

Building Value through Public Procurement: A Focus on Africa

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I. Introduction

This paper will discuss both domestic and international imperatives for reform of public procurement, with specific information on the state of public procurement in selected countries in Africa.

The public procurement sector is often the largest domestic market in less developed countries. As an international agency providing technical assistance, ITC has a long history helping countries to develop their export potential and improve import operations to lower costs through improved purchasing techniques.¹ The ITC experience in developing countries is that public procurement can account for up to 50%-70% of imports. Any improvements in the public procurement system can have a direct and beneficial effect on the overall economic situation of a country. And improvements are needed. One measure of this fact is the emphasis which the World Bank and regional institutions like the African Development Bank are placing on assisting developing countries to review and revise their procurement systems. Within the Africa region, over one fourth of the countries have, or will have, an active public procurement improvement program.

Public procurement systems are the bridge between public requirements (e.g. roads, hospitals, defence needs, etc.) and private-sector providers. Governments provide goods and services to meet a variety of citizen-needs. These items are obtained from either internal government organisations (hospitals, public works departments, etc) or from sources external to the government in the private sector (domestic or international suppliers). In this sense, governments traditionally use their budget process to decide if they will "make" something in-house or "buy" it from others through their procurement system, just as a private company makes similar decisions in their enterprise resource plan. However, unlike private sector procurement -- public procurement is a business process within a political system -- with distinct considerations of integrity, accountability, national interest and effectiveness.

The business operations of government, as controlled by public procurement systems, affect many different elements of society. First are the procuring entities which have needs for material support (e.g. roads, hospitals, desks and educational supplies, etc.) to fulfil their designated national missions. Then there is the business community of actual or potential suppliers to satisfy the government's identified requirements². But, for the government agency's needs to be properly considered by a supplier, they must be expressed in clear terms, compatible with public policies involving such areas such as competition, social and economic goals, and transparency of the basic rules and procedures. Procurement actions should encourage suppliers to value government business and provide satisfactory quality, service and price in good time. There are also professional associations, academic entities, and public interest groups, which have important views in how public management institutions are to perform. The general public is more likely to feel satisfaction when they know that expenditures made through the public procurement system are economical, rational and fair.

¹ For our purposes, public procurement encompasses the process of identifying the government's requirements through to the completion of the contract.

² Traditionally, a need translates into a procurement requirement. The government *need* may be to move transports across a lake. The *requirement* under the contract may eventually be described as a bridge, or a ferry or a tunnel or another solution to this need which the government has determined to be the optimum approach to meet the need.

II. Imperatives for Reform

A country may want to undertake public procurement reforms to support essential internal administrative improvements, to help qualify for international financing from multilateral institutions or to help integrate a country into the multilateral trading system.

The core aspects of public procurement systems involve getting the right item at the right time, and at the right price, to support government actions. But, just trying to define the "right" item/time/price/etc. leads into a variety of public and private functions and political decisions (e.g. should the item come from private or public production sources, should a premium be paid to aid local manufacturers, etc.). Without a serious and sustained review of such decisions, policy makers may find that their policies are not being supported -- or are actually being undercut from within the government meant to serve them.

Generating savings through procurement system improvements is done now almost routinely in the private sector, where the procurement function helps companies to respond quickly to market changes. As an example, the typical cost structure of a manufacturing firm is that for every dollar earned, around 60 cents is spent on purchased materials, 15 cents on labour, 15 cents in overhead activities, and 10 cents in profit. If, through better management of the purchasing function the cost of purchased materials were reduced by 10%, it would make a saving of 6 cents on every dollar. The result would be a 6% reduction in the total cost of the finished product. The company could make use of this saving by either reducing the sales price by 6% to compete more effectively in world markets or it could increase the company's profit from 10 cents to 16 cents: a full 60% increase! To achieve the same level of profit without reducing costs, sales would have to increase by the same 60%!

It was not too long ago that the subject of public procurement would not get any attention from key decision-makers in Government. It was considered an administrative function too mundane to worry about. However, several developed countries have taken steps recently to revise their public procurement systems to improve their efficiency and generate savings. The federal government of the United States began a program to Reinvent Government in 1994. One of its first tasks was to reform the laws of the public procurement system to make it more efficient. Likewise, the United Kingdom began a study in 1998 called Efficiency in Civil Government that has resulted in several improvements for government. The government of France is developing recommendations that will also improve the efficiency of its public procurement system. In all these cases, billions of dollars have been, or are expected to be, saved through improvement actions.

In addition to the general recognition that improvements in public procurement management systems will help add value to national budgets, specific international and national imperatives now exist for increased attention to public procurement. Among them are:

A. World Trade Organisation Initiatives

There are several international trade initiatives, which will focus on improving public procurement systems in the year 2000. Those countries that have an organised, system-wide management approach to public procurement will be able to more easily identify effective national negotiating positions. However, even where there is not yet a procurement policy-making/management infrastructure in place, high level attention to the issue can provide a basis for better negotiations on these issues.

