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**COUNTRY PROCUREMENT ASSESSMENT REPORT**

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## 1. III ATTACHMENTS AND ANNEXES

**This third part discusses each of the major issues in more depth and is meant for those readers who would want additional details on these issues.**

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## **A .Data and in depth analysis on procurement in Mauritius**

### Public Sector

#### **1.Outline of legislative/regulatory framework**

##### 1. Main legislative and regulatory texts

Procurement in Mauritius is governed by two main legislative texts:

- The **Central Tender Board Act 2000**, which establishes a Central Tender Board (CTB) and sets forth its functions. This Act, although introduced in 2000, reestablishes a procurement system that has been in place for many years.
- The **Financial Management Manual (the Manual)** that dates from 1990. It elaborates the basic principles and procedures to be followed in day to day operations of Ministries and Departments when dealing with public funds. Various Ministry of Finance circulars have amended the Financial Management Manual, notably circular no. 6 of 1995 and circular no. 3 of 1997

In addition, a number of other texts have an impact on procurement, imports and exports: The Constitution, specifically section 110, contains the authority for the Director of Audit to audit public accounts.

The Finance and Audit Act sets forth the method of control and management of public money and property, and the duties and powers of the Director of Audit.

- Mauritius is a member of the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Organization of African Unity (OAU) and is a signatory to the Cotonou Agreement.
- Mauritius qualifies for unrestricted access to the USA market for certain textiles and manufactured goods under the Africa Growth and Opportunity Act

A list of legislation gathered during the mission is attached as Annex ... Furthermore, the Internet provides various texts such as the Constitution, the Companies Law etc.

##### 2. Introduction and abolition of the Public Procurement Transparency and Equity Act 1999

There was no fundamental dissatisfaction with the procurement system during the nineteen nineties, but a need was felt to modernize and go with the times which required among other things having more definite procurement rules. In the course of this natural evolution towards specificity, a consultant was engaged to draft a new procurement law, taking into account UNCITRAL principles. The new Public Procurement Transparency and Equity Act 1999 was introduced in 1999.

The changes introduced by the Public Procurement Transparency and Equity Act 1999 were twofold: they introduced explicit procedures for tendering and dispute resolution; and they reorganized the entities involved in procurement: all procurement above a threshold, including award, would be handled by or supervised by a central procurement

division within the Ministry of Finance. The CTB would have an administrative function. It would oversee procurement regulations, and arbitrate procurement disputes, but it would no longer review individual tender documents and award proposals.

These were far-going changes. When they were introduced in May 1999 after a very short transition time and without retraining or re-education, they provoked strong reactions. The various precise regulations on how to procure in the Act of 1999 were found to be less objectionable than the proposed institutional reorganization. Centralized review of an independent institution was deemed more suited than placing procurement review within the Ministry of Finance. A second criticism of the Act of 1999 was that it provided for too heavy a system, with the creation of too many committees whose members were not allowed to overlap. For a small country with a limited procurement capacity there were simply not enough people available with a sufficient level of procurement proficiency to staff all those committees. The new rules were ignored and, in October 2000, abolished in favor of a return to the previous system of decentralized procurement coupled with centralized review, as set forth in the Central Tender Board Act 2000.

### 3. Financial Management Manual (the Manual)

Written by the Ministry of Finance and updated from time to time by circulars of that Ministry, the Manual comes closest to a procurement law. However, the Manual applies solely to low value procurement of the central Government, i.e. to ministries and departments. In practice, the Manual's rules are widely extrapolated, interpreted, referred to and used by local authorities and state enterprises as well, both for low value and low value procurement.

- Its chapter 30 sets forth in detail how ministries and departments should acquire, handle and dispose of stores, i.e. goods up to a threshold of Rs 500,000.
- Chapter 20 of the Manual gives instructions for preparation of works estimates and specifications, and referral of works.
- Services of an intellectual nature are not addressed in the Manual. The services referred to are of a type where the works element dominates such as maintenance and printing etc.

### 4. Authority to handle central Government procurement according to the Manual

The Manual's amendment of 1995 applies mainly to open tendering. At the same time, the amendment abolished requests for quotations as a procurement method and replaced it with selective tendering. There is no specific description of how to tender selectively. In practice, selective tendering equals shopping or requesting quotations from suppliers on an approved list (Manual paragraph 30.4 – 50), but the quotations received are kept in a tender box and opened all at the same time.

<b>Amount</b>	<b>Method</b>	<b>Handled by</b>	<b>Applicable Procedures</b>	<b>Clearance</b>
Below Rs 20,000 (approx. US \$700 equiv.)	Direct purchase	Accounting officer	Manual	
From Rs 20,000 – 500,000 (approx. US\$700-18,000 equiv.)	Selective or public tendering (or even direct purchase)	Tender Committee of Ministry/Department	Manual	
Above Rs 500,000 (approx. US\$18,000 equiv.)	Not regulated. (in practice, public tendering)	Tender Committee of Ministry/Department	None (in practice, those of the Manual)	
Above Rs 1 million (approx. US\$36,000 equiv.)	Public tendering	Officially the Central Tender Board, in practice the Tender Committee of Ministry/Department	None (in practice, those of the Manual)	Central Tender Board

#### 5. Central Tender Board Act 2000

The Central Tender Board Act 2000 establishes a Central Tender Board (CTB) and broadly outlines its functions:

- establishing appropriate tender procedures;
- vetting tender documents;
- inviting tenders;
- receiving and open tenders;
- examining and evaluate tenders;
- approving the award of major contracts.

The Act's scope is much broader than that of the Financial Management Manual: the Act applies not only to the central government but also to large contracts of local authorities and listed state enterprises.

#### 6. The High Powered Committee (HPC)

The Government is aware that modernization of the procurement law remains necessary. The Central Tender Board Act 2000 is seen as a temporary measure, to bridge the gap until new, comprehensive procurement legislation can be introduced. To this end, the Government has instituted a High Powered Committee in February 2000. The Committee's mandate is to make recommendations for a new and modern procurement system that retains the best features of past and current laws. Under the chairmanship of the assistant Solicitor General, the committee, composed of high-level civil servants, will submit a report to the Prime Minister before the end of March 2002.

### 7. Interaction between the Manual and the CTB Act 2000

Because the CTB Act of 2000 has always had a somewhat provisional character – in anticipation of the High Powered Committee’s recommendations for changes in the legislation -, the CTB has not formally established appropriate tender procedures, as mandated by section 8 of the Act, although an attempt has been made by the Attorney General’s office to draft them. Similarly, the Prime Minister has not established further regulations and limited his amendment to raising the threshold of the CTB’s review. In the absence of CTB formalized tender procedures, the tendering rules of the Manual are extrapolated and used for tenders regardless of their value, although the rules of the Manual only apply to tenders valued at Rs 500,000 or less.

According to the Financial Management Manual, purchases over Rs 500,000 must be referred to the CTB for public tendering but according to the Central Tender Board Act 2000, the CTB is only consulted with regard to tenders with a minimum value of Rs 1 million. In practice, contracts between Rs 500,000 and 1 million are not reviewed by the CTB.

When a tender is estimated to value under Rs 500,000 but one bidder’s bid exceeds the Rs 500,000 limit, section 30.4-21H of the Manual provides that the tender be referred to the CTB. This is seldom done, especially where referral of tenders between Rs 500,000 and Rs 1 million is a gray area.

#### BOX

##### **Wastewater Management Authority**

Wastewater Management Authority was set up in September 2001 to operate wastewater assets belonging to the Government as Maitre d’ouvrage délégué, pursuant to a management contract. In the future, Wastewater is meant to outsource the operation and maintenance of sewerage and sanitation infrastructure to the private sector under standard contracts that are not prepared yet.

Wastewater has receipts from the rates for wastewater disposal charged to its customer, which cover its operation and maintenance. For the moment, depreciation and debt service are covered by the parent ministry, the Ministry of Public Utilities.

