cost? Are customs procedures generally transparent and efficient?

Information on national standards is easily available.

6. Do national testing laboratories exist? Are ISO 9000 quality assurance standards also applied?

The answer is "yes" to both the questions.

7. Describe the registration and license requirements in place for pharmaceuticals and vaccines.

Ministry of Health has prescribed registration and licensing requirements for pharmaceuticals and vaccines.¹

8. Is there a pre-shipment verification program? Is it carried out according to generally accepted practice?

There are presently no national requirements as to pre-shipment inspection of all the goods entering into Ethiopia. It is up to the importer to make, at his/her option, his/her own arrangements as to pre-shipment inspection, either by an independent agency, or agency specified by the supplier and approved by the buyer. Most of the public bodies and parastatals reviewed have not provided for pre-shipment inspection in regard to the import of goods and equipment.

9. Who carries out pre-shipment inspections? (Describe selection procedures)

Not applicable in view of the answer given to Question No. 8 Above.

10. Are goods also normally inspected upon arrival? Do inspections comply with established practice (i.e. are they carried out by independent third party experts)?

Importers can, at their own option, make their own arrangements, for inspection of goods on arrival at the port of discharge or at the project site. Most of the public bodies and parastatals provide for inspection by project staff on arrival of the goods at the project site. However in regard to fertilizer imports, they are inspected by an independent inspection agency at the port of discharge as such provision is included in the special conditions of contract. Further the Customs Authority inspects the goods on arrival. In regard to fertilizer imports, the Customs Authority checks only the quantity at the importer’s warehouse.

¹ Details thereof were not made available to the CPAR Mission.
² Under the IDA Structural Adjustment Credit, pre-shipment inspection was prescribed as a requirement by the NBE under all letters of credit. With the closing of this IDA credit, the provisions as to furnishing of a pre-shipment inspection certificate has been deleted from the NBE’s L/C requirement.
³ When the IDA Structural Adjustment Credit was on going, there was a requirement as to pre-shipment inspection by SGS of all imports, which came into Ethiopia. With the closing of the adjustment credit, this requirement as to pre-shipment inspection was deleted.
11. Are there indications suggesting price-fixing in open bidding?
   None.

12. Are goods frequently described incorrectly on the invoices?
   No.

13. Are there indications that import documents are falsely labeled?
   No.

14. Is there evidence of any other trade malpractice affecting public sector procurement?
   No.

June 5, 1998
Annex C – Financial Framework

1. Are banks capable of issuing Letters of Credit?
   Yes.

2. Are banks generally creditworthy?
   Yes.

3. Can bid and performance securities, advance payment guarantees be obtained locally?
   Yes. Contractors and suppliers can obtain credit facility from commercial banks for issuing bid security
   and performance security and the commission is charged in the range of one-half of one percent for 3
   months or parts thereof. If contractors and suppliers provide cash collateral, instead of availing of credit
   facility, the commission charged is in the range of one-eighth of one percent for 3 months. Obtaining of
   credit facility depends on the personal relationship of the supplier/contractor with the commercial banker.
   (See also answer to Question No. 9 under “Annex A – Basis of Transparency”)

4. Are the requirements for issuance of bid and performance securities to local suppliers/contractors
   reasonable? Are conditional securities allowed?
   Yes. Some performance securities contain a condition that it is operative only when the bid security is
   released.

5. Do local suppliers/contractors/consultants have reasonable access to credit?
   Local contractors have problem in getting access to credit. Much depends on the collateral provided by
   the suppliers/contractors and their personal relationship with the bankers. However the situation has
   improved during the past 2 or 3 years and one could get credit at 10.5 percent per annum.

6. Can implementing agencies obtain budgetary authorizations for contract payments falling due
   beyond the current financial year?
   Yes.

June 5, 1998
Annex D - Public Sector Procurement of Goods/Works

GENERAL RISK ASSESSMENT

1. Is the public sector procurement profession held in high regard?

In most public bodies and parastatals, the procurement profession is not held in high esteem. In very few organizations, the procurement profession is treated as equal to other professionals such as engineers, administration and finance staff, etc. In some agencies, highly regarded personnel have left the public employment due to low salary levels. In most organizations, except for the few top procurement officials, others are not held in high professional regard.

2. Are pay levels for procurement professionals comparable to that for other public and private sector technical specialists? Give current range of monthly salaries.

In most agencies, the pay levels of top procurement professionals are lower than that of other professionals such as the Engineering Department. The monthly salary level ranges from Birr 1950 to Birr 2800 in major parastatals. Especially in the Ministries the monthly salary levels ranges from Birr 950 to Birr 1250 and because of this low level of salary, they are not able to attract qualified personnel. In the Central Procurement Cell, which acts as the procurement agent for public bodies, the regions etc., the monthly salary level for personnel with diplomas and Master's degree ranges from Birr 800 to Birr 1800, while for others it is Birr 150 to Birr 600. In other organizations, the monthly salary levels lie in between the levels obtaining in the Ministries and the major parastatals.

3. Is the procurement profession generally staffed with honest and capable individuals?

The procurement profession is staffed with honest individuals in most organizations. As to their capability, the experience in various agencies has been that few have capable, qualified and experienced professionals, mostly at the top level, while the rest of the staff (i.e. the majority) have below average level of capabilities.

4. Does a code of ethics exist that procurement professionals are expected to follow?

All the public bodies and parastatals visited do not have any formal written code of ethics. The MOF – Directives contains the “Code of Ethics” and the provisions thereof are elaborated in the “Procurement Manual”. When the Directives are formally issued, these will be applicable to public bodies and parastatals in regard to procurement financed by MOF budget. (See also answer to Question No. 1 of “Annex A – Basis of Accountability of Procurement Officials”.

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

The authorities relating to procurement is clearly assigned to the project authorities, except as detailed below. If the procurement involves financing from the MOF budget\(^1\) and exceeds Birr

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\(^1\) Under the current directives of the Ministry of Finance, their approval is required for individual contracts involving more than Birr 250,000.
500,000 in the case of local bidding and Birr 2 million in the case of international bidding, approval of the MOF in regard to the (a) the draft bid document before it is issued and (b) the evaluation report before the contract is awarded, are required. Contracts financed out of funds from external financing agencies are excluded from this process of MOF approval. As a temporary measure, approval of the PM's Office is required in regard to contracts for goods and works exceeding the value of Birr 10 million and contracts for consulting services exceeding value of Birr 1 million irrespective of source of financing, unless a specific exemption is granted by the PM’s Office. Proposals for contract awards, which require PM’s Office approval need not be processed for MOF’s approval.

ERA, MOE and RTA have obtained special exemptions from MOF and PM’s Office review procedures. As AAWSA is not part of the Federal Government, they are not governed by the requirements as to MOF and PM’s approval.

Some agencies like AAWSA, MOA, NFIA, NSIA and UDSS do not get MOF budget allocation and hence do not need to go MOF for clearances.

The applicable procedures are clearly defined.

6. Are procurement decisions ever overridden by higher governmental agencies? If so, by whom? To what degree is the procurement decision-making process independent from politics?

On a few occasions, the PM’s Office has revised the recommendation for contract award proposed by the public body/parastatals unit. In some cases, the higher governmental agencies have rejected all bids and sought for retendering although the public body/parastatal had recommended award of contract.

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

Yes.

ORGANIZATION

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

Almost all the public bodies and parastatals interviewed did not have copies of the latest versions of the procurement documentation issued by the World Bank (e.g. “Guidelines: Procurement under IBRD Loans and IDA Credits” (January 1995 edition with or without the amendments made in 1996 and 1997)\(^2\), “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” (January 1997 edition)\(^3\), the 1995 edition of the World Bank’s Standard Bidding Documents for “procurement of works” and “procurement of works (smaller contracts)” etc.

\(^2\) AAWSA was using the 1985 edition of the “Guidelines: Procurement under IBRD Loans and IDA Credits”

\(^3\) As most of the IDA credits have been approved prior to January 1997, consultant service contracts are to be awarded in accordance with World Bank Guidelines “Use of Consultants by World Bank Borrowers and the World Bank as Executing Agency” (August 1981). However as many of the organizations are following QCBS method, the availability of the January 1997 edition would provide them practical guidance.
2. Are the procurement and supply management functions clearly distinguished?

Yes, where the public body/parastatal’s procurement function involves both procurement and supply management functions.

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

Subject to the requirements as to MOF’s approval and PM’s Office approval detailed in answer to Question No. 5 under “General Risk Assessment” above, the following is the position obtaining in public bodies/parastatals in regard to approval of contract awards.

Approval of the recommendation to award contract is required at the highest level in most agencies. In the case of Addis Ababa Water and Sewerage Authority (AAWSA), although the General Manager has been delegated full powers, he obtains the approval of the Board. In regard to specific major procurement contracts, there has been no MOF or PM’s Office involvement so far in regard to their procurement decision making.

In the case of ERA, approval of contract awards up to the value of Birr 60,000 and Birr 250,000 could be granted by the Procurement Officer and the General Manager respectively, while approval of the Board is required for contracts exceeding Birr 250,000.

In the case of the Ministry of Agriculture (MOA), although there is no formal delegation of authority to the Head, Administration and Finance Department, he approves contracts not exceeding the value of Birr 150,000 and the approval of the Minister is obtained for contract award proposals exceeding this value.

In the case of MOE, the recommendations of the Tender Committee are submitted to the Department Head for his approval. No further references to other bodies or persons are required.

In the case of NFIA, the recommendation of the Tender committee is submitted to the General Manager for his approval.

In the case of NSIA, the recommendation of the Tender committee for award of contract(s) is submitted to the General Manager for his approval. There is no further references to the NSIA Council or to other bodies.

In the case of the RTA, all recommendations for award of contracts require the approval of the 7 person Tender Committee, comprising of 5 Vice-Ministers, a representative from the Ethiopian National Bank and the General Manager.