1. Government Procurement Agreement

The World Trade Organisation (WTO) Government Procurement Agreement (GPA) is a voluntary agreement to extend most-favoured-nation and national treatment rules to government purchases of specified government agencies. These agencies are required to make their purchases (which exceed specified threshold limits) by inviting tenders which are open to participation of suppliers from other signatory countries. A separate action of accession is needed to join the GPA, which involves negotiations with all signatories to determine coverage of the Agreement. There are provisions for developing countries that provide for special and differential treatment. This could allow exclusion of certain products or services from the rule of national treatment for which developing countries wish to continue to extend price preferences. Under Article XXIV.7 (b), the GPA members are expected to conclude negotiations December 1999 on improving the Agreement and "achieving the greatest possible extension of its coverage" with regard to the Special and Differential Treatment for Developing Countries under Article V of the Agreement.

2. Working Group on Transparency in Government Procurement

The Singapore WTO Ministerial Conference of December 1996 decided to establish a Working Group on Transparency in Government Procurement to conduct a study that could lead to the development of elements to include in an appropriate agreement on the subject of transparency. The Working Group has held several meetings to accomplish this task and is expected to produce its report before the end of the year. This report could signal the start of a new phase of work to agree on the elements of transparency in public procurement and how they should be applied by WTO member states.

3. General Agreement on Trade in Services

Article XIII of the General Agreement on Trade in Services requires that there be multilateral negotiations on government procurement in services under the agreement within two years of its effective date. This will be next year. Since the procurement of services is a fast growing area of public procurement in many countries, any change under GATS could have a significant effect on many countries.

B. Support for Anti-Corruption Efforts

Procurement reforms are often a key feature of anti-corruption efforts and can help promote good governance programs.

Transparency in public procurement is an important matter for all countries. The member countries of the Organisation for Economic Co-operation and Development (OECD) have recently focused on improper, wasteful and corrupt activities in government, including public procurement. Developed countries have established various means to create and sustain transparency. Institutional checks and controls are likewise needed in developing countries and economies in transition.

Corruption deserves special attention because it works in insidious ways. It tends to undermine the whole fabric of economic and political life. Thus, it is of extreme importance to establish and sustain correct behaviour in all procuring entities. Corruption, as defined by the World

Bank³, is the abuse of public office for private gain. Such behaviour by persons concerned with the procurement process often leads to economic losses for the public. Thus, many lose for the benefit of a few. Often there is some form of collusion between the purchasing and selling side. Responsible officials on the contracting side request -- or are induced -- to accept gratuities from bidders or contractors to make favourable award decisions. Such influence in the decision-making and executive processes of a country has legal, administrative and economic costs.

Also, market-based systems work best when constructive pressure exists to change and improve pricing, quality, or performance of a product, or to otherwise satisfy customer needs. If a competitor arranges to minimise market pressures by relying on personal contacts, bribes or other means to "influence" the system, both parties are diminished. First of all, the public sector (buyer) will most likely receive a less satisfactory product to meet the public need at a price not in keeping with market forces. Second, the contractor (seller) loses initiative and energy to make its product or service more competitive (with consequent distortions of internal management and resource-allocation decisions, such as the level of research and development actually needed to maintain market share in the global marketplace).

The public's trust in government to operate efficiently on its behalf is always being tested. Even with the strongest controls and the highest intentions, an organisation can suffer a breach of trust due to selfish actions of individuals. The existence of such breaches will not necessarily destroy the system, although failure to expose the wrongdoing and take corrective action will, over the long run.

C. Initiatives of International Financing Institutions

The World Bank is assisting countries to reform procurement procedures and streamline them to conform to internationally acceptable principles, such as those developed with the UN Agencies and Multilateral Development Banks. The World Bank systematically undertakes country procurement assessment reviews to study the national procurement procedures and practices of their borrowing countries. The Bank also supports the adoption by its borrowing countries of legislation and regulations based on the UNCITRAL Model Law for Public Procurement.

Procurement is always identified as a major problem area, where cumbersome procedures slow down project execution. For the World Bank, good regulations are indispensable and should be characterised by equability, transparency and predictability. Procurement should not be a bureaucratic process, but a framework for professionals to organise their work and deliver their services efficiently.

The African Development Bank is committed to assist its member countries in the implementation of structural reforms to improve public procurement systems as well as the development of intra-Africa trade. The ADB's approach to public procurement reform is to work closely with recipient governments to encourage greater investments in training to create a corps of well-trained procurement specialists.

D. External Investment and Other Resource Needs

Transparent procedures can help attract more investment by lowering risk. A transparent procurement system allows competing private enterprises to judge the risk of doing business

³ *Helping Countries Combat Improper, wasteful and corrupt*, Poverty Reduction and Economic Management Network, The World Bank, Washington, DC September 1997. Page 8

with the government. They can make more realistic economic investment decisions where government procurement policies are in line with good commercial practice and public accountability requirements.