When making capital investments, Wastewater tenders on behalf of the government and it will check back with its parent ministry before tendering. It does not have a specific internal Board resolution on what kind of procurement procedures to use. Wastewater’s general manager has addressed this point in a Board paper, suggesting that Wastewater follow the same rules as those found in the central Government, i.e. those based on the Financial Management Manual. Wastewater is exempt from CTB control for its contracts below Rs25 million.

#### 8. New anti-corruption legislation

In parallel with the recommendations of the HPC, new legislation will be submitted to parliament in early February 2002. It will create an independent Financial Services Commission (modeled on the successful Hong Kong model) to oversee all non-banking financial bodies and in general, to promote fairness, efficiency and transparency and the protection of investors. The bill is supposed to contain rules concerning corruption in government including corruption in procurement, and money laundering.

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## 2. Outline of procurement procedures and practices

### Responsibility for tendering

- Responsibility for procurement of goods and services: Procurement of goods and services is handled by each beneficiary ministry.
- Responsibility for procurement of larger works: Most works (all works above Rs 1 million) are channeled through the Ministry of Public Infrastructure (MPI), as mandated by the Constitution and further detailed in the Manual. MPI prepares drawings, plans and estimates, tender and supervise while the beneficiary ministry retains financial control. Since August 2001, the part of MPI concerned with construction of roads has become the Roads Development Authority. The Authority's staff numbering around 450, is still paid by the MPI but in the future, is expected to earn its own money, maybe from user fees or taxes on gas, and from roadside advertising. The Authority currently does minor road works, patching of potholes, painting signs. In the future it will prepare tenders, either through in-house capacity or with the assistance of consultants. MPI now only does design and supervision of building construction. It employs architects, quantity surveyors and engineers. Once the client ministry has approved the design, MPI launches the tender. The tender is received and opened by the CTB. Evaluation is done by MPI. MPI supervises the works and certifies the work through its quantity surveyors. The bills are paid by the client ministry. MPI may, and often does, employ outside engineering firms to do the design, prepare tender documents and to supervise construction.
- Responsibility for procurement of smaller works: Exceptionally, contracts for works costing between Rs 20,000 and Rs 1 million may be either handled by the beneficiary ministry itself, or assigned to MPI. In case the beneficiary ministry decides to handle the tender itself, it may tender selectively and, after consultation with MPI, retain the services of private consultants for the preparation of plans and the supervision of works. Even then, MPI retains responsibility for the general supervision of works. MPI also carries out small maintenance works, either through force account or through small contractors after selective tendering.
- Joint purchasing: each entity or ministry does its own purchasing although joint purchase of common-use goods such as computers and other office equipment is sometimes proposed. Only the Ministry of Health still buys its drugs and medical supplies by means of annual tenders that provide for defined quantities and delivery dates. Another example is the joint purchase of milk powder for the Ministry of Health, the police and the prison department.
- Procurement planning: there is little procurement planning and although a formal exception to tendering on the basis of emergency doesn't exist, some public bodies are said to utilize lack of planning and the ensuing year-end pressure to

avoid tendering in favor of selective tendering or direct contracting. There is a marked bunching in the CTB's workload toward the end of the fiscal year.

### **Procurement method**

- Procurement method: there is a strong preference for (national) open tendering, even for low value contracts.
- Guiding principle: the Government is committed to obtaining best value for money in terms of price, quality and delivery, having regard to set specifications. This corresponds to the Bank's guiding principle of preference for the lowest evaluated bid.
- Slicing: notwithstanding the current very low threshold for both method of procurement and review, some slicing of contracts in the central government was reported by the Director of Audit. Lack of systematic analysis of procurement records prevented determination of the extent of the problem. The reasons given varied from avoidance of CTB review, urgency because of extraordinary circumstances or lack of procurement planning, to actively favoring existing suppliers rather than open up a tender to competition. The Financial Management Manual forbids slicing in order to make direct purchases (paragraph 30.4 – 24).
- Conflict between national legislation and rules of donors: although the legislation doesn't provide for a conflict rule, no conflicts are perceived between national rules and the requirements of a donor. Donor rules, when applicable, are observed scrupulously.

### **Bidders**

- Pre-qualification: there are no national rules on Pre-qualification. No Pre-qualification is carried out unless required by an international donor.
- Pre-selection: pre-selection of suppliers is done in case of selective tendering i.e. when inviting quotations for supplies and presumably for services as well, in tenders under Rs 500,000. The Manual provides for a relatively open procedure for the establishment of listed suppliers: Ministries and Departments are encouraged to give preference to suppliers who have demonstrated their ability to comply with delivery requirements and to maintain effective relationships with existing sources of supply while also developing other sources of supply either as alternatives or to meet emergencies or planned needs. The various procuring entities keep their own lists of suppliers and update them at random. In some ministries, the list remains relatively unchanged but the departmental tender committee will take pains to invite tenders from those on the list on a rotating basis. This practice goes back to a requirement in the Manual that was abolished in 1995.
- Discrimination of foreign bidders: The definition of a foreign company as one that is less than majority owned by Mauritians is thought to be set forth in a law from the year 1997, but no copy could be obtained during the mission. Three reasons were given for discrimination of foreign bidders:
  - When spare parts or after sale servicing is an important consideration, only local bidders can be counted on to actually provide after-sale service. This practice applies to procurement of most machines, cars, computers etc.

- Some foreign construction firms have brought in foreign laborers whom they paid lower wages than those paid to Mauritian labor (Mauritian labor earns well over the minimum wage, the only standard the foreign firms were obliged to observe).
- Foreign contractors have an unfair advantage over local contractors. When they bring in equipment on a temporary basis, they are free/exempt from import duties, whereas local firms have to import their equipment.
- Form of discrimination: Discrimination of foreign bidders takes the following forms:
  - Barring foreign companies from tendering outright. Most tenders, and certainly those financed from the national budget, will admit only national companies to tender, especially for supplies and services, if the tendering entity believes there is a chance that a local firm has the capacity to supply. If a foreign firm would have been able to obtain bidding documents, its bid would be rejected and discarded at bid opening, regardless whether the tender documents stated exclusion of foreign bidders or not.
  - Barring unregistered construction companies from tendering. In case of works, the MPI will recommend to the user ministry and the CTB to tender internationally or to invite tenders from registered (and thus only Mauritian) companies.
  - Granting a margin of preference. When both national and international companies are allowed to tender, national companies will benefit from a 10% margin of preference. The foreign companies, even when already installed in Mauritius, will not.
- Legislative basis for discrimination: Neither the practice of barring foreign companies from tendering, nor the 10% advantage are mandated by written rules. The regulations (Public Procurement, Transparency and Equity Regulations 2000, concerning Domestic Preference and Registration of Suppliers) which provided for them were repealed by passage of the Central Tender Board Act 2000.
- Classification of contractors: preselection for all works contracts, regardless of value, is done on the basis of classification of contractors. The Minister of Public Infrastructure keeps a register of Mauritian construction companies, divided into categories ranging from the best qualified ones that are able to construct bridges and multistoried buildings, to small companies that can be entrusted with maintenance work. The register lists only national firms.

### BOX

#### **Construction Industry Development Board**

The Construction Industry Development Board (CIDB) was established in 1997. Modeled on a similar agency in Singapore, the CIDB consists of an equal number of members from the public and the private sector.

A report and draft regulations currently circulating in Government recommends that the CIDB review and

upgrade the classification of contractors and construction-related service providers and deal with their disqualification. The regulations provide for registration of national firms (majority Mauritian owned) and contains a grandfather clause which would allow foreign companies (meaning those with a majority foreign ownership) that have had a presence in Mauritius for at least ten years to register and thus tender in national tenders, after obtaining a derogation on a case by case basis. However, it mandates the registration and payment of fees to the CIDB as a pre-requisite to participation to any tendering process. This a source of discrimination and limitation of outside competition, and the final version of bill should provide that competitors will be allowed to bid if they provide prima facie evidence of their qualification. Only when they are considered for award should they then be required to complete the registration formalities.