In the case of Urban Development Support Services (UDSS), the General Manager is authorized to approve contract awards not exceeding Birr 250,000 provided IDA financing is not involved. However all contract award proposals involving IDA financing irrespective of value, and other contract award proposals exceeding Birr 250,000, require the approval of the Minister.
In regard to signing of contracts, there are a variety of situations bordering on extremes. In the case of AAWSA, NFIA, NSIA and ERA, the General Manager signs all contract documents. In the case of the Ministry of Agriculture, the Head of the Procurement is authorized to sign all contracts; however as a matter of practice, in the case of high value contracts, he will seek higher authority's instructions as to who should sign. In the case of RTA, all contracts are signed by the end user. In the case of UDSS, the contract agreement is signed by the end user, unless it happens that the particular contract bulks the requirements of several end users and/or agencies, in which case the General Manager of UDSS signs.

4. Are thresholds for contracting powers regularly updated?

There are no mechanisms for periodical review of the procurement thresholds in various Ministries, public bodies and parastatals. Revisions of thresholds are done on an ad-hoc basis. The draft MOF-Directives updates the thresholds for procurement financed with MOF budget only. ERA has submitted proposals to its Board to update the procurement thresholds for awards of contracts and their decision is awaited.

5. Do procuring entities have internal quality control mechanisms? Are they regularly audited?

Presently no internal quality control mechanism exists in regard to the procurement process and there is no audit of the procurement process in all the public bodies and the parastatals visited. However many organizations have internal audit mechanisms, which are of a financial nature; and the goods and works procured are subject to quality control mechanisms on arrival at project site with regard to physical, technical and performance characteristics.

However, the Draft Procurement Manual\(^4\) requires public bodies to “ensure that there is a regular audit of procurement activities to ensure that controls are in place and functioning”. The audit is required to be conducted by the internal audit function, while additional audits can be conducted by others. Be this as it may, there is no audit of the procurement process in all the organizations reviewed.

6. Is procurement staff experienced in international procurement?

Every public body and parastatal visited, except for RTA, have one or two procurement staff who are experienced in international procurement.\(^5\)

7. Is career advancement primarily based on job-related accomplishments and factors?

Yes.

8. Do adequate formal and on-the-job training programs exist for entry- and higher-level procurement staff that contributes to proper professional career development?

On the job training programs is provided in some public bodies and parastatals (i.e. ERA, MOA and RTA) in regard to the general procurement procedures.

9. Are there additional training resources in the country which are currently utilized or that could be utilized to complement Government/donor-administered programs (e.g. universities and private institutions)\


\(^5\) NFIA and NFIA have only one procurement staff.
None.

(Note: Some procurement staff has received training in the Ethiopia Management Institute, Debrezeit. Many staff have attended the procurement and disbursement seminars conducted in Ethiopia by the World Bank Staff. In some agencies consultants have been hired to provide training in civil works contract management. In the case of AAWSA, there is a training need assessment, which is on going under IDA financing.)

10. Did previous training programs lead to an obvious improvement in the quality/productivity of procurement work?

The previous training programs are considered to be not adequate by the public bodies and the parastatals.

11. Do procurement staff have adequate project/contract management capabilities?

Most of the public bodies\(^6\) have stated that that not many staff in the procurement section /department have adequate experience in procurement and contract management capabilities. They reckon that the capabilities of most staff border more or less on the average.

12. Are procurement agents used? Under what circumstances? How are they selected? Describe normal basis for compensation and contract duration

As a rule, procurement agents are not used for procurement\(^7\).

13. Is procurement monitoring and administration computerized? How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?

The procurement monitoring and administration function is not computerized. Most public bodies and parastatals use manual systems to do project monitoring and administration, utilizing the services of the engineering supervision consultants wherever applicable. Presently (i) MOA is undertaking a study to computerize the entire procurement operations under IDA Credit; and (ii) AAWSA is planning to do computerization for procurement and contract administration for its projects.

Be this as it may, a software has been installed in MEDAC, the PM’s Office and the Bank’s Resident Mission with the purpose of tracking and alerting project staff of the time elapsed in regard to various procurement activities with reference to the target dates for completion. This program is on going since the commencement of this year in regard to on going IDA projects.

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\(^6\) AAWSA has few capable staff at the senior level.

\(^7\) ERA had engaged the services of Crown Agents to perform the services of a procurement agent under Japan Non-Project Grant Aid. The Central Procurement Cell has been engaged as the procurement agent in a few cases e.g. MOE and ESRDF.
PROCESS – PLANNING

1. Are project implementation units adequately staffed with trained procurement, planning, scheduling, expediting and cost estimating personnel?

In most public bodies and parastatals, most of the urgent and immediate work is taken care of by the division heads, as they have been unable to attract qualified personnel due to Government salary levels. In the case of the AAWSA, ERA, MOA and UDSS, there are appropriate divisions who take care of planning, cost estimating, scheduling and expediting functions. Consultants are employed in some organizations to provide assistance in the preparation of the project schedules and cost estimates. In the case of NFIA and NSIA they have only one person to take care of the entire procurement work and they do not have cost estimating personnel.

2. Is overall planning for complex goods, works and other contracts done in sufficient detail to produce realistic project definition, achievable completion schedules and accurate cost estimates?

The public bodies and the parastatals, use the assistance of consultants for accomplishing these activities, wherever appropriate. Project definitions are arrived at on the basis of economic, technical and socio-economic criteria, as appropriate, and every effort is made to have realistic project definition. In the case of UDSS, due to change in Government priorities arising out of the change in the Government, there was major revisions to the project definition and this has caused project execution delays and rescheduling of the project completion date. In regard to other agencies, project completion has slipped by about 25 percent.

3. Is the early technical and financial planning well coordinated so that projects are fully funded when work needs to begin, based on accurate cost estimates?

All the projects undertaken by the public bodies have been fully funded based on cost estimates, which include appropriate price and physical contingencies.

4. Are appropriate methodologies used to plan multiple inter-related procurement activities on large projects (e.g. the critical path method)?

All the public bodies and the parastatals use the critical path method, etc. for planning and execution of inter-related activities for large projects and/or civil works contracts.

5. Are project components appropriately packaged for procurement purposes?

Yes.

6. Are completion schedules generally met for goods, works and consultant services contracts? If not, what is the major cause for slippage? Is sufficient time generally allowed for external reviews/clearances?

The experience of the public bodies and the parastatals has been that under works and consultant services contracts, there is a slippage of about 20 to 25 percent in the completion dates, with few exceptions where the delays are in the range of 60 to 80 percent. In regard to procurement of construction materials and construction equipment, the slippage in deliveries are in the range of 50 percent. Slippage in deliveries of other goods is in the range of 20 percent with reference to the contracted delivery period. Presently most
agencies have not suffered significant delays in project implementation arising due to external reviews and clearances. However this situation would change given the fact the draft MOF –Directives requires clearances of both the invitation for bid and the contract award proposal over certain financial threshold limits and the need for clearance from PM’s Office in regard to certain contracts. In such cases, a bid validity period of 90 days may not be enough to complete the formalities in some cases.

7. Do procurement units regularly conduct market surveys to update their knowledge of prevailing prices for goods and works?

No; the public bodies and the parastatals do not conduct market surveys or have other mechanisms for updating their knowledge of prevailing prices for goods and works. In regard to works contracts, they mostly rely on the engineering estimates prepared by their engineering department and/or consultants. In regard to goods, the Market Intelligence Department of the Ethiopian National Bank has a data bank, which is used to determine the value of goods imported under letters of credit. However this data does not provide meaningful information in regard to the type of goods imported by these organizations for the implementation of their projects.

8. Are procedures and methodologies for planning procurement of recurrent items (i.e. inventory control, forecasting of future requirements, classification, coding, accounting/financial management, spare parts management, and delivery systems) adequate?

There are appropriate mechanisms in place for procurement of recurring items in the public bodies and the parastatals, whose functions involve such procurement. However in the case of some organizations, such as MOA, MOE, NSIA, RTA, UDSS etc., who procure items for the use of end users, it is the end users responsibility to plan and procure the recurring items.

PROCESS – DOCUMENT PREPARATION

1. Do standard documents exist for goods, works and other types of contract? List. Are other international contract formats used? If so, identify

Most public bodies and parastatals (with the exception of RTA) use the standard bidding documentation of the external funding agencies (e.g. IDA, ADB etc.) for procurement financed by such agencies; further they use a modified version of the IDA and/or ADB documentation for procurement of goods and works for most procurement financed by local resources. In most cases for major works contracts involving international contractors, they use the FIDIC Conditions of Contract for Works of Civil Engineering Construction” with minor modifications.

However in the case of works contracts, not involving financing from external funding agencies, some public bodies and parastatals are required to follow the Ministry of Works and Urban Development Standard Bidding Documents for Construction of Civil Works Contracts dated December 1994. These documents are deficient in two major areas, namely (a) lack of price adjustment provisions if the duration of the contract extends beyond 18 months and (b) the applicable procedure for settlement of disputes between the contractor and the Employer raises transparency issues, as the final arbiter being the

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*MOE has stated that it experiences delays of about one to two months due to beneficiaries and external funding agencies clearances for contract award proposals.
Ministry of Works and Urban Development or its authorized representative will not be perceived as an independent impartial authority.

The bidding documents used by RTA have significant deficiencies and they have been advised to use the World Bank’s Standard Bidding Documents for Goods with appropriate modifications. As a significant portion of RTA’s procurement comprises of buses and trailers, using the Ethiopian Government budget, they have been requested to adopt mechanisms relating to life cycle costing in the evaluation of bids etc., wherever appropriate.9

2. Are these documents, if any, readily adaptable to specific contract situations (i.e. by modifications made through a Bid Data Sheet, Special Conditions of Contract or similar)?