International organisations and external donors also have an interest in public procurement, since control of expenditures through an accountable means is essential in explaining to their legislatures and Boards of Directors how development assistance funds were used. As foreign assistance budgets are reduced in many donor countries, there will be more pressure to ensure that recipient countries are wisely spending increasingly scarce donor resources. Those countries with inadequate controls will face increasing difficulties with donors.

If a country's public procurement and accounting procedures improve, it could allow donors to grant untied aid to give more flexibility in how recipient countries spend the contributions. The need for accountability normally leads donors to impose specific procurement rules on recipient countries to ensure that generally accepted procurement practices are being followed. This can have the effect of splitting a country's professional procurement workforce into small, less efficient units as they specialise in specific procedures agreed with the donors. A more common donor approach to procurement rules could ease the burden on a country's scarce personnel resources and improve internal and external efficiencies. However, this is unlikely to happen unless there is a high level of commitment by the government to take the reform process seriously, interact with procurement experts, and implement proper decisions.

E. Support for the Domestic Supplier Base

Improved techniques for buying goods and services using modern quality standards and business practices can help improve the efficiency of local suppliers as they compete for government contracts. Such improvements in efficiency can enhance trade prospects by making these suppliers more acceptable vendors to global business partners. Inefficient government suppliers, on the other hand, not only provide poor value to their national government, but will be unlikely to engage in any meaningful private sector trading partnerships as the forces of global competition reduce sales opportunities. For governments, such efficiencies can directly translate into the acquisition of additional goods and services to meet national needs, funding of higher priority programs, or even reduced taxes on the public, which aid development.

F. Potential for Expanded Intra-Africa Trade

Traditionally, about two thirds of Sub-Saharan Africa's exports are bound for industrialised countries. In return, the region purchases around 60% of its imports from these nations. Sub-Saharan Africa's imports totalled US\$ 76 billion in 1995, 7% of which were intra-regional. ITC is working with partner countries to boost intra-regional trade as a means of trade promotion and, consequently, the facilitation of regional development such as the Common Market for Eastern and Southern Africa (COMESA)⁴.

COMESA is just one of several trade agreements within Africa, but their approach to regional public procurement reform may be of interest to other groups. COMESA aims to fully integrate the countries of eastern and southern Africa into an economic union through trade and investment. COMESA's immediate aim is to achieve a Free Trade Area by October 2000 and a Customs Union in the year 2004. Currently, the members of the regional grouping are extending preferential duty rates for trade among themselves. Tariff reduction is advanced, with most members extending tariff preferences to COMESA-originating products based on 80% or 90% tariff reduction of the national tariffs. As the region gets more integrated and trade more liberalised, the need to ensure fair and open trade will be greater. COMESA has

⁴ COMESA member states are: *Angola, Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe*

determined that in order to enhance competition in both private and public procurement arrangements, it is essential that regulations and procurement procedures be harmonised across the Free Trade Area. Alongside the reform and harmonisation of public procurement, COMESA is in the process of formulating a regional competition policy to guard against cross-border collusion, monopolistic and other unfair trade practices. Reforms to public procurement in COMESA shall also take these principles into account.

III. Estimating the Size of the Procurement Market in Africa

How big is the public procurement marketplace? This is a difficult question to answer with any certainty because statistics are not maintained in an easily integrated fashion. Anecdotally, we know the market is quite large. The European Union estimates that the public procurement marketplace at all levels of government in member states involves about \$1,000 billion annually. The United States spends about \$200 billion annually at the federal level while another \$400 billion is estimated to be spent at the state and local level.

Determining the level of procurement in most countries is inexact at best. Most governments do not keep good statistics. Public procurement is decentralised in many countries among many ministries and, increasingly, between central and sub-central levels of government. Because of the difficulty in judging the scope of the marketplace, ITC invited Dr. Federico Trionfetti of the London School of Economics to build on earlier research on public procurement markets to help size the potential scope of public procurement.

Despite the difficulties in measurement, international comparison covering a wide set of countries is possible when one considers central government procurement only. Trionfetti found that the size of central government purchases varies between five percent (5%) and eight percent (8%) of GDP for most industrialised countries. For the Middle East and Africa, the magnitude of central government purchases ranges from between nine percent (9%) and thirteen percent (13%) of GDP.

This work has provided a means for estimating the total public procurement base for Africa, when the range of percentages are applied to known estimates of GDP. Using the nominal GDP figures⁵ available in the World Bank publication "African Development Indicators", Table 1 indicates a range of \$30 to \$43 billion which could be available in the public procurement marketplace in Sub-Sahara Africa. While South Africa and Nigeria dominate the total with from \$16 – \$23 billion of this amount, there still could be a significant \$13 - \$19 billion associated with the remaining countries.