- Blacklisting of bidders: Blacklisting of suppliers and contractors is already envisaged in the procurement legislation but not clad with the necessary safeguards. In paragraph 30.4 – 90, the Manual provides that the secretary of a departmental tender committee shall keep a register of suppliers and contractors who have been in breach of contract or failed to give satisfaction in respect of a contract. Such bidders are not barred from tendering but the breach or failure “shall be taken into account” by the tender committee. In practice, this means that the tender will be disqualified at bid opening. When the CTB notices that in the evaluation a ministry has disqualified a bidder on the basis of bad past performance, they’ll ask for evidence before allowing disqualification.
- Favoring of Government-related contractors: In the past, schoolbooks have been ordered directly from a private company in which the Government has a participation, rather than through open tender. The Development works Corporation benefits from a special exception in the Central Tender Board Act 2000: A public body can directly contract with the DWC without tendering and without consulting the CTB. If the DWC thus obtains a contract and then subcontracts it out, only subcontracts with a value of Rs 10 million have to be submitted to the CTB.

#### **DWC**

The Development Works Corporation (DWC), set up approximately thirty years ago to provide simple work for the unemployed in return for minimal payment (akin to various public works schemes elsewhere in the world during depression years), currently employs approximately 2000 person who get paid a minimal daily wage, whether they work or not. The DWC is financed by a direct transfer (Rs 90 million in 1999) from the Ministry of Public Infrastructure’s budget.

DWC acts as a private sector contractor. The decision to contract directly with the DWC or to go for open tender is a political one, made at the ministerial level. The prices offered by DWC are similar to those asked by the private sector, but the quality of its work is not estimated very highly. Procuring entities feel, rightly or wrongly, that it would be politically incorrect to apply contractual penalties to DWC.

Regardless of whether DWC still fulfills the social function for which it was set up and whether the current labor situation justifies its continuation, its privileged status gives it an advantage over private sector companies that do not benefit from state-subsidized wages and that have to compete in tenders.

### **Bidding documents**

- Time for preparation of bids: an adequate time period for bidders to prepare their bids is observed. Although no specific time limits are set in the legislation, the CTB recommends a minimum of three weeks between publication of a tender notice and closing of the tender. In complicated cases, four weeks is seen as more appropriate and in case of overseas (international) tenders, eight weeks will be allowed to bid.
- Bid security: bid bonds for smaller contracts (those below Rs 1 million), may be required but in practice never are. For larger contracts, bid bonds are set as a fixed amount, up to 5% of estimated contract value. Neither bid bonds nor performance bonds are difficult to obtain.
- Advertising: the Manual requires advertising of a tender in the Government Gazette and at least two daily, local newspapers. When international advertising is called for (mainly in the framework of a donor-financed project) advertisements will be placed by the tendering entity in Development Business and international newspapers. Advertisements are vetted by the CTB as part of its review of bidding documents. Vetting may take up to a month.
- Objectivity of specifications: in case bidders protest specifications, the tender procedure may be stopped, new specifications written and the tender reissued.
- Evaluation criteria: Evaluation criteria are often are stated globally ('The experience of the supplier in similar contracts shall be taken into account'). Quantification of criteria is not always announced in the tender documents.

### **Bid opening and evaluation**

- Bid reception: Bids below Rs 1 million are received by the tendering ministry and kept in accordance with the detailed instruction of sections 30.4 – 53 through 58 of the Manual. Bids over Rs 1 million are received by the CTB. All bids received by the CTB during a time period go into one box. At the appointed day, the tender box is opened and CTB sorts out the tenders to be opened that day. The rest is put back in the box.
- Bid opening: Some ministries open their tenders (the ones that fall below the threshold for CTB opening and review) in public, others do not. In the case of external financing, when donors insist on public bid opening, this is done and done

correctly. Out of around 1500 tenders in fiscal year 2001, 51 were opened in public. Otherwise the CTB opens most of its tenders in closed session, about half an hour after closing of the tendering period. Once opened, the tenders are kept overnight and transferred the next day by the CTB to the beneficiary ministry for evaluation. There is much speculations about what happens during bid opening and before the tenders are transferred.

- Evaluation: generally, tenders are evaluated within the bid validity period (approximately 90 days). Reasons for exceeding the stated bid validity period range from an extension due to changed specifications, to underestimation of the amount of work involved in evaluating complicated works tenders.
- Evaluation practices: they vary widely for goods, works and services, with some tender committees working according to a points system, others not. Most evaluations correctly reject bidders deemed unqualified, rather than giving them a weighed penalty in the evaluation. Some evaluation committees are said to determine further evaluation criteria as a first step after bid opening, before setting about to evaluate tenders. In international tenders, they may for instance decide to give favorable consideration to foreign companies which have formed a joint venture with a national company, whether joint venturing is stated as a requirement or not. They may also decide to disqualify those firms who have not found a joint venture partner. Some evaluation committee members evaluate without further coordination of what criteria to use.
- Evaluation of consultants tenders: when seeking to procure consultants' services under national rules, a one-envelope system is used and price will determine whether a consultants' firm wins or loses.
- A two-envelope system is only used for design & build, and for turnkey tenders, not for other works or supplies.
- Extension of bid validity period: Extensions of the bid validity period are generally not foreseen in the bid documents. In case the Government wishes to extend a bid validity period substantially beyond the original date, bidders are allowed to increase their prices as a condition of continued validity of their bids.

### **Award of contract**

- The CTB reviews the evaluation and approves the proposed award for larger contracts.
- State Trading Company: Some procuring entities such as the State Trading Company, have decided not to submit their tenders to the CTB's vetting and approval, notwithstanding the already high threshold for review applicable to them.
- Consultants contracts: some consultants contracts are not submitted to the CTB. Many are of a lower value than either goods or works and therefore below the threshold for submission to the CTB. But others such as those for public relations services or supervision of works of considerable value are often not submitted to the CTB either. The misconception may stem from the different terminology in the Manual and the Central Tender Board Act 2000. The first one – basically concerned with supplies management, does not cover intellectual and advisory services but rather the kind of services where the physical aspects of the activity

- dominate, such as printing and building maintenance. Contracts for services of an intellectual nature are included in the contracts that should be submitted to the CTB pursuant to the Central Tender Board Act 2000, but this fact is not generally recognized, probably because stores officers' training specializes in the rules of the Manual.
- Publication of award: The amount of the award is not published. The Manual (30.4 – 72) requires that the secretary of the ministerial or departmental tender board notify each bidder of the acceptance or non-acceptance of his tender. In addition, in its Circular CTB/GC/532/2/95 of March 7, 1996 the CTB has suggested that public bodies send a letter to unsuccessful bidders stating the name of the successful bidder and the price at which the tender was allocated. The Manual's rule and the circular's recommendation are generally ignored but it has emboldened some public bodies to tell bidders at debriefing sessions what the other bid amounts were. This practice is not widespread or systematic and the circular is not interpreted as giving an unsuccessful bidder a right to know. The general public are entirely left in the dark as to the actual amount of public money spent on a given contract, although they may be able to get information on larger contracts that have attracted the attention of the Director of Audit, several years after award. The CTB is equally left in the dark as to whether an award recommendation which they have approved corresponds with the award actually made. With regard to procurement below the CTB thresholds and thus undertaken by Ministries/Departments, it is currently rather difficult to find comprehensive data enabling to compare consolidated figures showing the numbers of contracts per ministry, for what amounts and what procurement method was used. Nevertheless, and as per financial regulations, it is for the Accounting Officers of Ministries/Departments together with the Purchasing and Supplies Cadre who should institute appropriate systems of management information for their respective Ministries/Departments.
  - Price negotiations: no price negotiation with winning bidder before a contract is awarded were reported, although some contract adjustment discussions are held.