Yes; in most organizations the documents used are basically the World Bank’s Standard Bidding Documents for goods and works with the exception of MOE and RTA.

3. Are there separate documents for international and national competitive bidding not financed by the Bank?

They use the same document for international and national competitive bidding, for procurement, which are not financed by any external funding agencies.

4. Do Instructions to Bidders (ITB) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application?

Yes; in most cases where the procurement is financed by external funding agencies. However, where financing from Ethiopian Government budget and/or other local resources are involved, while the bidding documents for works contracts are substantially in order in many cases, similar documents for goods need improvements, more particularly in the case of MOE and RTA.

5. Do they contain other necessary information, such as eligibility requirements, basis of bid, language and currency of bids, common currency for purposes of evaluation, source and date of the exchange rate, etc.? Are sample forms and other appropriate sections of the documents provided?

About half of the documents reviewed10, including contracts being financed by IDA, do not contain project specific and/or procurement specific eligibility requirements11. However (with the exception of RTA) they contain appropriate information on basis of bid, language and currency of bids, common currency for purposes of evaluation, source and date of the exchange rate, etc.

The draft MOF Procurement Manual (revised August 28, 1997) incorporates a sample bidding document for goods and services, which is to be used for procurement by (a) public bodies, except in regard to procurement financed by external funding agencies which mandate the use of specific procedures and/or tender documents; and (b) parastatals using MOF budget funds. This document needs modification in

9 RTA has been requested to get in touch with OPR-PR of the World Bank.
10 No prequalification of bidders’ procedure has been followed or was required in regard to these procurements.
11 AAWSA had prescribed procurement/project specific eligibility criteria in the bidding documents in regard to procurement of water meters; ERA’s draft “Design and Construct Standard Contract Document” contains provisions for eligibility requirements.
various major areas, such as use of approved suppliers, bid prices, bid currencies, bid security, evaluation and comparison of bids (in particular the elimination of the applicability of the merit point system), etc. The draft MOF Procurement Manual, if appropriately modified to meet the comments of the World Bank staff, would meet the requirements of CPAR.

6. Are bidders required to provide bid security in an appropriate amount as a condition of responsiveness of their bid?

Yes; the bidding documents issued by the public bodies and the parastatals require the bidders to provide the amount of the bid security as a fixed sum, which is calculated as a percentage of the estimated contract price varying from 1% to 3% depending on the organization doing the procurement and the nature of the contract.

However, the draft MOF - Directives laying down the guidelines on this aspect requires redrafting. The draft, as it is written now, divides the contract spectrum into three (3) ranges of contract values and establishes the amount of the bid security as a separate and distinct fixed sum expressed in Birr for each range of contract values. This leads to irrational situations. It would be better to redraft the provision and specify the amount of the bid security as a specific amount to be determined as a percentage of the estimated contract value and expressed in the bidding documents. The percentage could be different for each range of contract value, going down from 3% to 1% as the estimated value of the contract increases.

(See also answer to Question No. 9 of Annex A - Legal Framework - Basis of Transparency).

7. Is pre- or post-qualification provided for?

In regard to infrastructure projects, prequalification of bidders' procedure is followed for major works contracts (e.g. AAWSA and ERA) and post qualification of the lowest evaluated substantially responsive bidder is also carried out. In regard to other projects, which mostly involve procurement of goods and minor civil works contracts of a simple nature, prequalification of bidders is not undertaken, which is appropriate. However these agencies, with the exception of MOE, NFIA, NSIA and RTA, do not undertake a post-qualification exercise in regard to the lowest evaluated substantively responsive bidder.

8. Are qualification criteria appropriate and clearly described?

The prequalification documents for major civil works contracts prescribe the qualification criteria viz. general experience expressed as annual average turn over, execution of three major projects of nature and complexity comparable to the proposed contract, personnel capabilities to fill the positions for each contract applied for; equipment capabilities, financial position expressed as access to credit to meet the construction cash flow for a period of four months estimated in US$ and audited balance sheets for the last five years.

12 Para 32 of the draft MOF - Directives refers.
13 Birr 1000 for contracts estimated to be below Birr 30,000; Birr 10,000 for contracts estimated to be between the value of Birr 30,000 and Birr 1,000,000 and Birr 50,000 for contracts estimated to exceed the value of Birr 1,000,000.
However the bidding documents for works and goods, where procurement is undertaken without a prequalification of bidders procedure do not contain project-specific or contract-specific criteria as to the eligibility requirements which a bidder should meet to qualify for award of contract. In these circumstances the post-qualification of the lowest evaluated bidder is not a rigorous exercise.

9. Are conditions of contract equitable?

Yes: in regard to procurement not financed by the external funding agencies, the public bodies and the parastatals generally follow IDA standard bidding documents in the case of procurement of goods and works, with the total incorporation of the FIDIC Conditions for civil engineering works contracts in regard to works contracts in many cases.

10. Are conditions of contract generally equitable? Do they provide adequate coverage for most important commercial and legal issues (for the method of procurement, size, nature and type of contract used) and provide adequate protection to the Government, without putting undue risk on bidders?

Yes, as they generally follow IDA and/or ADB standard bidding documents in the case of goods and the FIDIC Conditions for civil engineering works contracts.

11. Are standard purchase orders used for shopping?

Purchase orders forms are used in most organizations (e.g. AAWSA, ERA, MOA etc.) for all procurement under shopping procedures. However in the case of few organizations (e.g. NFIA, NSIA and UDSS) no purchase order forms are used for any project expenditures; they use these forms only for office expenditures where procurement is made under the shopping procedure and the amounts involved are very insignificant.

**PROCESS - PRE-QUALIFICATION**

1. Is pre-qualification carried out when appropriate? What types of contracts is it used for? Works? Goods? Other?

Prequalification of bidders' procedure is followed mostly for large major civil works contracts. (e.g. AAWSA, ERA etc.). However such a procedure has not been used in the recent past for goods and services, as such procurement does not partake of the nature of "custom-designed equipment, industrial plant, specialized services, and contracts to be let under turnkey, design and build or management contracting", where the costs of preparation of bids are high. Some organizations have followed the prequalification procedure for preparing the shortlist of local consultants. (e.g. ERA).

2. Is the pre-qualification process fair and transparent? Are decisions made promptly? Are foreign firms allowed to apply?

AAWSA uses purchase orders only for individual procurement not exceeding Birr 10,000. Otherwise they use complete and formal contract documents.

In the case of AAWSA, they have used the prequalification of bidders' procedure for pipes and electro-mechanical equipment.
Yes, the procedures followed are fair and transparent, irrespective of the source of funding and the method of procurement (viz. ICB or NCB). Foreign firms are allowed to participate subject to one restriction in the case of AAWSA, namely that in regard to civil works contracts let under local competitive bidding, the foreign bidder should have a local agent.

3. Are standard pre-qualification documents used? Do they clearly and completely describe all the prerequisites for submitting responsive applications for pre-qualification? Is financial information routinely requested and critically evaluated to assess an applicant’s financial capacity to perform?

Yes, as the organizations use the World Bank’s Standard Document issued in 1993, with very few modifications. The financial information routinely required from the bidder relates to access to credit from banks etc. to meet adequately the cash flow requirements needed for timely execution of the contract, together with the annual audited financial statements for the past five years. These are critically evaluated to assess the bidder’s ability to perform.

4. Do pre-qualification documents clearly and completely describe all requisites for submitting responsive applications and the qualification requirements?

Yes.

Is financial information required and critically analyzed to assess financial capabilities to perform contracts?

Yes. (See also answer to Question 3 above).

5. Do procuring entities verify prior to contract award if a successful bidder continues to meet pre-qualification requirements?

Of the public bodies and parastatals reviewed, only one organization – namely ERA – verifies, prior to award of contract, whether the successful bidder continues to meet prequalification requirements.

6. Are suppliers required to have a local agent in order to qualify to bid for goods or services?

No.

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

Currently, most public bodies and parastatals reviewed do not maintain a list of qualified suppliers and/or contractors (e.g. AAWSA, ERA, NSIA, MOA, MOE, NFIA, NSIA and UDSS16), while only RTA17 uses an approved list of qualified suppliers.

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16 AAWSA does advertisement inviting bids for all individual procurement involving more than Birr 10,000
17 May be there are other organizations that have not been reviewed by the CPAR Mission.
In terms of the draft MOF – Directives, under “Selective tender” method of procurement, public bodies should select the eligible bidders from an approved suppliers list\(^{18}\). In consultation with each public body, the MOF establishes and maintains a list of approved local and foreign suppliers. In regard to vehicles, such list is established and maintained by RTA. Under “Open Tender” method of procurement, although all suppliers are eligible to participate in the bidding, in the event a bid is received from a supplier who is not on the approved list, the public body shall\(^{19}\) with the Ministry of Finance determine whether the supplier meets with all the criteria for inclusion in the approved list, viz. “Technical competence; managerial competence; financial stability; level of resources; commercial standing; and reliability, including any previous record of corruption”. In order for this system to work without restricting competition, applications for entry of new firms should be dealt with promptly and fairly. The objectives underlying the introduction of a list of approved suppliers could be more efficiently and economically achieved by the adoption of the normal post-qualification of the lowest evaluated substantially responsive bidder as per requirements specified in the bidding documents.

The draft Procurement Manual (revised August 28, 1997)\(^{20}\) prescribes evaluation of the performance of the supplier/contractor at the end of the contract, which evaluation will be used to update and modify the approved list.

According to the Draft MOF-Directives and the draft Procurement Manual, new comers can apply and if they are determined to meet the qualifications requirements prescribed they will be included in the list of approved suppliers.

**PROCESS – ADVERTISEMENT**

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

Yes, currently all the public bodies and the parastatals advertise the contracts to let under competitive bidding in the local newspapers. If the contracts involve financing by external funding agency, the funding agency’s rules as to advertisement and publicity are followed in addition. Information on procurement let under methods other than “open tender” and which are not financed by external funding agencies such as the World Bank, ADB etc., is not disseminated to the public through the publication of a general public notice or like instrument.