⁵ Table 2-5. Gross domestic product, nominal; African Development Indicators 1998/99. World Bank. Washington

Table 1 - Estimated Range of Public Procurement Expenditures in Africa

	1997GDP *	Estimated 9% level	Estimated 13% level
Millions of U.S.\$, current prices			
Sub-Sahara Africa	329,731	29,676	42,865
Excluding South Africa	200,637	18,057	26,083
Excluding South Africa & Nigeria	148,484	13,364	19,303
Angola	7,662	690	996
Benin	2,137	192	278
Botswana	4,696	423	610
Burkina Faso	2,441	220	317
Burundi	1,237	111	161
Cameroon	9,115	820	1,185
Cape Vert	426	38	55
Central African Republic	1,019	92	132
Chad	1,603	144	208
Comoros	194	17	25
Congo, Dem. Rep. Of	6,101	549	793
Congo, Rep. Of	2,298	207	299
Côte d'Ivoire	10,251	923	1,333
Djibouti	500	45	65
Equatorial Guinea	487	44	63
Eritrea	643	58	84
Ethiopia	6,381	574	830
Gabon	5,153	464	670
Gambia, The	407	37	53
Ghana	6,762	609	879
Guinea	3,998	360	520
Guinea-Bissau	265	24	34
Kenya	10,240	922	1,331
Lesotho	950	86	124
Liberia	Not Available		
Madagascar	3,552	320	462
Malawi	2,424	218	315
Mali	2,532	228	329
Mauritania	1,098	99	143
Mauritius	4,398	396	572
Mozambique	2,753	248	358
Namibia	Not Available		
Niger	1,858	167	242
Nigeria	52,153	4,694	6,780
Rwanda	1,863	168	242
São Tomé and Príncipe	44	4	6
Senegal	4,554	410	592
Seychelles	538	48	70
Sierra Leone	Not Available		
Somalia	Not Available		
South Africa	129,094	11,618	16,782
Sudan	10,050	905	1,307
Swaziland	1,242	112	161

Tanzania	6,707	604	872
Togo	1,474	133	192
Uganda	6,571	591	854
Zambia	4,051	365	527
Zimbabwe	8,907	802	1,158
North Africa	173,528	15,617	22,560
Algeria	45,997	4,140	5,980
Egypt, Arab Rep.	75,482	6,793	9,813
Libya	Not Available		
Morocco	33,258	2,993	4,324
Tunisia	18,791	1,691	2,443
All Africa	504,357	45,392	65,566

IV. Overview of Public Procurement Systems in Africa

Given the significance of the resources controlled through public procurement systems and the need for improvement, the World Bank, the African Development Bank, the United Nations Development Programme (UNDP) and ITC agreed to co-sponsor a Conference on Public Procurement Reform in Abidjan, Côte d'Ivoire, (hereafter referred to as the Abidjan Conference) from 30 November to 4 December 1998. The conference was attended by procurement officials from more than 30 African countries, as well as donors and other institutions concerned with public procurement world-wide. The Abidjan Conference helped to stimulate a fresh look at procurement in many of the countries. Through questionnaires, briefings and discussion, a representative image of public procurement operations in selected African countries emerged from the Conference.

The Conference provided information and insight into procurement systems in Africa in two ways:

1. Through responses to an ITC questionnaire provided to participants prior to the Conference⁶; and,
2. Through direct presentations or interventions at the Conference by participants.

A. Responses to the Questionnaire

To help stimulate a dialog within the countries of Africa on the role and importance of public procurement, ITC developed a questionnaire to obtain some insight into the current characteristics of participants' procurement systems. The World Bank, through its Country Procurement Assessment Reviews, was the source for many of the questions. The following highlights of responses provide insight into the general state of matters affecting public procurement in Africa today.

1. Legal framework and procurement methods

The responses indicated that in a number of States, the legal framework is unclear and may not be comprehensive enough for effective management of the system. Some States admitted that their current system precluded innovative techniques, such as consignment stocking and strategic alliances. Updates may be needed also to enact rules governing implementation of "build-operate-transfer" type of privately financed

⁶ The questionnaire results were summarised by Mr. Simeon Sahaydachny, formerly of UNCITRAL.

infrastructure projects. Several States should update regulations and the organisation for the management of public procurement, taking into account the UNCITRAL Model Law on Procurement⁷. Some responses implied potential problems in:

- crafting specific bid evaluation criteria;
- the lack of procedures for bid evaluation;

2. Information and transparency aspects

Several states indicated:

- a failure in individual procurement proceedings to pre-determine and disclose in advance the award criteria; and
- the imposition of discretion by the concerned Minister
- that procurement rules are not always followed in practice;
- that the application of competitive and transparent methods of procurement needs to be broadened; and
- that information about public procurement performance (e.g., number of bids received, number of contracts awarded, names of successful) is usually not available.

3. Rules of conduct and accountability

While rules seem to be in place, the effect of their implementation can be questioned. Some States reported not having any conflict of interest rules at all. Only a few States reported that they had anti-corruption provisions in place in various types of legislation (e.g., criminal and civil codes, anti-corruption acts, civil service laws). Enforcement organs mentioned included ombudsmen, anti-corruption bureaus, State auditors and comptrollers. One response pointed to insufficient resources for policing. Several States reported a lack of anti bribery laws (including specific rules concerning bribery of Government officials), or of enforcement of the laws that exist.