### **Settlement of disputes**

- Conflict resolution: Both the Government and the private sector are generally satisfied with the current system of review by tendering entity and debriefing by the CTB but would like to accelerate procedures. Bidders have gone to court when the Government had already awarded and signed the contract with the winning bidder. The complainant's injunction prevented the Government from going ahead for several months, until the court reached a final decision. Although the Government won the case, it had to pay damages caused to the awarded bidder who couldn't start work (mobilization/demobilization costs, higher prices). Even in case the court would have found in favor of the complainant, the Government believes it would have been cheaper to compensate the complainant for any damage sustained than to hold up the whole contract.

### **Contract administration**

- Pre-shipment inspection: there is no general pre-shipment inspection.

- Payment: there are few complaints about slow payments by public entities. Architects may take up to 30 days to certify work performed after which the Government may take another 30 days to pay. In exceptional cases, interest on late payments is actually paid by the Government.
- Price escalation: there is no general practice with regard to price increases for long term contracts. For very large works, the MPI is inclined to use standard World Bank documents which provide for such an escalation.
- Guarantee: the defects liability period for works is one year, notwithstanding the fact that the General Conditions of Contract state 6 months.
- Performance bonds: performance bonds amount to 10%. The practice of partial replacement of the performance bond during project execution with a guarantee is haphazard, sometimes allowed, sometimes not. Upon completion sometimes 50% of the performance bond is released and other 50% retained until end of the guarantee period. Sometimes the entire retention amount is released. Performance bonds are never called.
- Record keeping: Purchasing and supply officers keep a ledger of all procurement in the ministry where they are placed, i.e. of goods and ancillary services and those works that are not tendered by the Ministry of Public works. They draft a completion report after every tender, describing what prices were offered and who won. Many also keep the actual evaluation sheets used and the process-verbal of their decision with regard to a tender.

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## **Private Sector**

### **1.Competitiveness and Participation of Private Sector**

#### **The F. O.M. Freeport Operations Mauritius Ltd.**

1.01 Mauritius Port Authority (M.P.A.) gave part of the port zones recuperated from the ocean to private operators out to tender in 1995. These operators were given viable and fenced land for the development of commercial, industrial and *in-custum* port activities, carrying long term 99 year leases. The lessee commits to doing business in the area and building necessary infrastructure at his expense following an investment timetable approved by the port authority. If the rented areas are not operational or in deficit after a certain time, the MPA can cancel the lease and award it to another private operator. The investor therefore has to show results.

1.02 The F.O.M. is one of the two enterprises ( the other being the M.F.D.- Mauritius Freeport Development) who received port land for development of economic activities *in-customs*.

The F.O.M. occupies 8.5 hectares and has created three separate entities corresponding to the three activities it is developing :

1/ the transshipment, transit, handling, loading of containers, storage and distribution of raw materials to factories and the return to port of the finished products after the opening of raw materials for re-expedition. This is called A.C.S. (Advanced Container Services)

2/ the light manufacturing industry working in-customs for export called ( Export Processing Zone)

3/ the repair and maintenance of containers for shipping companies called C.E.L. ( Container Enterprises Ltd).

These three entities are grouped into one company called the Port. This company belongs to traditional large mauritian share-holders.

1.03 The F.O.M. has a privileged fiscal status :

- No taxes on profits
- Total exoneration from taxes on all equipment except the trucks that distribute merchandise in the island. Employees however are still subject to income tax as are all other personnel in the island..
- Rent is very low, 150.000 roupies p.a. Also, whenever shows are organized on F.O.M. property, a temporary daily permit is issued at a very low price for the duration of the show. 14 shows a year are held at the F.O.M.

1.04 A 15% corporate tax will soon be levied.. «Offshore » companies can still have their address at F.O.M. with a permit. In this case, the companies will pay 90% of the

15% corporate tax mentioned above. These companies will of course benefit from all the fiscal and customs advantages accorded to the Freeport.

1.05 It is to be noted that F.O.M's competitor, the M.F.D. ( Mauritius Freeport Development) was given 25.000m2 of in-customs land under the same conditions as F.O.M. and does practically the same kind of business as F.O.M. There are 20 shareholders, some foreigners and some mauritians.

Statistics show that the freeport zone is very dynamic.

#### **Total trade carried out in Freeport Zone in 2000**

<b>IMPORTS</b>	<b>Sea and Air</b>	<b>Sourced Locally</b>	<b>Total</b>
Value ( Rs million)	3,781	483	<b>4,264</b>
Volume (Ton)	56,737	11,794	<b>68,531</b>
<b>RE-EXPORTS</b>	<b>Sea and Air</b>	<b>Sourced Locally</b>	<b>Total</b>
Value (Rs million)	7,825	366	<b>5,191</b>
Volume (Ton)	60,931	4,492	<b>65,423</b>

*Source: Mauritius Freeport Authority*

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## **2. Performance of public procurement contracts**

### **Medicine and pharmaceutical imports.**

2.01 There are three possibilities :

▷ **pharmaceutical imports by authorized importers**

Only pharmacists accredited by the Pharmacy Board of the Ministry of Health can import pharmaceutical products. It is comprised of 8 people, 3 civil servant pharmacists, 4 private sector pharmacists and one magistrate appointed by the Minister of Health . There are 220 pharmacies on the island of which 191 are retailers and 29 are wholesalers who import medicine from different origins or who are the sole agents of large international laboratories. Authorization procedures for a new medicine are as follows ; no medicine can be imported without the Pharmacy Board's authorization; there is no technical control but the documents provided by the laboratory are analyzed. After examination of the documents, the product is authorized or rejected for import. Sale prices are not set but wholesalers' and retailers' profit margins are fixed by the government, with a 14% maximum for wholesalers and 27% for retailers; this procedure is called maximum « mark up ». This procedure is also used in practically all other imports where the profit margin is strictly controlled.

▷ **government bidding for hospital pharmaceutical products**

The Ministry of Health regularly offers international bidding for the different public services' medical supplies. Permanent procedures have existed for approximately ten years.

▷ **import of raw materials for the manufacture of pharmaceutical products on the island.**

All imports of raw materials, even if the product was authorized previously, require the prior approval of the Pharmacy Board . All new medicines to be manufactured domestically provide the Pharmacy Board (PB) with a technical file and a temporary approval is given for local manufacturing( Certificate of Pharmaceutical Product). This approval is given after 10 days but the new products are not sold until the PB researches the product and gives final approval after 3 or 4 months. The new product can also be rejected.. The factories cannot import finished products but they do benefit from the same advantages as the companies in Freeport for re-exporting to other countries. The raw materials are purchased directly abroad by the Procurement Agency but the letters of credit are opened directly for the supplier approved by the procurement Agency. Three approvals are needed for each import : from the Ministry of Trade ( Import Permit), from the Ministry of Finances for re-export and a stamp of approval from the Ministry of Health on the commercial import invoice.

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### 3. Commercial practices

#### Products imported by the State Trading Corporation, STC

3.01. The state company, STC is the first importer of Mauritius with an annual turnover of approximately \$188 million, approx. 10 % of total imports. Its creation goes back to the time when the Mauritian government feared shortages in the importing of « sensitive » products. STC still benefits from certain import monopolies, especially in finished oil products with the exception of heavy oil (380 CST earmarked for electric plants that is directly imported by open bidding), and state subsidized rice. This is low grade rice with 25% small fragments that is subsidized by the state, other kinds of rice can be imported freely. STC also imports onions, potatoes and flour with annual quotas fixed by the the government.

3.02.1. **Oil products** . 900 000 tons are imported annually on an annual tender basis; SGS is responsible for the quality/quantity expertise at embarkation as well as testing of aviation fuel by analysis of a sample. The usual distributors bid as well as overseas suppliers. Prices are broken down into a fixed portion and a variable portion indexed on world oil price fluctuations. STC does not distribute directly in the island and delivers the carburant directly into the different distributor's tanks. Prices at the gas stations are however fixed by the government taking into consideration the distributors fixed profit margins and STC costs. If oil prices go up, STC absorbs these losses, as they do profits if oil prices go down. The government compensates STC for any such losses. *Minimum disclosure* is always prevalent in this bidding.