The draft MOF – Directives also require the public advertisement of the invitation for bid for contracts to be let under “open tenders”, at least two times in one consecutive week in the Ethiopian Herald\(^{21}\) and Addis Zeman\(^{22}\).

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\(^{18}\) Paragraphs 14 and 57-63 of the draft MOF – Directives refers.

\(^{19}\) Paragraphs 61 and 62 of the draft MOF – Directives refers.

\(^{20}\) Chapter 11 of the draft Procurement Manual at pages 73-78 refers.

\(^{21}\) A local newspaper in the English language

\(^{22}\) A local newspaper in the Amharic language.
2. Is sufficient time allowed to obtain documents and prepare bids?

Yes. Currently in regard to public bodies and parastatals reviewed, for procurement of goods the time allowed for preparation of bids is:

(i) 45 days (e.g. ERA and RTA) for goods involving international bidding;
(ii) 90 days for major civil works;
(iii) ranges from 30 to 38 days in other cases involving local bids for goods; and
(iv) 45 days in the case of minor works.

The draft MOF- Directives envisages a tender period of 20 days for local tenders and 45 days for international tenders.\(^2\) The period allowed under the MOF- Directives would be inadequate for major civil works contracts.\(^3\)

**PROCESS – COMMUNICATIONS BETWEEN BIDDERS AND THE PROCURING AGENCY**

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

Current experience in most of the public bodies and the parastatals has been that bidders have not asked for clarifications. Wherever clarifications have been asked by bidders, these are answered promptly in written form and copies of the question and the clarification have been sent to all the bidders without identifying the party who raised the enquiry, with one exception namely ERA, which is described in the succeeding paragraph. In the case of all organizations reviewed, except ERA, they always entertain requests for clarification and responses are given in writing when requested.

ERA always has a pre-bid conference and all inquiries and requests for clarification are answered during the proceedings of this conference and recorded in the minutes. They do not respond to, or answer inquiries and requests for clarifications received from bidders, either before or after the pre-bid conference. This matter requires serious attention and should be addressed from the point of view of integrity and fairness of the procurement process.

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

Yes.

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

Yes; wherever appropriate the time allowed for submission of bids has been extended to enable the prospective bidders to submit bids based on the clarification etc.

\(^{2}\) Paragraph 18 of the draft MOF – Directives refers

\(^{3}\) It should be noted that the MOWUD, which has responsibility for this area, has in the past prescribed, and will continue to prescribe in the future, a time period of 90 days for submission of bids for major civil works contracts.
4. Do procuring entities maintain accurate records of all communications with the bidders (before and after the deadline for submission)?

Yes.

5. Are there communications between the procuring entities and the bidders, other than appropriate requests for clarification of a bid made by the evaluating committee?

The answer is "no" as far as the current practice is concerned. It may be mentioned that RTA sometimes asks the lowest evaluated substantially responsive bidder to increase the quantities, without changing the substance of the bid in regard to other aspects.

**PROCESS – RECEIPT OF BIDS AND OPENING**

1. Are bids received prior to the deadline securely stored?

Although it is a MOF requirement for public bodies that bids are to be deposited into a tender box, of the public bodies and parastatals visited only AAWSA, CPC, MOA, MOE, NFIA, NSIA and UDSS have a tender box for deposit/receipt of bids.

In regard to AAWSA, CPC, NSIA and UDSS, given the tender box design which has a small opening for receipt of bids, bids for civil works contracts, which are bulky in size are received by hand and stored in the General Manager’s office, until they are opened.

NSIA maintains a register for immediate documentation of bids received and issues a receipt to the bidder or his/her representative on receipt of the bid.

ERA and RTA have no tender boxes for deposit/receipt of bids. All the bids received are kept in the General Manager’s Office until they are opened.

2. Are public bid openings conducted?

Yes, with one exception. In the case of ERA, where they follow the two-envelope procedure (i.e. submission at the same time of separate technical and price proposals) in regard to works contracts using funds allocated by the Ethiopian Government, they do not follow any public bid opening procedure.

3. If so, are they conducted at a specified place closely following the deadline for submission? Generally how long after are they scheduled?

Only in the cases of MOE, NFIA, NSIA and UDSS are bids opened on the same day as the deadline date for bid submission and often within less than 2 hours after the bid closing time.

In the case of AAWSA, bid opening takes place on the same day as bid submission in less than 50% of the cases. In regard to the balance, which is more than 50% of the cases, bid are opened on the following day.

Para 2 of Annex 1 and Annex 2 of the draft MOF- Directives and para. 8.2 of the draft Procurement Manual refers. Similar provisions were contained in the erstwhile MOF Financial Regulations.
In the case of ERA, only in regard to IDA financed procurement, bids are opened on the same day as the deadline date for submission of bids. In regard to other procurement, which are not financed by IDA, on some occasions bid opening may take place on the same day as bid submission; while on other occasions bid opening may take place on the following day after bid submission in most cases.

In the case of MOA, bids are normally opened on the following day after the deadline date/time for receipt of bids.

In the case of RTA, as they require a quorum of 4 members of the tender committee to witness the bid opening ceremony, often bid opening is done from a few days after bid closing to 20 days after bid closing. RTA notifies all the bidders of the place, time and date of bid opening.

It may be mentioned that the draft MOF-Procurement Manual requires that opening of bids should follow immediately or soon after bid opening.

4. Do bid opening procedures generally follow those specified in the Guidelines? What information is read out at the opening ceremony? Are minutes kept?

Yes. The bidders’ names, bid prices and modifications including discounts, bid withdrawals and the presence or absence of bid security and the information on alternate bids, if any, are read out at the opening ceremony. Separate minutes of the bid opening proceedings are not kept. The bid evaluation report usually contains a brief statement relating to the bid opening proceedings.

In the case of some organizations (e.g. AAWSA and ERA), they officially announce the rejection of the bids at the bid opening proceedings, if the bids are not accompanied by bid security substantially conforming to the bidding document.

5. Do bid opening procedures differ for goods, works or other types of contracts? If so, how?

No.

PROCESS – BID EXAMINATION AND EVALUATION

1. Are evaluations conducted by qualified evaluating committees?

Yes

26 Para. 20 at page 28 of the draft Procurement Manual (revised August 28, 1997) refers.
27 AAWSA and ERA were advised that all bids received by the deadline for submission of bids at the prescribed place, should be opened and included in the bid opening proceedings and their details recorded, whether or not they are accompanied by appropriate bid security. There cannot be any rejection of bids at the bid opening ceremony, if the bids are received at the date, time and place specified in the bidding document. Rejection of bids is an event which takes place later after due consideration, This has been the World Bank’s advice to all borrowers and project executing units.
2. Are evaluating committees appointed ad hoc for each evaluation?

No. However in some public bodies and parastatals, there are separate evaluation committees for procurement of goods and works. For special cases, where they need additional expertise, the technical/evaluation committee co-opts the services of outside experts as needed.

3. Is responsiveness determined on the basis of the documentary requirements described in the documents and according to established practice?

Yes.

4. Are bid evaluations carried out thoroughly and on the basis of the criteria specified in the documents?

Yes with on exception. In the case of the RTA, criteria for evaluation of bids are not prescribed in the bidding documents.

5. Is the successful bidder's qualification to perform the contract determined solely on the basis of the criteria stated in the documents? (See above) If not, what other criteria are considered?

Yes with one exception. In the case of RTA, bidders' qualifications are not specified in the bidding documents. However RTA uses the list of "approved suppliers", which is really a register of suppliers.

6. Are evaluations normally completed within the original bid validity period?

Experience is varied. In the regard to AAWSA, MOA, MOE and NFIA, contracts are awarded within the original bid validity period in most cases.

In the case of ERA, in many cases the original bid validity period is extended by 30 days, although the bid validity in many cases, where financing by external funding agencies are not involved, has been prescribed as 120 days.

In the case of NSIA, contract award has always taken place within the original bid validity period of the bids.

In the case of RTA, as the original bid validity period of bids is prescribed as 180 days, rarely do they experience the need for extension of bid validity period.

7. Are bid evaluation reports prepared containing all essential information (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified)?

Yes, subject to one comment. In the case of MOA, they do not normally verify the bidder's qualifications unless they have doubts.
8. Describe any significant differences between goods and works procurement relating to the above

None.

PROCESS – CONTRACT AWARD AND EFFECTIVENESS

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

Yes.

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

In a few cases, MOA has negotiated with the lowest evaluated substantially responsive bidder, reduction in the submitted price, in order to meet budgetary deficiencies. On some occasions, RTA conducts negotiations with the lowest evaluated substantively responsive bidder; to increase the quantities of buses and/or trailers and/or vehicles specified in the bidding document. ERA conducts negotiations with the lowest evaluated substantively responsive bidders on technical matters without changing the substance of the bid.

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

Yes in the certain situations. In the case of procurement which involves the use of funds from MOF budget (a) exceeding Birr 500,000 in the case of local bidding, and (b) exceeding Birr 2 million in the case of international bidding, approval of MOF is required before the contract is awarded. For this purpose, procurement made from funds provided external-funding agencies’ credits, loans and/or grants are not treated as MOF budget allocation, as the funds are released through the Treasury Department.

Further as a temporary measure all procurement contracts for (a) goods and works exceeding Birr 10 million and (b) consulting services contract exceeding Birr 1 million require the approval of the Prime Minister’s Office. In such a circumstance, the line ministry’s recommendation for award of contract goes directly to the PM’s office without going through the MOF. A technical committee - headed by an advisor and comprising of four technical advisors - in the PM’s Office reviews the recommendation to award contract, before PM’s approval is accorded to the award of contract.