4. Preferential treatment of local bidders

Most States reported applying some sort of preference in favour of their own nationals or national goods. Differences appear to exist in the amount of the preference, whether it was applied as a mandatory procedure or at the option of the procuring entity or other authority in planning individual procurement proceedings, and whether the law or regulations specified particular categories of national bidders. Some responses related to sub-categories of nationals eligible for preferential treatment, in particular small and medium sized enterprises.

5. Institutional and administrative arrangements

In almost all cases reported, the central procurement authority is involved operationally in the conduct of procurement proceedings. Such operational activity ranges from sitting on evaluation committees, serving as the adjudicator body, or procuring country-wide or common use items. This creates an overlap between the operational and regulatory functions to the detriment of regulatory independence. In effect, the regulator and regulated become one, with the regulatory function subject to pressure and potential conflicts of interest.

6. Upgrading of human resources and capacity

Quite a few States responded that there were no particular professional requirements. Other States responded by identifying a minimum civil service rank required for

⁷ United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services with Guide to Enactment. United Nations, New York, 1995

performance of procurement functions. Some other responses identified a familiarity with procurement rules and procedures, or "on the job training", as the standard. No mention was made of any university degree requirement or study background in the fields of purchasing or supply and materials management.

B. Participant Descriptions of Selected Procurement Systems

The Conference allowed the participants to describe for themselves their present plans and needs for building value into their national budgets through improved procurement operations. Several participants at the Conference took the opportunity to describe their efforts in reform of their public procurement systems. This information is useful in itself as a description by the countries themselves of what they feel is important. However, since there was no format or order to the presentations, placing these selected presentations within a logical framework for review of public management initiatives will enhance our understanding of how these activities can fit within an overall process of reform. The framework we are using below for this purpose was developed by ITC as part of our work in preparing a guide⁸ on the use of public procurement to assist small and medium enterprises (SMEs). After each of the nine elements of the policy review framework, there are examples of specific text based on the report of proceedings of the Abidjan Conference that help expand the point of the element under discussion. Such a framework could be useful in helping to articulate a nation's position and negotiation objective involving government programs.

Commitment:

The key aspects of commitment are that it should be *credible* and *consensual*. The major components of building credible commitment in a consensual manner depend very much on the country in question. But, they include establishing a sound legal and policy environment, identifying potential participants, disseminating information, consulting with interested parties, and collaborating among the government, trading partners, international financial institutions and industry groups.

SOUTH AFRICA

In 1994, the new Government of South Africa identified an urgent need for public sector procurement reform. After an initial review of the regulatory environment, the government undertook a fundamental review of the entire public procurement system, discussing the subject with various stakeholders. In February 1995, this resulted in a joint initiative of the Ministry of Public Works and the Ministry of Finance to transform public sector procurement policy and systems in the country.

UGANDA

Public procurement reform in Uganda is now part of the policy package to eradicate poverty in the country through the re-orientation of government spending in critical sectors. In order to achieve and maintain greater savings, public procurement reform will be made effective at the central and district levels in conjunction with the anti-corruption effort led by the President's office.

KENYA

A team was established in 1998 for public procurement reform. The national steering committee participating in the policy review is composed of high-level officials, including the Permanent Secretaries in Finance, Public Works and Housing, Education, Research and Technical Training, Commissioner General of Kenya, Inspector General, Heads of Post and Telecommunication, and the

⁸ SME and Export-Led Growth: Are there Roles for Public Procurement Programmes?, International Trade Centre, Geneva 1999. Principle Author - Dr. John Linerelli, Aberstwyth University.

town clerk of the City of Nairobi. The World Bank is also represented on the team.

Reforms focus on addressing procurement laws (e.g., codifying laws and ensuring that tariff and procurement laws are streamlined together); establishing appropriate procurement institutions and entities; and setting-up adequate and timely evaluation and monitoring mechanisms. With an 18 to 24 month time frame, reforms will be subject to the approval and passage of legislation of the Parliament. The estimated budget appropriation for this effort is \$400,000, with staff provided from the Ministry of Finance.

The reforms are to create a system that includes among others, proper delegation of authority, incentives, procurement thresholds, planning, and supplies manuals.

Baseline institutional capacity:

How well a government can deliver results depends in large part on its ability to monitor, audit and enforce government policy and programme effectiveness. It may be difficult or impracticable to achieve value through the procurement system if required government institutions are absent or weak. A country could "baseline" its institutional capacity to describe its current system and compare this against existing models in other developing or developed countries. A baseline provides information on what a government can realistically do and expect. What can be accomplished and the way it is accomplished depend on the institutions in a given country.

SOUTH AFRICA

A preliminary review of the existing procurement policies and systems indicated a skewed nature of tender awards to the larger, more established companies that obtained most of the public sector contracts. Further, the participation of small and medium enterprises in public sector procurement, and in particular those enterprises owned and controlled by previously disadvantaged individuals (i.e. persons who did not have political franchise prior to the 1994 elections) was negligible. To address these problems, an interim improvement plan was developed for short-term effect and a green paper on public procurement conceived to deal with longer-term issues.