3.02.2. **Rice**. The government presently subsidizes the annual purchase of 200 000 tons of rice. Better quality rice is put out for bidding but not always at the most appropriate moment. Rice prices fluctuate following the two annual rice harvests in Asia. The rice is no longer imported « loose » in 50 kilo bags by 125 ton ships, but by monthly 4000 ton totally contained bags resold to distributors at prices fixed by the state. Monthly shipments are used because of inadequate storage space and the expense that storage would incur. The rice is purchased through international tender published in local newspapers and in the embassies of exporting countries. Resale price of this low quality rice is fixed by the government and distributors have to sell it at government fixed prices. Bidders have to respond within 30 days. STC determines the rules governing the tender, inspired from CTB rules. These rules are validated by the State Law Office. All the bids must have a *deposit* of 5% of the *cif value* except for oil which has a fixed *deposit*. STC delegates the controls of packaging the rice at embarkation and at arrival to STC. The insurer is SICOM ( state insurance company) but private companies will be consulted in future. Other rices can be imported freely.

3.02.3. **Flour**. Through tender, STC imports 90 000 tons of flour exclusively. The Moulins de la Concorde, the sole flour mill on the island, submits a bid. If a foreign supplier puts in a lower bid, then the Concorde only receives half of the tonnage for distribution. If, however, the Concorde bids the same or a lower price than the others, it receives the total yearly supply of 90 000 tons, as was the case this year.

3.02.4. **Cement** . Annual imports of cement in Mauritius are 660 000 tons of which 300 000 tons are reserved for the STC, the remainder is imported by the private sector but at prices that have been fixed by the government on the basis of CAF. STC does not distribute. Two private companies distribute the full 660 000 tons that they re-sell at a price fixed by the government. The mauritian government compensates any losses incurred from depreciation of the roupie, estimated at 8% last year, and guarantees financing from private banks at 11% p.a.

### 3.03 Banks

3.03.1. Banks are unable to accept as collateral work tools such as taxis, trucks, buses, etc as they cannot legally be confiscated. Banks then use « floating security » covering goodwill and any outstanding loans on real estate. This security is registered with the lending institution with a 2.475% tax. The agreed on rate varies according to the size of the project, from 50 000 roupies to several millions of roupies and usually begins at 8% reaching 12 or 13% depending on whether construction or industrial investment are involved. The rate often progresses annually according to the company's development. The usual rate in freeport is 12%, the Mauritian Central Bank's lending rate to banks is between 10% and 11% and inflation is officially estimated at 6.2%.

3.03.2. **Bonds.** Bond expenses in public tender are 1.5% for the first 6 months and 0.25% every additional three month period. Performance bonds are 1.5% for the first 5 million roupies and 1% p.a. for higher amounts. Retention money is 1% p.a. The granting of warranty bonds in customs is invoiced at 1% p.a. and guarantees for state and para-state organisations for loan disbursement is 2% p.a. Rates for non specific current loans are around 14 %. Bank settlement for payment of construction phases or supplies is done with due timing and is not routed through other banks.

3.03.3. **Letters of credit.** Opening a letter of credit is easily done. Cost of letters of credit is around 1% including all related administrative expenses. Credit lines opened for importers on the basis of their credibility are not used only to finance the letter of credit.. Settlement documents are handled automatically by the banker who opens the letter of credit and he also handles all document negotiations.

3.03.4. **Credit access.** Once the credit file has been constituted, the economic operator receives a positive or negative response from the bank within 8 to 15 days. Commercial banks compete with the state bank, the Development Bank of Mauritius . This bank offers loans at a slightly higher rate than commercial banks and it appears that their required guarantees are a little more severe than those required by commercial banks. DBM's rates vary from 8 to 13%, and differ whether they are for an industrial manufacturer (9%), working capital for export (12%). Rates for office construction are 13%. The DBM is able to hold shares in companies it loans money to, up to 12%, unlike private banks. It does not act as a guarantor during bidding and does not grant performance bonds or give credit insurance.

## 4. Customs and Trade Practices

### THE PORT OF PORT LOUIS

4.01 The Port Louis port works 24 hours a day and last year handled 4.8 millions of merchandise, oil products included. No restrictions exist for docking and there is no dock overcrowding. The average water draw is 13 meters which allows loaded ships of up to 30 000 tons to dock. The container terminal is equipped with three handling porches and the unloading rate for the containers is 19 movements per hour per porch, which is a good rate by international standards

#### **Computerized port and customs management by a semi-state organization for common interests : the Mauritius Network System, MNS**

4.02 The port, customs and the Ministry of Finance have agreed to have the computer system managed by an interest group including the Mauritius Port Authority, the Cargo Handling Corporation Limited and State Investment Corporation, Mauritius Telecom and the Chamber of Commerce. MNS is affiliated with the computerized management system of the Port of Singapor. This organization appears to have provided the Port, customs, state handlers and economic operators with satisfactory management software. The software was sold to the Port Authority of Tema. MNS receives information from all of the Port's economic operators through computer terminals. Assignment of customs inspectors to inspect containers is done manually.

#### **Heavy Bureaucracy**

4.03 Four examples of heavy bureaucracy noted during embarkation :

- **certificate of origin :**

Many wholesalers, especially supermarkets who work with european purchasing centers place merchandise from different origins in the same container. However,these centers have to provide a certificate of origin CEE when the merchandise leaves Europe, even though the containers sometimes contains non CEE merchandise. When customs orders the container to be inspected, the different origins are noted and the inspectors draws up a «Custom Offense Report » which entails a fine or a financial transaction with the importer.

- **publicity:**

Some suppliers place publicity materials in the containers that has not been approved the the appropriate ministry; this also gives pretext for a fine or a financial transaction with the customs officer.

- **Wrapping and weight of products :**

If the wrapping and/or weight of the food product that requires approval does not exactly correspond to the description given by the importer, the Ministry of Health inspector will impose a fine or come to a financial arrangement with the importer.

- **The Agricultural Marketing Board :**

AMB delivers a certificate of good will to importers who do not have cold rooms as required by law but who use the refrigerated shipping companies' containers for storage. Some unclear transactions result from giving these certificates.

## List of certificates required for entry into Mauritius

4.04 ▷Certificate of the Mauritius Standard Bureau, MSB is given by the Ministry of Industry for certain construction materials, electrical equipment and electrical wire; this certificate is validated by the Ministry of Commerce. Import of used cars and spare parts also requires prior approval from the Ministry of Health.

▷Certificate of conformity for medicines given by the Ministry of Health.

▷Certificate of the Food Act: « Application for pre-market approval of container, contact material, food and prepacked food intended for Human Consumption » given by the Ministry of Health concerns all imported food products. This certificate requires approval from the Ministry of Health following the Food Act of 1999 that requires extremely precise information even manufacturing secrets to be furnished before approval is granted.

Exemple : Coca Cola imports were not allowed for several months as the manufacturer refused to disclose his manufacturing secrets.

▷Pesticide imports require a certificate granted by the Ministry of Health; import of parasanitary products also require a certificate of control from the Ministry of Agriculture.

▷Unloading of fish either in transit or for domestic consumption requires a certificate from the Ministry of Fishing who checks that no forbidden species have been fished and that the fish is fit for human consumption.

▷The Ministry of Environment grants a certificate for aerosol and spray products products checking their compliance with the Montreal convention on ozone levels.

If these different certificates are not presented when the products are clearing customs, the computer will block delivery of the merchandise.

## Merchandise requiring authorization and subject to quotas

4.05 Potatoes, garlic and onions have import quotas as well as authorization requirements granted by the Ministry of Agriculture. STC is their exclusive importer .Many items are not allowed to be imported, such as rebuilt tires, some vehicle spare parts, narcotics, fireworks, ivory, tortoise shell, etc.