It may be noted that ERA, MOE and RTA are exempted from the requirement as to MOF and PM’s Office approvals.

4. Is performance security required in an appropriate amount and in an appropriate format?

Performance security equal to 10 percent of the contract price is required to be furnished in the format of a bank guarantee from a banking company or an insurance company in almost all cases with the exception of ERA.

28 Under the current directives of the Ministry of Finance, their approval is required for individual contracts financed out of MOF budget allocation, if their value exceeds Birr 250,000

29 Article 53 of the draft MOF – Directives refers
In the case of ERA, it requires the performance security equal to 10 percent of the contract price if provided in the format of a bank guarantee, or 30 percent of the contract price if provided by an insurance company or a bonding company.

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

None.

PROCESS – CONTRACT ADMINISTRATION

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

There are manual procurement and project monitoring systems in all the organizations reviewed.

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

Generally speaking, suppliers and contractors are paid on time.

In the case of MOA, MOE and NFIA, where payment for goods is made under a letter of credit, 90% of the contract price is paid when the seller negotiates the L/C documents and the balance 10% is paid after the “goods receipt” is received from the store, which usually takes about three weeks after the delivery of the goods. The release of the final 10% under the L/C takes about 3 to 5 days thereafter.

In the case of AAWSA, under works contracts, contractors are paid within 30 days of the submission of the invoice. For goods, they follow the L/C procedure.

In the case of ERA, payments for goods are made under L/C to the extent of 90 percent on shipment and the remaining 10 percent after inspection of the goods, when they are received on site. In regard to works contracts, payments are made within 56 days after approval of the invoice by the Engineer. This could mean even more than three months in some cases of payments under works contracts.

In the case of NSIA, payment are made under L/C, to the extent of 10 percent of the contract price on signing of the contract, 80 percent of the contract price is paid when the seller negotiates his/her shipping documents and the remaining 10 percent is paid after receipt and inspection of the goods at project site.

In the case of RTA, 100% of the contract price is paid under L/C when the supplier negotiates the L/C documents.

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

Yes.

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

Yes.

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

Yes.

6. If this fails, are the resulting disputes handled in accordance with the contract conditions?

Yes. In regard to works contracts awarded by AAWSA and ERA, they are strictly following the FIDIC Conditions of Contract for Civil Engineering Construction, and there are several cases where the parties have resorted to arbitration through the International Chamber of Commerce.

In the case of MOA, no supplier has had a grievance or complaint against the purchaser (i.e. MOA). However, MOA has a case where a supplier has failed to perform under a contract for procurement of goods. MOA will pursue its claims against the purchaser through the civil courts.

7. Are supplier and contractor claims handled fairly based on a clear recognition of both parties’ obligations under the contract?

Yes.

8. Are works contracts supervised by independent engineers? Does an employee of employer act as engineer in some cases?

Independent engineers are employed by AAWSA and ERA to supervise major civil works contracts. These organizations do not employ an employee of “Employer” as “Engineer” in regard to their contracts.

9. Are contract managers/administrators skilled in resolving problems in a timely manner and dealing with unforeseen circumstances arising during the life of the contract? Do they adequately document all actions of contractual import taken by the purchase/employer during implementation?

The answer is “yes” to all the above questions.

10. Are contractual remedies utilized only when appropriate and in accordance with the contract conditions?

Yes subject to one comment. In the case of RTA, where 100% of the contract price is paid under a L/C to the supplier on the basis of negotiation of shipping documents, RTA experiences problems after deliveries are effected to the end user, as some of the vehicles do not pass the mechanical specification tests.
11. Are contracts generally completed on schedule and within the originally approved contract price? Or are cost and time overruns frequent? If so, in which sectors and for which particular kinds of contracts? Are fair final acceptance procedures used and certificates issued in a timely fashion?

Contracts for goods and equipment are generally completed on schedule and within the original approved contract price in the case of all contracts relating to AAWSA, ERA, MOA, NSIA, RTA and UDSS to the extent of 75 percent of the contracts; while in regard to the remaining contracts there is a slippage of about four to five months in completion dates. Cost overruns are not generally experienced in the above cases.

In the case of major works contracts let by AAWSA and ERA, they usually experience a 25% time delay in completion coupled with a price increase of about 10 to 15%.

All the organizations reviewed have fair final acceptance procedures in place and certificates are issued in a timely fashion, subject to one qualification in regard to RTA. In the case of RTA, there are no final acceptance procedures.

12. Are contracts generally administered in a fair and equitable manner (e.g. the purchaser/employer grants extensions of time when delays are attributable to its untimely action, fair compensation is provided to offset additional costs caused by its mistakes, etc.)

Yes.

13. Are under-inspection, over-inspection and/or improper rejection of goods, materials or methods of carrying out the works a common problem?

No.

14. Are disruptions of the supplier’s or contractor’s orderly performance common?

No.

15. Can any of the improper contract administrative practices identified above, be attributable to a problem identified in the local procurement environment? Specify

The following are the improper administrative practices:

(i) Bid opening procedures are not conducted at the same time as the deadline for receipt of bids or promptly thereafter (e.g. wholly in the cases of MOA and RTA; partly in the case of AAWSA and ERA).

(ii) RTA makes 100% payment to the supplier on the basis of shipping documents under an L/C. There is no pre-shipment inspection. A significant portion of the vehicles delivered fail to pass mechanical tests.

(iii) ERA adopts the two-envelope system (viz. separate technical and price proposals) for certain works contracts and does not have a public bid opening procedure in such cases.

(iv) MOWUD issues at the same time
(a) the notices and the standard document for prequalification of contractors; and
(b) the bidding documents for the construction contract;

and requests bidders to submit in two separate envelopes, "prequalification material" and "technical and price proposal" at the same time, but which are opened sequentially in separate sessions. The prequalification materials are opened first and evaluated. The price proposals of only the bidders who are prequalified are opened in a second session and evaluated. Contract award is to the bidder who submits the lowest evaluated substantially bid on the basis of price.

(v) In case of urgency of works, which is established by the implementing Ministry and MOWUD, and where IDA financing is not involved, MOWUD prepares a shortlist of contractors from lists received from the region and request these contractor to be submit bids. Contracts are let after evaluation of the bids to the lowest evaluated substantially responsive bidder. Price is the sole criterion for evaluation of bids. If for some reason a contract could not be concluded with the lowest evaluated bidder (e.g. the bidder is unable to provide performance security), MOWUD will conduct negotiations with the next lowest evaluated bidder to enter into a contract on the basis of price submitted by the first lowest evaluated bidder. This procedure involves a change in the substance of the bid as a condition of award of contract and hence is not conducive to accountability, integrity and transparency of the procurement process.

16. Are procurement evaluations/audits conducted? If so, describe scope, frequency, who carries them out, etc.

None in place. However the draft Procurement Manual envisages that all "public bodies should ensure that there is a regular audit of procurement activities to ensure that controls are in place and are functioning". It further suggests that such audits should be conducted by the Internal Audit function of that body, while additional audits can be carried out by alternative members of staff.

PROCESS – RECORD KEEPING

1. For contracts to be awarded on the basis of competitive bidding, does the procuring entity maintain a complete record of the process? This would include e.g. copies of all public advertisements, pre-qualification documents (if used), the pre-qualification evaluation report documenting any decisions not to pre-qualify certain potential bidders, the bidding documents and any addenda, a record of any pre-bid meetings, the bid opening minutes, the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid, copies of bids, appeals against procedures or award recommendations, a signed copy of the final contract and any performance and advance payment securities issued, etc.

All the public bodies and the parastatals keep a complete record of the procurement process and these covers the matters mentioned in the question. However no time period for has been prescribed for record maintenance and weeding of unwanted and/or obsolete records. By way of example ERA maintains its records for more than 10 years.

AAWSA has stated that the processes relating to review and approval of contract award proposals by the General Manager and in a few cases by the Board of Directors could be considered to be the equivalent of procurement evaluation/audit.
The Council of Ministers Financial Regulations No. 17/1997 deals with maintenance of all financial information and records including submissions made to MOF for a minimum period of ten years. As required under the Financial Regulations, MOF has since issued the Directive on "Retention of Financial Records". However these Financial Regulations and the Directive do not cover all types of procurement records raised in the question and needs to be addressed either by concerned organizations.

2. Are adequate contract administration records maintained? (These would include contractual notices issued by the supplier, contractor, purchaser or employer; a detailed record of all change or variation orders issued affecting the scope, quantities, timing or price of the contract; records of invoices and payments; certificates of inspection, acceptance and completion; records of claims and disputes and their outcome; etc.)

Yes, complete records by all the public bodies and the parastatals in regard to contract administration.

3. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items?

None.

4. Are periodic reports prepared on overall procurement activities? By and for whom?

All the public bodies and the parastatals prepare periodical reports to their management, which could be monthly and/or quarterly and these cover the procurement aspects.

June 5, 1998
Annex E - Public Sector Selection of Consultants

1. Are procuring entities generally well staffed, experienced and capable of carrying out a professional selection process for consultant services? Do they administer consultant contracts efficiently?

Where public agencies and the parastatals recruit consultants utilizing financing by external funding agencies such as the IDA, ADB, and EU, they carry out the selection process prescribed by such agency and in these cases the selection process could be stated to be professional. In other cases, these organizations often do not specify the various essential parameters necessary for a professional selection process and these may relate to the evaluation criteria, the bid validity period, etc. Only very small value consultancy service contracts are financed using local resources and even in these cases most organizations follow the World Bank and/or ADB documentation.

In regard to the administration of consultants contracts, many organizations often take unduly long time (a) to give approvals under contracts (e.g. approval of replacement for deceased staff etc.), (b) effect payments against invoices etc.

As “on-going projects” have been transferred to the regions following decentralization, consultants have experienced serious inefficiencies in the administration of contracts by the regions, as the staff in the region need time to gain knowledge concerning various aspects of the project, the contract and the current status of implementation.