UGANDA

The Government established an inter-ministerial Task Force on Public Procurement Reform in 1998 under the leadership of the Minister of Finance. After considerable discussion with stakeholders in the public and private sector, the Task Force identified several deficiencies in the procurement system:

Procurement and Trade Practices: The use of international trade terms is a new phenomenon that has not taken root in the business community of Uganda. For example, INCOTERMS⁹ are generally not used and understood by the private sector. Further, trade practices in public procurement are characterised by malpractice, such as over-invoicing and inadequate official documentation;

⁹ International Rules for the interpretation of trade terms published by the International Chamber of Commerce, Paris, France (publication number 460)

Financial Framework: High interest rates hinder access to credit. Bidders also find the requirement for bid bonds at 10% of the face value of the bid to be too high, preventing them from participating in the tenders;

Procurement Training System and Institutions: The procurement profession is currently not part of the Civil Service, and is not held in high regard in the country. In addition, in-service procurement training is not available domestically, which further inhibits development of a core of procurement professionals; and

Procurement Procedures: Goods, services or works are obtained through public advertising locally and internationally. However, there are no standard contract documents for use in procuring goods, works or other types of contracts. The system is also segmented, with functions and decisions decentralised, and with differing rules applying to various entities. There is no single unit with the responsibility to issue, update, educate and monitor compliance with public procurement guidelines.

Legal and regulatory structure:

The kinds of legal instruments that will be required to implement the public procurement programme will depend on the country in question. Public procurement rules are typically implemented in legislation promulgated by a legislature in the form of a statute or code. Some countries will adopt regulations to provide additional detail to implement the legislation. Depending on the legal system, regulation may or may not require authorisation in legislation or in a constitution. In some states, an executive branch of the government, through circulars, guidance or executive orders, may implement procurement programmes with a minimum of legislative authority.

GUINEA

In Guinea, the main elements of public procurement reform were undertaken with the help of the World Bank. Reforms were primarily introduced to increase transparency in the public procurement system and responsible agencies. In 1998, a new public procurement code was enacted to correct shortcomings in the system. Highlights of this new code are:

- *Foster more open competition to buy more and better requirements for less money. With greater openness, reforms are expected to result in more transparency and efficiency in the system. A streamlined process, using scientific evaluation criteria, allows greater control of expenses and limits the use of direct purchase.*
- *Emphasis on economic development - to facilitate Guinean enterprises in the procurement process through various modalities, such as allowing SMEs to compete by building in subcontracting components and waiver exemptions, obtaining guarantees from banks, and short-listing.*
- *Improve information dissemination and enhance transparency – includes advertising in public procurement journal and issuance of*

general procurement notices.

- *Clarify authority of procurement department and ministries to reduce fragmentation.*
- *Reduce the number of tender boards to decrease delay and opportunities for corruption.*
- *Streamline various approval levels to the barest minimum to facilitate accountability by assigning specific responsibility to individuals at each level.*
- *Encourage sanctions - for misconduct and malpractice.*

SOUTH AFRICA

One interesting top-down approach to good governance can be found in South Africa. This country has included the need for fair public procurement practices in the nation's constitution.¹⁰ While this is unique among the African countries which participated in the ITC survey, South Africa's emphasis on ensuring that its system of contracts is "fair, equitable, transparent, competitive and cost effective" provides a modern example of the importance of public procurement.

Organisation:

Some public body or combination of public bodies has to "own" the programme. To the extent that the public procurement system is used to implement other public programmes, like international trade promotion, conflicts with efficiency or value for money goals as represented in individual ministries may arise and a distinct public body may be appropriate. The kinds of organisations that are appropriate and the powers that they will possess will depend on the baseline of institutional capacity for a given country, and on the resource constraints within the country's system of public finance and governance.

UGANDA

The Task Force for Public Procurement Reform has recommended that a National Public Procurement Unit be established as the central organ of state administration on all matters of public procurement, including:

- 1) presenting an annual report to the Council of Ministers concerning the functioning of the public procurement system;*
- 2) preparing drafts of Acts and regulations concerning public procurement;*

6 Section 217 of the Constitution of the Republic of South Africa, 1996 (Act no. 108 of 1996) reads as follows: When an organ of the state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective. Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for:- categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. (3) National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.

3) disseminating, at the request of and in co-ordination with appropriate Ministers, the general conditions and forms of contracts for public procurements, the rules and standard procedures for conducting procurements;

4) collecting information about procurement planning, signed contracts, and performance of public procurements;

5) preparing training programs, and conducting and encouraging training concerning public procurements;

6) international co-operation on matters associated with public procurements;

7) organising a system of publication of public procurements

8) recommending to the Minister matters of consolidation of procuring agency requirements to achieve value for money

9) requiring the procuring entities to provide information about conducting public procurement proceedings and performing public procurements as well as disclosing the documentation of public procurements.

10) notifying the relevant jurisdiction body, in case of discovery of a breach of provisions hereunder.