## Appeal procedures are open to importers in the event of conflict with customs

4.06 Three possible scenarios :

- ▷ Conflict on the classification made by customs of merchandise.
- ▷ Error on or absence of certain documents.
- ▷ Fraud

In all three cases, if the customs inspector applies the rules, a « Custom Offense Report » is drawn up and given to his superior, for approval or conciliation with the importer. If no agreement is reached, the importer can appeal to two bodies, the Revenue Authority (ex URB : Unified Revenue Board) who intervenes in the case of fraud to determine the amount of the fine or confiscate the merchandise. If it involves an error in the documents, absence of documents or conflict with the classification, the importer can appeal to the Custom Advisory Committee (CAC). This committee is composed of four people nominated by the Ministry of Finances : one member of the Chamber of Commerce, one customs officer, a representative of the magistrate who has to be a magistrate and a representative of the Ministry of Commerce. The decision taken by this committee is recognized and applied by customs but if the importers feels it is still unfair he can then appeal to the «Tax Appeal Tribunal » and beyond this body he can go to the Supreme Court, but this is a long and costly procedure, and very rare. In the meanwhile, his goods are blocked in customs or confiscated with a fine to be paid if there has been fraud. If the appeal concerns merchandise classification, document error or administrative error, the importer can collect his goods against the payment of a bank guarantee equal to the amount of the taxes in litigation until the committees have made a decision. It is to be noted that customs formalities only have four stages unlike many other countries where control procedures are higher leaving the door open to corruption temptation. To resume, customs service are satisfactory but could be improved upon.

### **Tarification structure of customs duties and levies**

4.07 Nine rates of import taxes on the CAF value are applicable in Mauritius plus a fixed 12% sales tax. Inland duty is also applied to alcohol, cigarettes and automobiles. Automobiles are only subject to inland duty and sales tax whereas milk, medicine, rice, flour and oil are exempt of sales tax. There is no sales tax in freeport if the goods are to be re-exported.

#### **◆ The nine tarification rates in customs duties in Mauritius :**

0% rate: Aluminium, cement profiles, materials, buttons, thread needed for garment manufacturing, flour, 25% rice imported by STC, milk , computers, motors, machines, most raw materials used in manufacturing for re-exportation, buses to be used for public transport.

5%rate: rice other than that of the STC, medicine, prefabricated homes

10% rate: Wrappings of all sorts, nails, screws, trucks, vans

15% rate : Cameras, video cameras, household oil, some fertilizers as those manufactured locally are exempt from taxes.

20% rate: Iron bars, tin, motor oil, disinfectant products, individual buses.

30% rate: Processed groceries, toilets, glass, videos.

40% rate: Crockery, tiles, household electrical goods, radios, stereos, cut paper, toilet paper.

55% rate: If the products come from a non-preferred country.

80% rate: Blocks of paper, plastic and all other articles, canned fruit, china, clothes made abroad, all articles coming from non-preferred countries such as China, Taiwan, Korea, Japan.

◆ **Excise duty on alcohols, wines, cigarettes, tobacco and automobiles.**

- Alcohols, wines and liquor  
300 RPS per liter

- Cigarettes and Tobacco  
360% excise duty  
+ 360 RPS per 1000 cigarettes

- Automobiles

A 90% minimum that can reach 150% following the horsepower : double cabins are only subject to 40% excise duty.

There are no customs duties on these three categories.

◆ **Sales tax (TVA)**

TVA at a fixed rate of 12% on CAF is collected on the majority of all imported products with the exception of milk, medicine, rice, flour and household oil. Freeport is totally exempt of TVA for goods to be re-exported.

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**B. Responses to the questionnaire**

<b>Annex A - Legal Framework</b>
<b>GENERAL FEATURES</b>
<p>1. <i>Legal System (i.e. Common/Civil Law; Socialist; Shari'a; other)</i>  <b>Answer:</b> Common Law and Civil Law</p>
<p>2. <i>Form of government (i.e. federal or centralized)</i>  <b>Answer:</b> Centralized</p>
<p>3. <i>Does the Constitution contain any provision directly bearing on public sector procurement? (If so, describe)</i>  <b>Answer:</b> No</p>
<p>4. <i>Is the country a signatory to the Agreement on Government Procurement of the World Trade Organization?</i>  <b>Answer:</b> No</p>
<p>5. <i>Does the basic contract law contain any provision directly bearing on public sector procurement? (If so, describe)</i>  <b>Answer:</b> No – but general principles of contract law apply</p>
<p>6. <i>Is there a separate body of law which regulates public sector procurement, or is it governed by regulations issued under an organic finance act?</i>  <b>Answer:</b> CTB Act – FMM under Finance &amp; Audit Act</p>
<p>7. <i>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, and banking laws, foreign exchange controls or laws defining national standards - If so, describe)</i>  <b>Answer:</b> Local Government Act</p>
<p>8. <i>Is the system clear, comprehensive and consistent? Does it cover all essential aspects with no unduly complicated, unnecessary, conflicting or outdated regulations and are rules found in various distinct sources or within a well coordinated legal framework?</i>  <b>Answer:</b> Being Reviewed</p>
<p>9. <i>Is the hierarchy of the sources of procurement rules well established?</i>  <b>Answer:</b> Being Reviewed</p>
<p>10. <i>Do the same rules apply to central and local governments?</i>  <b>Answer:</b> No – CTB – Central Government – Local Government</p>
<p>11. <i>Are there procurement rules established for parastatals? Describe.</i>  <b>Answer:</b> Partly in CTB Act – Being Reviewed</p>
<p>12. <i>Is the procurement function decentralized? If so, describe basic structure, name the main decentralized procuring entities and indicate whether their role, rights and responsibilities are clearly delegated in writing.</i>  <b>Answer:</b> The procurement function is centralized for central government and central organization caters for major contracts as prescribed in the Central Tender Board Act which presently are 1m, 10m and 25m for all public bodies. All Procurement below the prescribed amount are handled by Government Institution. Consultancy Services for public bodies are completely decentralized</p>

partly for local authorities.

13. *Is there an entity(ies) with oversight responsibilities for procurement functions throughout public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure. Is it operationally involved in procurement? Is it the Central Tender Board?*

**Answer:** No

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

**Answer:** Yes-duties as enunciated in Section 8 of the Central Tender Board Act.

*Do the procuring entities or the Central Tender Board issue the award recommendation?*

**Answer:** Central Tender Board only approves awards for major contracts. The Public bodies issue award of recommendations.

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

**Answer.** Does not prevent the introduction of new techniques – completely opened to innovation.

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

**Answer:** There is no black list.

17. *Is the country a member of regional trade/customs agreements? (If so, specify)*

**Answer:** Yes – SADC/Comesa/COI.

18. *Are there primary/secondary boycotts? (Specify)*

**Answer:** Absolutely none

19. *Are there provisions regarding preferences for particular categories of suppliers of goods and services? (Specify) Is the purchasing entity compensated by the government for awarding contracts to higher cost national or local firms?*

**Answer:** Domestic preference

20. *Are provisions on domestic/international arbitration codified? (If so, specify in which statute) Are the arbitration rules applicable to procurement contracts? Do they incorporate international rules?*

**Answer:** Arbitration rules applicable

21. *If domestic arbitration rules are in force, are they generally in line with established principles such as those embodied in the UNCITRAL rules? (Highlight major differences)*

**Answer:** Yes

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

**Answer:** yes

23. *Are there laws or regulations governing policies and procedures for awarding concessions/contracts for private sector provision/operation of power, water or other infrastructure facilities? (BOO, BOT, etc.) Do any general conditions of contract apply as a matter of law or regulation?*