2. Is the winning consultant firm normally chosen on the basis of competitive proposals from a short list of qualified firms? Where do procuring entities obtain the information used to develop shortlists? If not, specify what other methods are used and in what situations.

The winning consulting firm is normally chosen from a short list of qualified firms by the public bodies and the parastatals. These organizations obtain the information on consultants from the information system maintained by agencies such as the World Bank, ADB, the Ministry of Economic Development and Cooperation, etc. They also solicit expression of interest from firms through advertisement, wherever appropriate.

3. Do requests for proposals clearly describe the selection process and evaluation criteria?

In regard to small projects (usually Birr 200,000 or less) and medium projects (usually less than Birr 700,000), only the Terms of Reference is provided by the organization and the Request for Proposals does not contain the selection process and/or selection criteria.

In regard to large projects, the Request for Proposals contains the Terms of Reference, a Letter of Invitation, Information to the Consultants and the Conditions of Contract. The information provided makes clear prescriptions regarding the selection process and the evaluation criteria.

4. Do the Terms of Reference describe the requirements for the assignment clearly and completely, including background, scope and objectives, deliverables, timeframe, anticipated staff-time, and the contributions to be provided by the procuring entity and others?
Yes in most cases. In some cases involving small and medium value consultancy service contracts, which are funded locally, information on time frame for has to be proposed by the consultant in his/her proposal.

5. **Is selection based only on technical considerations or also on price?**

More often they use the Quality-and Cost Based Selection method\(^1\) with one exception. MOE’s selection procedure is based only on “quality” in all cases.

In some cases where local funding is involved, some agencies use a method which is a modified version of the “least Cost Selection” method mentioned in para 3.6 of Guidelines: Selection and Employment of Consultants by World Bank Borrowers dated January 1997. Under this method proposals are invited in two envelopes (i.e. separate technical and financial proposals) which are required to be submitted at the same time. The technical proposals are opened and evaluated first. A minimum qualifying mark for technical quality is established. The proposals are ranked according to their technical merit. The financial proposals of the first three firms are opened, assuming that they obtain the minimum qualifying mark for technical quality. The organization negotiates with the first ranked technical bidder to conclude a contract by negotiating such bidders financial compensation to the level of the lowest price quoted amongst the qualifying bidders. The organization believes that it will obtain a good technical and financial deal by the utilization of this process. The organization may sequentially negotiate with the second ranked technical firm if it is unable to conclude a satisfactory contract with the first ranked firm.

6. **Are technical criteria detailed and appropriate and their relative weights reasonable?**

Where funding form external funding agencies such IDA, ADB, EU etc. are involved, appropriate and detailed criteria and their relative weights are detailed in the Request for Proposals. In cases where local funding is involved, it is not the norm for project agencies to declare the evaluation criteria, whether financial and/or technical, and in what proportions.

7. **If price is also a selection factor, are technical evaluations completed before opening and considering price proposals? Are relative weights appropriate?**

Where financing from external funding agencies such as the World Bank, ADB etc. is involved for consultant’s contracts, the procedures followed strictly comply with the requirement of the financing agency. In these cases, where price is a selection factor, technical evaluation is completed before financial proposals are opened considered. In regard to contracts involving engineering services, construction supervision and management services, the weight for prices is 30 points out of a total score of 100 points. In regard to contracts involving special studies, the weight for cost is 20 points out of a total score of 100 points. Some public bodies and parastatals (e.g. ERA) strictly follow these norms irrespective of the source of funding.

Where external funding agencies are not involved, many organizations although they may follow the requirement as to opening of the technical proposal first and evaluating them before opening the financial proposals, they may not prescribe appropriate weights as between technical and financial factors; and/or may not disclose them to the short listed consultants.

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\(^1\) Some public bodies like ERA strictly follow the QCBS method for all consultants’ service contracts irrespective of the source of funding.
8. Are there standard Conditions of Contract? Are they fair and equitable to the consultant? Do they adequately protect the interests of the client?

The experience is mixed. Where financing from external funding agencies such as the World Bank, ADB, EU, etc. is involved for consultant’s contracts, the procedures followed strictly comply with the requirement of the funding agency. In these cases, the conditions of contract follow the funding agency’s requirements and are consequently fair and equitable to both parties to the contract. Some organizations like the ERA follow a modified version of the World Bank conditions of contract, which is substantially fair and equitable to both the parties.

Where the contracts are financed from local resources, in the case of certain organizations that recruit consultants, the conditions of contract are not always fair and equitable between the two parties.

9. Are consultants required to submit bid and/or performance securities?

It is the norm not to require bid and performance securities from consultants, irrespective of source of funding. However, there have been cases where in regard to contracts financed from local resources, certain organizations that recruit consultants, have asked for bid and performance securities.

10. Is there a conflict of interest policy provision included in the conditions? (If so, describe)

Yes. The conflict of interest policy provisions followed is more or less identical to the prescription contained in para 1.9 of Guidelines: Selection and Employment of Consultants by World Bank Borrowers dated January 1997.

11. What form of compensation is used? Unit rate? Lump sum based on milestones?

In most cases involving engineering services, construction supervision, and management services, the form of compensation used is unit rate. Lump sum based on milestones is used in the case of contracts involving the preparation of studies.

12. Are evaluations conducted by committees with appropriate expertise?

Yes.

13. Are general criteria broken down into appropriate detailed criteria agreed by the evaluating committee before conducting the evaluation?

Yes.

14. Are all criteria generally applied consistently, fairly and impartially by the evaluators?

Yes.

15. Are evaluations conducted individually by each member of the committee and the results averaged?

Yes.
16. Are new factors or weights added after issuance of the request for proposal that are considered during the evaluation?

No.

17. Are evaluation reports prepared containing essential details of the process, the results, and matters to be taken up during contract negotiations?

Yes.

18. Are evaluations normally completed within the time originally requested for the validity of proposals?

In many cases, some organizations ask the consultants to extend the validity of their proposals by about 30 days.

June 5, 1998
Annex F - Procurement Performance

VOLUMES

1. What are the approximate annual values of public procurement of goods, works, and consultant services, respectively?

The approximate value of public procurement of goods, works and consulting services for the current Ethiopian Fiscal Year is Birr 7243.03 million (US$ 1,034.72 million equivalent.). The breakdown of the value of the procurement in to goods, works and consulting services is not available.

2. What are the approximate percentages of goods, works, and consultant services financed by external donors?

The approximate value of public procurement of goods, works and consulting services financed by external assistance and external loans for the current Ethiopian Fiscal Year will be Birr 1,755.44 million (US$ 250.78 million equivalent.). In other words the approximate percentage of goods, works and consulting services financed by external agencies is 24.24%. The breakdown of the value of the procurement in to goods, works and consulting services is not available.

3. What percentage of public procurement follows competitive bidding procedures? Other methods?

Not available.

4. What percentage of competitively bid procurement is donor financed?

Not Available.

GENERAL EXPERIENCE

1. Are government organizations generally perceived by suppliers/contractors/consultants/the public as fair and efficient in their procurement practices?

The suppliers, contractors and consultants perceive the public bodies and the parastatals as being fair and efficient to a very limited extent, only when the contracts are financed by external funding agencies like the World Bank, EU and ADB. In situations where these external funding agencies are not involved, the suppliers/contractors/consultants feel they are wholly at the mercy of the public bodies and the parastatals in regard to the applicable procurement processes and the terms and conditions of the contract for supply of goods, works or consulting services.

2. Has the country been rated in Transparency International corruption surveys? With what results?

Ethiopia has not been rated in Transparency International corruption surveys.

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1 This Annex is intended to help the CPAR team summarize the findings that result from use of all the previous Annexes.
3. Which of the following factors are considered to be problems by persons familiar with public procurement in the country? Yes No

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<thead>
<tr>
<th>Factor</th>
<th>Yes</th>
<th>No</th>
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<tr>
<td>Inappropriate or outdated laws and regulations:</td>
<td>X</td>
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<td>Poor compliance with and enforcement of existing laws:</td>
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<td>Poor information about procurement needs:</td>
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<td>Shortage of experienced professional staff:</td>
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<td>Poor training of procurement staff:</td>
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<td>Low pay for procurement staff:</td>
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<td>Weak procurement planning:</td>
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<td>Inadequate range of procurement methods and procedures:</td>
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<td>Lack of good standard procurement documents:</td>
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<td>Cumbersome contract approval procedures:</td>
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<td>Lack of delegation of contracting authority:</td>
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<td>Inadequate appeal mechanism:</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Interference by higher level officials:</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Lack of anti-corruption measures and enforcement:</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

EXPERIENCE WITH WORLD BANK-ASSISTED PROJECTS

1. How many Bank projects have been completed in the country? Are now underway? In which sectors?

59 Bank projects\(^2\) have been completed in Ethiopia. 12 projects are now under implementation in “Agriculture”, “Infrastructure”, “Water, Urban and Energy” and “Human Resource Development” sectors.

2. Which organizations have been responsible for procurement on these projects?

The organizations responsible for procurement for these projects are Ministry of Agriculture, National Seeds Industry Agency (NSIA), National Fertilizer Industry Agency (NFIS), Addis Ababa Regional Administration, Ministry of Works and Urban Development (MOWUD), Urban Development Support Services (UDSS), Oromee Water Supply Energy Bureau, Development Bank of Ethiopia (DBE), Calub Gas Company, Ministry of Mines and Energy (MOME), Ministry of Water Resources (MOWR), Addis Ababa Water and Sewerage Authority (AAWSA), Ethiopia Electric Power Corporation (EEPCO), Ethiopia Roads Authority (ERA), Ministry of Education (MOE), and Central and Regional ESRDF Offices.