Implementing guidelines:

In addition to a legal or regulatory framework, a more detailed and rudimentary set of guidelines may be necessary to ensure that the law or regulation is "operationalised" to the level of the particular government bodies that will be responsible for carrying out procurement policies.

SOUTH AFRICA

The Ten Point Plan on Procurement is a series of interim interventions primarily aimed at increasing the participation of small and medium enterprises, in particular those enterprises owned by previously disadvantaged people, in public sector procurement opportunities. The 10 Point Plan (Interim Strategies) remains Government's current procurement policy while the new policy is being finalised and legislated.

10 POINT PLAN:

This plan encompass the following policy implementation points:

1. *Improving access to tendering information.*
2. *Developing tender advice centres.*
3. *Broadening the participation base for contracts less than R7, 500.*
4. *Waiving security/sureties on construction contracts having a value of less than R100 000.*
5. *Unbundling of large projects into smaller contracts.*
6. *Promoting early payment cycles by government.*

7. *Developing a preference system for small and medium enterprises owned by historically disadvantaged individuals.*
8. *Simplifying tender submission requirements.*
9. *Appointing a procurement ombudsman.*
10. *Classifying building and engineering contracts.*

Training:

Training is an important element in the success of public procurement programmes. Two important audiences for training are (1) government managers; and (2) managers of government suppliers. Training should be based on local conditions and should be accessible locally.

UGANDA

The Task Force for Public Procurement Reform has recommended that a procurement professionalism programme be established involving:

- *Adoption of a Public Sector Code of Business Ethics all its employees, and*
- *Implementation of an Eight-Step Professional Procurement Development Plan to Focus responsibility for the procurement workforce.*
 1. *Identify professional performance standards and internationally accepted certification requirements.*
 2. *Identify members of a training network.*
 3. *Establish and co-ordinate nation-wide plans for training.*
 4. *Write or tailor course materials, encouraging participation by training network members.*
 5. *Distribute final course material to all members of the training network.*
 6. *Identify financial resources for training.*
 7. *Monitor success of the training program.*

Measurement of results:

Measurement and data collection efforts should be devised to ensure that the procurement system could be evaluated on the basis of effectiveness and not merely on inputs. The lack of rigorous statistical measures is particularly acute in developing and transitioning economies. Data not only need to be collected in well-accepted and unbiased ways; they should also be assessed based on established credible measures. Success should be (1) defined to assure commitments are met; and (2) measured on the basis of the agreed-upon definitions.

SOUTH AFRICA

The goal of continuous improvement in public sector procurement requires a clear lead and strong commitment through sound management practices. This, together with the basic values and principles governing public administration as enshrined in the new South African constitution, provided a framework to develop sound organisational and institutional arrangements that will result in a public procurement system which becomes more efficient and effective.

Evaluation and review:

Governments should be prepared to evaluate the public procurement system's effectiveness to deliver value and meet national goals periodically

UGANDA

Based on a review of the current public procurement programme, the principal recommendations the Task Force for Public Procurement Reform involve:

- *Replacing the current Public Finance (Tender Board) Regulations with a set of rules that, among others: makes economy and efficiency the primary purpose of public procurement to be carried out in a fair, transparent and non-discriminatory manner; defines procedures with preference for competitive methods; assigns primary responsibility to procuring entity with funds appropriated;*
- *Establishing a senior level National Procurement Policy Unit in the Ministry of Finance with specified responsibilities;*
- *Adopting a code of ethics for all public employees;*
- *Implementing a phased plan for professional procurement development; and*
- *Standardising procurement processes and developing improved management of information through electronic commerce.*

Modification or abandonment as necessary:

Governments should adapt and be prepared to modify or even abandon programmes implemented through the procurement system which are ineffective, as well as change the system as a whole. Programme reform is often difficult not for policy reasons, but for political reasons. When a government reaches this stage, it loops back to step 1, Commitment.

KENYA

In Kenya, public procurement used to be undertaken by external entities, such as Crown Agents in the 1970s. With increasing procurement needs, this responsibility has been passed over to the various ministries, and regulations compiled in a manual under the Ministry of Finance. However, due to financial constraints, the Government realised that regulations as they existed in the manual were still deficient, and hindered its ability to use donor funds. In 1997, the Government commissioned a study assessing the country's procurement processes and systems, which identified the need for a comprehensive review and consequently the development and implementation of a reform process.

V. The Road to Reform

The ITC strategy for public procurement involves a multi-faceted programme to make changes that support and reinforce improvement actions. The first step we recommend is that the country undertake a comprehensive review of the present procurement system. Through this internal review, we seek to identify needed adjustments in the legal, organisational and professional resources of the country to make the system more effective. An effective international model that has been applied successfully in developed as well as developing countries has the following elements:

- A legal or regulatory framework with implementing guidelines.

- A means to monitor compliance with the law and regulations.
- A responsible manager of the public procurement system to measure its performance, advise political leaders of its successes and deficiencies, improve it as necessary, and assist procuring entities in their buying operations.
- Standard terms and contracts.
- Open and advertised tenders.
- A means to identify and take advantage of potential economies of scale - such as grouping various Ministry requirements, like vehicles, to obtain the best price.
- High levels of procurement professionalism and buying expertise in each procuring entity developed through organised staff training.