**Answer:** No

<b>BASIS OF TRANSPARENCY</b>
<p>1. <i>Is there a legal or regulatory requirement for public disclosure of procurement legal texts?</i>  <b>Answer:</b> No</p>
<p>2. <i>Are there mandatory requirements for maintaining written records of procurement?</i>  <b>Answer:</b> Yes – Minutes of proceeding of all meetings  <i>Are they available to the general public?</i>  <b>Answer:</b> No</p>
<p>3. <i>Are requirements for advertisement of contracting opportunities adequate?</i>  <b>Answer:</b> Yes  Is the country's national gazette published in a timely fashion  <b>Answer:</b> Yes  Is it available to the general public?  <b>Answer:</b> Yes</p>
<p>4. <i>Are requirements regarding public bid opening, if any, appropriate?</i>  <b>Answer:</b> Public openings are held for all foreign projects and high value contracts financed from local funds and projects having a national impact.</p>
<p>5. <i>Are negotiations after bid opening or award selection generally forbidden?</i>  <b>Answer:</b> Negotiations are allowed with the lowest evaluated tender but no negotiation is held after award of contract.</p>
<p>6. <i>Do rules on negotiated procurement, if any, provide the basis for a fair and transparent process? Detail.</i>  <b>Answer:</b> Negotiated procurement is not allowed.</p>
<p>7. <i>Are conditions for use of various procurement methods clearly established and is there an explicit requirement that open competitive bidding is the preferred or default method?</i>  <b>Answer:</b> Open competitive bidders is preferred in cases of procurement of goods and services and works. A restricted bidding is resorted to only for procurement of a specialized nature.</p>
<p>8. <i>Is there a requirement for public notice of contract awards?</i>  <b>Answer:</b> No.</p>
<p>9. <i>Are requirements for bid and contract securities clear and appropriate?</i>  <b>Answer:</b> Yes- except for consultancy services.  Are they required of all bidders?  <b>Answer:</b> Yes.</p>
<p>10. <i>Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract?</i>  <b>Answer:</b> Yes.</p>
<p>11. <i>Do requirements for bid examination and evaluation provide the basis for a rational and fair process?</i>  <b>Answer:</b> Yes.</p>
<p>12. <i>Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, names of successful bidders)? If so, describe scope and frequency.</i>  <b>Answer:</b> No.</p>

13. *Does government hold regular meetings with the business community to discuss public procurement issues?*

**Answer:** No.

14. *Is there a conflict of interest policy in effect? (If so, describe its essential features)*

**Answer:** Yes – All officers involved in procurement need to declare their interest if they have interest in procurement if any.

15. *Are the laws on bribery of government officials enforced? Do government bidding documents and contracts contain anti-bribery and anti-corruption conditions?*

**Answer:**

#### **BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICIALS**

1. *Are government employees expected to follow a published code of ethics? If so, describe its basic features.*

**Answer:** No

2. *How easy is it for bidders to report bribes by others and solicitation/extortion of bribes by government officials?*

**Answer:** Presenting with new Anti-corruption Commission Act, any report of corruption should be addressed to the Commission.

3. *Do bidders have adequate access to administrative or judicial review/appeal?*

**Answer:** Yes – Court

4. *Are there measures/initiatives to curb/control corruption, e.g. anti-corruption statutes and/or bodies, whistle-blower statutes, comprehensive reforms of the civil service/judiciary, regional initiatives, provisions in the criminal law, anti-bribery provisions, etc.? (If so, describe)*

**Answer:** See 2 above

### Annex B - Trade Practices

1. *Are foreign firms engaged in trade with the country required to use a national agent?*

**Answer:** This is not necessary but recommended

2. *Are there indications that over-invoicing and/or under-invoicing are common practices? For which purposes?*

**Answer:** Customs is most afraid of under-invoicing. Using WTO criteria for customs value has not helped

3. *Are goods frequently described incorrectly on the invoices?*

**Answer:** Incomplete descriptions in the invoice oblige customs to inspect many containers

4. *Are there indications that import documents are falsely labeled?*

**Answer:** Some import documents have been falsified namely in used car imports even though they require prior approval.

5. *Is there evidence of any other trade malpractice affecting public sector procurement?*

**Answer:** Some small state suppliers offer unbeatable prices, but do not deliver the total amount of goods and come to an agreement with the administration to obtain delivery certificates through doubtful methods

6. *Is there a pre-shipment verification program? Who conducts the inspections? What goods are included?*

**Answer:** There is no pre-embarkation inspection.

7. *Is there a threshold for pre-shipment inspection? What is the amount?*

**Answer:** void

8. *If pre-shipment inspection is conducted by a private company, what is the duration of the contract with the company? Was the contract awarded following a competitive process?*

**Answer:** void

9. *Is pre-shipment inspection, if any, conducted according to generally established procedures? Are there indications that the inspection is not effective?*

**Answer:** void

10. *Are goods also normally inspected upon arrival?*

**Answer:** Yes, goods are controlled upon arrival by presenting administrative documents and customs visit, this is not systematic.

11. *Are inspection procedures in conformance with established practice?*

**Answer:** Yes

12. *Do pre-shipment/post-shipment inspection, if any, unduly increase the procurement lead time?*

**Answer:** No

13. *Is counter-trade used? Barter agreements? In which percentage of the country's total trade? For which commodities?*

**Answer:** No

14. *Are the ICC's INCOTERMS generally understood and commonly used in the Country? Are other trade terms used? What are the most commonly used INCOTERMS used? FOB? CIP? CFR? DDP?*

**Answer:** Incoterms are widely used. Incoterms used are usually CAF. Shipping cargo is handled on board at the arrival port.

15. *Are there indications suggesting price-fixing in open bidding?*

**Answer:** No

16. *Are licensing and customs procedures generally transparent and efficient?*

**Answer:** Computerized customs procedures are generally transparent. On the other hand, presentation of numerous certificates given manually, is not.

17. *Are "facilitation" payments normally necessary to clear goods through customs, obtain work permits for expatriate labor, process monthly payment certificates/invoices?*

**Answer:** If the documents are in compliance when the ship arrives, unloading is transparent and takes place during the free parking days at port.

18. *Are local staff familiar with shipping and other trade documents? With documentary credits?*

**Answer:** Yes, totally.

19. *Are local staff experienced in import planning and importation procedures?*

**Answer:** Yes, totally

<b>Annex C - Financial Framework</b>
1. <i>Are banks capable of issuing Letters of Credit?</i> <b>Answer:</b> Yes
2. <i>Are banks generally creditworthy?</i> <b>Answer:</b> Yes
3. <i>Can bid, performance and advance payment securities be obtained easily locally? What formats are permitted? Bank guarantees? Bonds? Other? Provide details on cost, if available.</i> <b>Answer:</b> Yes
4. <i>Are the requirements for issuance of bid, performance and other securities to local suppliers/contractors reasonable?</i> <b>Answer:</b> Yes
5. <i>Do local suppliers/contractors have reasonable access to credit?</i> <b>Answer:</b> Yes
6. <i>Do implementing agencies obtain budgetary authorizations for contract payments falling due beyond the current financial year?</i> <b>Answer:</b> Project contract basis, yes
7. <i>Are major projects or programs clearly identified in government budget estimates?</i> <b>Answer:</b> Yes
8. <i>What procedures are followed to ensure the procuring entity obtains budget authorization prior to inviting bids?</i> <b>Answer:</b> Budget provision in the national budget
9. <i>Do procuring entities reliably receive the monies authorized? Or is the budget subject to revision during the year by a restrictive cash release system?</i> <b>Answer:</b> reliably receive monies

<b>Annex D - Public Sector Procurement of Goods/Works</b>
<b>GENERAL RISK ASSESSMENT</b>
1. <i>Is the public sector procurement profession held in high regard?</i> <b>Answer:</b> Yes
2. <i>Are pay levels for procurement professionals comparable to that for other public and private sector technical specialists? Give current range of monthly salaries.</i> <b>Answer:</b> No.
3. <i>Is the procurement profession generally staffed with honest and capable individuals?</i> <b>Answer:</b> Generally Yes.
4. <i>Does a code of ethics exist that procurement professionals are expected to follow?</i> <b>Answer:</b> No.
5. <i>Are the authorities relating to procurement clearly delegated to the entities carrying out the process?</i> <b>Answer:</b> Yes. Are the applicable procedures clearly defined? <b>Answer:</b> Yes

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?*

**Answer:** No – It is totally independent.

7. *Does the highest level of government encourage/support/enforce compliance with existing procurement regulations?*

**Answer:** Yes

Are violations investigated and procurement/other responsible officials held accountable?