\(^2\) The loan closing dates of two (2) of the fourteen (14) projects, namely PADEP I and Family Health, have expired on June 30, 1997 and December 31, 1997. However these loans have not been formally closed by the Bank, pending settlement of financial transactions.
3. What thresholds for ICB, IS, NS, prior review for goods, works and consultant services are currently in effect for ongoing projects? Are they the same for all projects? How long have they been in effect?

The following are the thresholds for goods, works and consulting services in effect in recent on-going projects:

### A. Procurement Thresholds for Goods and Works

<table>
<thead>
<tr>
<th>Method of Procurement</th>
<th>Type</th>
<th>Threshold - Size of Individual Contract</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICB</td>
<td>Goods</td>
<td>US$200,000 and above</td>
<td>Recently increased from US$100,000</td>
</tr>
<tr>
<td>ICB</td>
<td>Works</td>
<td>US$500,000 and above</td>
<td>Recently increased to US$750,000 in the case of irrigation works under ESRDF project. This is an exceptional case.</td>
</tr>
<tr>
<td>NCB</td>
<td>Works</td>
<td>Not exceeding US$200,000</td>
<td>Recently revised to not exceeding US$750,000 in the case of irrigation works under ESRDF project.</td>
</tr>
<tr>
<td>NCB</td>
<td>Goods</td>
<td>Not exceeding US$100,000</td>
<td>Increased to US$250,000 in the case of Energy II Project</td>
</tr>
<tr>
<td>International Shopping</td>
<td>Goods</td>
<td>Not exceeding US$50,000 for goods;</td>
<td></td>
</tr>
<tr>
<td>National Shopping</td>
<td>Goods</td>
<td>Not exceeding US$50,000</td>
<td></td>
</tr>
<tr>
<td>Three (3) Written Quotations</td>
<td>Small Works</td>
<td>Not exceeding US$100,000</td>
<td></td>
</tr>
</tbody>
</table>

### B. Prior Review of Contracts by IDA

<table>
<thead>
<tr>
<th>Type of Procurement</th>
<th>Size of individual contract which requires prior review by IDA</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods</td>
<td>US$ 200,000</td>
<td>IDA credits approved a couple of years ago prescribed this limit as US$100,000. In the case of ESRDF project, the floor was revised to $200,000 in August 1997.</td>
</tr>
<tr>
<td>Works</td>
<td>US$200,000</td>
<td>IDA credits approved a couple of years ago prescribed this limit as US$100,000. In the case of ESRDF project, the floor was revised to $750,000 in the case of irrigation works in August 1997.</td>
</tr>
<tr>
<td>Consulting Services - Firms</td>
<td>US$100,000</td>
<td></td>
</tr>
<tr>
<td>Consulting Services - Individuals</td>
<td>US$50,000</td>
<td></td>
</tr>
</tbody>
</table>
4. Do project audits/completion reports/supervision reports indicate significant procurement problems? Any cases of misprocurement? Describe.

The project audits and the supervision reports do not indicate significant problems. Recently there have been two cases of misprocurement as detailed below:

(i) IDA credit No. 2741 ET, Seeds Systems Development Project: In regard to the procurement of cold room conservation equipment, the National Seeds Industry Agency issued invitation for bids, received and evaluated bids under the Bank’s ICB procedure and selected the lowest evaluated substantively responsive bidder. However NSIA was unable to award a contract as the end user had changed its mind as to the type of equipment it desired to procure. Consequently the Bank declared misprocurement and canceled US$150,000, which was the amount allocated under the loan for this procurement.

(ii) IDA Credit No 2841 ET, Ethiopian Social Rehabilitation and Development Fund Project. Tenders were issued for construction equipment, bids were received and evaluated under the Bank’s ICB procedure. In regard to items of construction equipment valued at US$11 million, the end users were unwilling to accept the equipment offered by the lowest evaluated substantively responsive bidder for these items. Consequently the Bank declared misprocurement and the amount allocated for this procurement was canceled from the loan amount.

5. Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe

None.

6. Does the Bank receive a large number of complaints about procurement procedures, selection decisions in the country?

The Bank has received a small number of complaints under each project in regard to the procurement procedures and selection decisions and these have been resolved. Some of these complaints have led to the cancellation of a part of the loans as per details provided in answer to Question 4 above.

7. Are contracts generally awarded within the planned, usual time-frame taken in similar situations by experienced and efficient organizations?

Procurement processing leading to award of contracts have been delayed by about 4 to 6 months in regard to all projects. This delay is supplemental to the slow down in project implementation arising out of (i) the civil strife in the 1980’s; (ii) restructuring and reformulation of the projects due to the change in the Government in the early 1990’s and the consequent changes in the Government’s priorities; and (iii) the transfer of some of the projects to the regions consequent on the regionalization and decentralization of the Government processes. Cumulatively these
events led to project implementation delays in the range of 2 to 4 years resulting in extension of the closing dates in a few loans, of which delays in procurement processes would account for about 4 to 6 months.

8. Are there serious problems or conflicts between local practices and World Bank Guidelines which should be addressed on an interim basis pending implementation of recommended long-term action plans?

(i) The legal and regulatory framework of the proposed public procurement reform should follow the generally accepted principles and norms prescribed in the UNCITRAL Model Law on Procurement of Goods, Construction and Services.

(ii) Use of selective tendering and negotiated procurement method of procurement and conditions of their use.

(iii) Use of approved list of suppliers for goods.

(iv) Use of merit point system as the bid evaluation procedure for all contracts for goods.

(v) Award of contract to the best evaluated bidder instead of the bidder who has the lowest evaluated cost and substantively responsive to the bidding documents.

(vi) Negotiation with the proposed contract awardee with the objective of decreasing his/her bid price.

(vii) Lack of procedures for ventilation and resolution of grievance and complaints from suppliers and contractors.

(viii) Provisions in the Conditions of Contract for works make the Ministry of Works and Urban Development the final arbiter for settlement of disputes.

(ix) Lack of appropriate provision in the conditions of contract for procurement of goods in regard to settlement of disputes.

June 5, 1998
Annex G - Private Sector Procurement

1. Is there a reasonably developed private sector?

Private sector operates in almost all areas. Agriculture accounts for 50 percent of the Gross Domestic Product (GDP). Manufacturing, trade (i.e. import and export), tourism, construction services, retail distribution and other service industries account for the remaining 50 percent of GDP. New private firms have been established in maritime and transit services, insurance and banking and these are still manned by ex-government and ex-national bank personnel.

2. Are any private sector contracts comparable in size to those in the public sector?

Yes. In weekly foreign exchange auctions, between 45% to 55% of the off-take is by private firms, which is indicative that the private sector has a significant share of the economy.

3. Who are the main importers of raw materials and finished goods?

The main importers of raw materials and finished goods are private firms. There is free licensing for imports and exports now. Mostly private firms do the importation except for (a) fertilizer where the market share between the public and private sector is 50:50 and (b) seeds where importation is entirely done by the public sector.

4. Are there established commercial practices? (i.e. as practiced in a competitive marketplace)

In the private sector there are no established commercial practices as practiced in a competitive marketplace. (See also answer to Question 5 below)

5. Are these practices normally based on competition?

Private sector industries and firms use commercial procedures by placing orders with known suppliers. The use of competitive processes in regard to procurement of goods is very rare. Private sector does not have even limited competition for procurement of works. Only very few companies buy goods on the basis of competition by obtaining quotations from three firms. In regard to imports, the private firms need an import license from the NBE and has to get an allocation from the foreign exchange auction on the basis of open competitive bidding. These procedures require that the application to the NBE for an import license should be accompanied by the submission of two proforma invoices, together with the applicant proposal to award contract.

6. Under what circumstances is direct contracting used?

Direct contracting is always practiced by the private sector, unless they are required by foreign exchange allocation/import trade licensing regulatory mechanism to obtain two quotations for their imports.
7. Do private sector companies utilize market surveys and other appropriate techniques in planning procurement for their operating needs?

In the manufacturing sector, very few of them do market surveys and planning for procurement. In the trading sector very few firms (may be a handful) do planning and market surveys. In the agricultural sector there is no planning and market surveys.

8. Are there usually price negotiations with selected suppliers/contractors?

Mostly purchases are purchases done through direct contracting and negotiations are focused on price are focused on price and not on quality, specifications, etc.

9. Is private sector procurement overall efficient and economic?

Most private sector procurement is inefficient and uneconomic. They buy their requirement container by container and open L/C piece by piece without doing any planning. They have inefficient logistics in handling and transportation. They do not have procedures in place to require pre-shipment inspection.

10. Do private sector companies maintain updated lists of approved vendors?

Very few companies have an approved list of vendors based on market analysis. Many private firms do not even ask the commercial counselor of the concerned embassy to give them the information on list of suppliers for any particular import they plan to make form that country.

11. Do private sector companies purchase commodities through brokers or by competition linking price to the international commodity market?

Few companies have professional or educated staff who studies the international market. Most companies purchase their requirements of commodities from whomever they meet first. They do not use brokers or link their purchase price to the international market.

12. Do private sector companies utilize modern accounting methods?

About 90 percent of the private sector companies do not keep any accounts. Of the remaining 10 percent, 5 percent maintain accounts according to accepted modern accounting principles and the other 5 percent maintain books of accounts but not on the basis of accepted accounting principles.

13. Are there procedures to ensure that procurement officers are accountable for their actions?

Most companies are family owned. They sink or swim with what they do. They do not have any procedures and so their procurement officers are not accountable. Even if the procurement officers recommend the adoption of efficient procurement systems, the owners do not like the prescription of any procedures.

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Addis Ababa Chamber of Commerce made a categorical statement that no planning and market surveys for procurement presently exists in the private sector.
14. Do private sector companies monitor contract implementation efficiently?

90 percent of the private sector companies do not monitor contract implementation efficiently. They do not have access to contractual remedies like liquidated damages for delays in deliveries and/or delays in completion, performance securities etc. in place. When they do monitoring, they do not do the right kind of monitoring as they interfere with the work of the professionals employed by them, without having appropriate skills in that area.