This approach was examined at the Abidjan Conference during a series workshops on issues related to building a reform program. Out of these workshops came a consensus on the steps needed to put in place a program for reform to build a responsive procurement management infrastructure. In addition, a sub theme of the Conference was to promote greater intra-Africa trade via public procurement among the participants. Taken together, this Abidjan Consensus Document provides a blueprint for reform in all countries.

Abidjan Consensus Document

The Conference on Public Procurement Reform in Africa, Abidjan, Côte d'Ivoire, December 1998

The Conference as a whole agreed that:

Building Support for Reform - requires

Political endorsement and commitment

A strategy for developing enabling legislation, organisations and regulations

Well trained and competent procurement officials

Informed, willing and supportive business and professional sectors at both the local and international levels

Demonstrating Political Commitment - is needed to effect changes and

Obtain public support

Obtain government staff endorsement

Prioritise key elements of procurement, such as transparency, anti-corruption, etc.

Promote socio-economic objectives

Keep Parliament advised

Reassure potential donors

Obtaining Resources for Reform – is needed to help prepare a business plan to implement key objectives of the reform.

Potential Sources of Funds to conduct reform are:

The country's own resources (Government and/or private sector)

Multilateral agencies such as the African Development Bank, the World Bank or the United Nations Development Programme grants and loans available under terms of regional and bilateral agreements

Potential partners to provide support for implementation of reforms are:

National resources (such as public authorities, business and professional organisations)

Bilateral and multilateral donor agencies

International Trade Centre and other United Nations organisations to build capacity

Other countries able to share information or exchange (second) staff

Detailing A Strategy For Reform - is needed to address how to self-initiate reforms (with donor assistance as needed) to

Build local capacity and transfer skills

Designate leader/champion of reform

Integrate reform within macro economic framework

Monitor and evaluate reform efforts

Maximise national expertise (complemented by external resources)

Obtain media support to promote acceptance of reform

Communicate national commitment and progress

Ensure clear, understandable goals (reform not an end in itself)

Anticipate obstacles and barriers and quickly overcome them

Communicating the Strategy - is needed to:

Set a vision (e.g. "Obtain more value for money through an efficient and internationally accepted procurement system")

Establish goals to fulfill the vision, involving areas such as:

Anti-corruption measures

Transparency enhancement

Economy in purchasing

Improved accountability of funds

Sustainable human development

Business opportunity

Harmonisation of procurement policies and procedures

Changing organisation structures

Accelerated economic growth (as a % of GNP)

Clearer government communication to private sector participants of the system

More effective trade policies (promote more intra-regional trade)

Promotion of socio-economic objectives

Identify the leader or champion of the reform effort with the required political weight to carry out an effective program, such as the President of the country or Prime Minister or Minister of Finance

Identify Stakeholders in the process and obtain their advice. Stakeholders normally include individuals in the following areas:

Line Ministries and buying agencies

Finance and Justice Ministries

Private sector organisations

Donors/international organisations

Parliamentarians

- Make specific changes in the following areas to support reform:

Legal framework (conform where possible to the UNCITRAL Model Law on Public Procurement)

Procurement operations (create decentralised procurement entities with the authority to do the actual buying operations following centralised policy)

Regulatory bodies (assure effective audit and review capability of contracting and expenditures)

Organisational structure (specific ministry and office structure dependent on each country)

Procurement policy at center of government level (management office to formulate policy and regulations and measure the effectiveness of the public procurement system and its operation)

Professional infrastructure (help establish and train a cadre of professional procurement officials) including a reference knowledge base of best practices

- Develop a means to measure performance (to show savings and collect essential data) of the reformed system - needed to:

Assure political leaders and the public that reforms are effective

Adjust policies to make the reforms as effective as possible.

VI. Conclusion

Public procurement systems can be on opposite poles -- they can either add value to the economy or siphon it away into corrupt, wasteful or unethical purposes. Few countries - developed or undeveloped - are at either one of these poles, yet, like people, many are at some point between perfection and perdition. Because of the domestic and international imperatives that are coalescing around the function of public procurement, all governments should have a clear understanding of where their system lies on this line.

The most effective way to understand the uses of a public procurement system vis-a-vis national goals and interests is to conduct a structured analysis of it. The information above, with examples from actual cases in Africa, is intended to help formulate that type of review and plan. How effectively a country can prepare and follow such a plan during the busy period ahead in the international trade community will depend on many things. But the one resource above all which will make the most difference in the task of enhancing values through improved procurement operations is a dedicated, trained, professional procurement workforce.

People are needed to translate management goals and policies into reality. Throughout the world, future demands on the procurement workforce are expected to be even more critical than they are today. As the economy of a developing country grows, its procurement requirements can be expected to become more complex. If procurement is to adequately support this growth, the procurement workforce must be able to make more informed judgments about the best items available in national and global markets to satisfy requirements within the government's policies.