15. Is the procurement function in private sector companies reasonably automated?

Less than one percent of the companies are automated.

16. Could some of the private sector procurement practices be adopted by the public sector, keeping in mind the different needs, responsibilities, and obligations, which are unique to the Government? Indicate desirable adaptations.

None.

17. Has there been any in-country experience with private sector provision/operation/maintenance of infrastructure for public services (build-own-operate-transfer, concessions, etc.)?

None.

June 5, 1998
<table>
<thead>
<tr>
<th>Annex H - Checklist Comparing National Competitive Bidding Procedures and World Bank Policy</th>
<th>Yes</th>
<th>No</th>
<th>Bank Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?</td>
<td>X</td>
<td>Not acceptable</td>
<td></td>
</tr>
<tr>
<td>2. Are there primary boycotts which are established by law?</td>
<td>X</td>
<td>Only primary boycotts are acceptable</td>
<td></td>
</tr>
<tr>
<td>3. Are bidding opportunities advertised in the local press?</td>
<td>X</td>
<td>Required</td>
<td></td>
</tr>
<tr>
<td><strong>Note</strong>: Only for open tenders</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?</td>
<td>X</td>
<td>Required</td>
<td></td>
</tr>
<tr>
<td><strong>Note</strong>: 20 days for local tenders procurement; in the case of major works contracts, 30 days to 45 days is generally prescribed.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Are contractors/suppliers pre-qualified for large/specialized contracts?</td>
<td></td>
<td>Mandatory (also advisable for more routine contracts when capacity/experience of bidders weak)</td>
<td></td>
</tr>
<tr>
<td><strong>Note</strong>: Only in the case of some major works contracts. Otherwise prequalification of bidders is not done for large/specialized contracts.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Are minimum experience, technical and financial requirements (for pre-or post-qualification) explicitly stated in the documents?</td>
<td></td>
<td>Required</td>
<td></td>
</tr>
<tr>
<td><strong>Note</strong>: This is being done only where pre-qualification of bidders procedure is followed. Eligibility requirements are rarely prescribed for post qualification of the lowest evaluated substantially responsive bidder.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Is an invitation to pre-qualify advertised for each procurement involving large or complex potential contracts?</td>
<td></td>
<td>Use of standing lists of approved bidders is discouraged but can be accepted if (i) foreign firms are not barred from competing and (ii) lists are updated frequently in manner acceptable to the Bank</td>
<td></td>
</tr>
<tr>
<td><strong>Note</strong>: Yes; only for major works contracts.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Are joint ventures with local firms required for foreign firms' eligibility?</td>
<td>X</td>
<td>Not allowed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Question</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------------------------------</td>
<td>-----</td>
<td>----</td>
</tr>
<tr>
<td>9</td>
<td>Are joint venture partners jointly and severally liable?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Are there set limitations to the number of firms who can bid for a contract?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Are parastatals allowed to bid?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Are bidders required to register with a local or federal authority as a prior condition for bidding?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Are extensions to bid validity allowed?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Are there restrictions on the means of delivery of bids?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Are there restrictions on sources of labor and material?</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Public bid opening is required. However it occurs on the same day as the deadline date for submission of bids only in regard to few organisations [viz. MOE, NFIA, NSIA, UDSS, AAWSA -less than 50% of the time, ERA – only in regard to IDA procurement]. In other cases bid opening takes place the day after the bid opening. In the case of RTA, bid opening takes place from a few days after bid submission to 20 days after bid submission..
<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Bank Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>18. Is a &quot;two envelope&quot; bid opening procedure permitted for procurement</td>
<td>X</td>
<td>Unacceptable</td>
<td></td>
</tr>
<tr>
<td>of goods or works? 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> Yes; in the case of procurement of goods under negotiated</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>procurement procedure. In regard to certain procurement of major works</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>which is considered by the MOWUD and the implementing Ministry as</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>urgent.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19. Is automatic rebidding required if too few bids are received?</td>
<td>X</td>
<td>Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result</td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> If only one bid is received in response to a tender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20. Is &quot;bracketing&quot; used in bid evaluations? 2</td>
<td>X</td>
<td>Unacceptable</td>
<td></td>
</tr>
<tr>
<td>21. Is award made to lowest evaluated qualified and responsive bidder?</td>
<td></td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> Yes in the case of public bodies and parastatals reviewed by</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the Mission. However, the new draft MOF- Directives on “procurement and contracts” requires the award to be made to “the best evaluated tender” which may not be the lowest evaluated substantially responsive bid.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22. Are price negotiations conducted with “winning” bidders prior to</td>
<td>X</td>
<td>Not acceptable, except where bid price is substantially above market/budget levels and then only if negotiations are carried out within limits described in the Guidelines</td>
<td></td>
</tr>
<tr>
<td>contract signature? 3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> Yes in the case of negotiated procurement.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23. Are price adjustment provisions generally used?</td>
<td></td>
<td>Not required, but recommended for works contracts of 1 year or more in duration when domestic inflation rate is high</td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> Only in the case of major works contracts involving financing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>by external funding agency.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24. Are the terms and conditions used in goods and works procurement</td>
<td>X</td>
<td>Mandatory (To be acceptable they should be balanced, reasonable and clearly address the most important issues that lead to problems during performance, e.g. payment, inspection, completion/acceptance, insurance, warranties, changes, force majeure, governing law, termination, etc.)</td>
<td></td>
</tr>
<tr>
<td>generally appropriate for the size and nature of contract intended?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

2 Rejection of bids outside a range or "bracket" of bid values.
### Annex H - Checklist Comparing National Competitive Bidding Procedures and World Bank Policy

#### Page 4 of 4

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Bank Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
<td>Acceptable, but advance Bank approval of changes subject to prior review needed if required under the Loan Agreement</td>
</tr>
</tbody>
</table>

**25. Are contract scope/conditions modified during implementation?**

*Note: Sometimes in the case of works contracts.*
<table>
<thead>
<tr>
<th>Project Title</th>
<th>Credit Amount US$ m</th>
<th>Date of Approval</th>
<th>ICB Goods</th>
<th>ICB Works</th>
<th>LIB Goods</th>
<th>NCB -Goods</th>
<th>NCB - Works</th>
<th>IS</th>
<th>NS- Goods</th>
<th>NS- Works</th>
<th>Direct Contracting</th>
<th>Force Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education VII</td>
<td>64.06</td>
<td>01/26/1988</td>
<td>&gt;$50,000</td>
<td>&gt;$200,000</td>
<td>-</td>
<td>$50,000 or less (furniture)</td>
<td>$200,000 or less</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Second Addis Ababa Urban Development</td>
<td>35.00</td>
<td>06/20/1990</td>
<td>&gt;$20,000</td>
<td>Housing sites and infrastructure in Addis Ababa</td>
<td>-</td>
<td>Akaki municipal infrastructure, Addis Ababa solid waste management and street maintenance - $2.1 million aggregate</td>
<td>-</td>
<td>$20,000 or less - Building materials;</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Market Towns Development</td>
<td>40.20</td>
<td>03/13/1990</td>
<td>&gt;$20,000</td>
<td>Water supply rehabilitation</td>
<td>-</td>
<td>on-site and municipal infrastructure and building contracts</td>
<td>&lt;$300,000 micro-scale enterprises</td>
<td>$20,000 or less - Building materials;</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Road Rehabilitation</td>
<td>96.00</td>
<td>11/19/1992</td>
<td>Nil</td>
<td>All contracts</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Aggregate $200,000</td>
</tr>
<tr>
<td>Calub Energy Development</td>
<td>74.31</td>
<td>03/29/1994</td>
<td>&gt;$200,000</td>
<td>&gt;$200,000</td>
<td>-</td>
<td>$200,000 or less</td>
<td>$200,000 or less</td>
<td>$30,000 or less</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>National Fertilizer Project</td>
<td>120.00</td>
<td>06/13/1995</td>
<td>&gt;$100,000</td>
<td>&gt;$200,000</td>
<td>&lt;$100,000 - specialized equipment; &lt;$200,000 - Fertilizers</td>
<td>&lt;$100,000 - equipment; Fertilizer Mini-kits &lt;$100,000</td>
<td>$200,000 or less</td>
<td>Vehicles; &lt;$100,000; Others - &lt;$50,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>National Seeds Project</td>
<td>22.00</td>
<td>06/13/1995</td>
<td>&gt;$100,000</td>
<td>All works contracts</td>
<td>Equipment and vehicles &lt;$100,000; Seeds and grains - aggregate amount of $2.9 million;</td>
<td>-</td>
<td>Office supplies aggregate amount of $200,000; Mules</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ESRDF</td>
<td>120.00</td>
<td>04/09/1996</td>
<td>&gt;$200,000</td>
<td>&gt;$750,000</td>
<td>-</td>
<td>&lt;$100,000 (subsequently limit raised to &lt;$200,000); &lt;$500,000 (subsequently limit raised to $750,000);</td>
<td>-</td>
<td>$50,000 or less</td>
<td>&lt;$100,000</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Water Supply Development &amp; Rehabilitation</td>
<td>35.73</td>
<td>04/09/1996</td>
<td>&gt;$20,000</td>
<td>All contracts</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Spare parts of proprietary nature</td>
</tr>
<tr>
<td>Road Sector Development</td>
<td>309.20</td>
<td>01/15/1997</td>
<td>&gt;$50,000</td>
<td>All contracts</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Energy II</td>
<td>200.00</td>
<td>12/11/1997</td>
<td>&gt;$50,000</td>
<td>&gt;$250,000</td>
<td>-</td>
<td>$250,000 or less</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

1 Small works to be procured under lump sum fixed price contracts on the basis of written quotations from three qualified domestic contractors.

2 Expected to be individual contracts below US$200,000.