**Answer:** 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)?*

**Answer:** Yes

2. *Are the procurement and supply management functions clearly distinguished?*

**Answer:** Yes

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

**Answer:** Yes

4. *Are thresholds for contracting powers regularly updated?*

**Answer:** Yes

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

**Answer:** User department ascertains.

6. *Are procurement staff experienced in international procurement?*

**Answer:** Yes – a few.

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

**Answer:** As per Government Establishment rules.

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

**Answer:** No

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)?*

**Answer:** No

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

**Answer:** Yes

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

**Answer:** Generally Yes

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

**Answer:** No

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?*

**Answer:** No

### **PROCESS – PLANNING**

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

**Answer:** Staff shortage

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?*

**Answer:** Yes

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?*

**Answer:** Yes

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

**Answer:** Yes

5. *Are project components appropriately packaged for procurement purposes?*

**Answer:** Generally 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?*

**Answer:** Delays do occur

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

**Answer:** Not regularly but for specific activity based.

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?*

**Answer:** Generally adequate, there are shortcomings

### **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*

**Answer:** Generally Yes – but more efforts need to be put in order to genuinely standardize.

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)?*

**Answer:** No

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

**Answer:** Same bid documents applies to all potential bidders whether national or international.

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

**Answer:** Yes

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?*

**Answer:** Yes

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

**Answer:** Yes

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

**Answer:** Yes

8. *Are qualification criteria appropriate and clearly described?*

**Answer:** Yes

9. *Are conditions of contract equitable?*

**Answer:** Yes

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?*

**Answer:** Yes for procurement of works.

11. *Are standard purchase orders used for shopping?*

**Answer:** Yes

#### **PROCESS - PRE-QUALIFICATION**

1. *Is pre-qualification carried out when appropriate?*

**Answer:** Yes

What types of contracts is it used for? Works? Goods? Other?

**Answer:** For procurement of works.

2. *Is the pre-qualification process fair and transparent?*

**Answer:** Yes

Are decisions made promptly?

**Answer:** Yes

Are foreign firms allowed to apply?

**Answer:** Yes

3. *Are standard pre-qualification documents used?*

**Answer:** Yes

Do they clearly and completely describe all the prerequisites for submitting responsive applications for pre-qualification?

**Answer:** Yes

Is financial information routinely requested and critically evaluated to assess an applicant's financial capacity to perform?

**Answer:** Yes

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

**Answer:** Yes

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

**Answer:** Yes

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

**Answer:** Yes

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

**Answer:** Generally Yes – for provision of back up spare parts and ensure after sales service

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?

**Answer:** Yes

### PROCESS – ADVERTISEMENT

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

**Answer:** Yes

2. Is sufficient time allowed to obtain documents and prepare bids?

**Answer:** Yes

### PROCESS - COMMUNICATIONS BETWEEN

#### BIDDERS AND THE PROCURING AGENCY

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

**Answer:** Yes

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

**Answer:** Yes

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

**Answer:** Yes

4. Do procuring entities maintain accurate records of all communications with the bidders (before and after the deadline for submission)?

**Answer:** 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?

**Answer:** No

### PROCESS - RECEIPT OF BIDS AND OPENING

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

**Answer:** Yes

2. Are public bid openings conducted?

**Answer:** Yes

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

**Answer:** On the same day (half an hour later)

4. Do bid opening procedures generally follow those specified in the Guidelines?

**Answer:** Yes

What information is read out at the opening ceremony?

**Answer:** Name and address of bidder (bid price, bid bond and any qualification made by bidder)

Are minutes kept?

**Answer:** Yes

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

**Answer:** No

### **PROCESS - BID EXAMINATION AND EVALUATION**

1. Are evaluations conducted by qualified evaluating committees?

**Answer:** Yes

2. Are evaluating committees appointed ad hoc for each evaluation?

**Answer:** Yes

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

**Answer:** Yes

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

**Answer:** Yes

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?

**Answer:** Yes

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

**Answer:** Yes – in most cases

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)?

**Answer:** Yes

8. Describe any significant differences between goods and works procurement relating to the above.

**Answer:** No significant differences

### **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?

**Answer:** Yes

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

**Answer:** Through a Letter of Intent – After selection of the lowest evaluated bidder

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

**Answer:** No

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

**Answer:** Yes

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

**Answer:** No significant differences

### **PROCESS - CONTRACT ADMINISTRATION**

<p>1. <i>Are there manual or computerized procurement and/or contract monitoring systems?</i>  <b>Answer:</b> User Department manual and computerized</p>
<p>2. <i>Are suppliers and contractors generally paid on time? What is the normal time lapse from invoice submission to final payment?</i>  <b>Answer:</b> Yes – 28 days as per terms of contract</p>
<p>3. <i>Are there appropriate procedures to monitor delivery of goods and services to verify quantity, quality and timeliness?</i>  <b>Answer:</b> Yes</p>
<p>4. <i>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.)?</i>  <b>Answer:</b> yes</p>
<p>5. <i>Do procuring entities normally make a good faith attempt to resolve disagreements through informal negotiations?</i>  <b>Answer:</b> Formal Yes</p>
<p>6. <i>If this fails, are the resulting disputes handled in accordance with the contract conditions?</i>  <b>Answer:</b> Yes</p>
<p>7. <i>Are supplier and contractor claims handled fairly based on a clear recognition of both parties' obligations under the contract?</i>  <b>Answer:</b> Yes</p>
<p>8. <i>Are works contracts supervised by independent engineers? Does an employee of employer act as engineer in some cases?</i>  <b>Answer:</b> Yes</p>
<p>9. <i>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?</i>  <b>Answer:</b> Yes</p>
<p>10. <i>Are contractual remedies utilized only when appropriate and in accordance with the contract conditions?</i>  <b>Answer:</b> In accordance with contract</p>
<p>11. <i>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?</i>  <b>Answer:</b> Relays do occur – for works contract</p>
<p>12. <i>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.)</i>  <b>Answer:</b> Yes</p>
<p>13. <i>Are under-inspection, over-inspection and/or improper rejection of goods, materials or</i></p>

<p><i>methods of carrying out the works a common problem?</i></p> <p><b>Answer:</b> No</p>
<p>14. <i>Are disruptions of the supplier's or contractor's orderly performance common?</i></p> <p><b>Answer:</b> No</p>
<p>15. <i>Can any of the improper contract administrative practices identified above, be attributable to a problem identified in the local procurement environment? Specify</i></p> <p><b>Answer:</b></p>
<p>16. <i>Are procurement evaluations/audits conducted? If so, describe scope, frequency, who carries them out, etc.</i></p> <p><b>Answer:</b> Audit by the Director of Audit</p>
<p><b>PROCESS - RECORD KEEPING</b></p>
<p>1. <i>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.</i></p> <p><b>Answer:</b> Yes</p>
<p>2. <i>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.)</i></p> <p><b>Answer:</b> yes</p>
<p>3. <i>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?</i></p> <p><b>Answer:</b> Yes - Data base not on current market price</p>
<p>4. <i>Are periodic reports prepared on overall procurement activities? By and for whom?</i></p> <p><b>Answer:</b> No</p>

<p><b>Annex E - Public Sector Selection of Consultants</b></p>
<p>1. <i>Are procuring entities generally well staffed, experienced and capable of carrying out a professional selection process for consultant services?</i></p> <p><b>Answer:</b> Yes</p> <p>Do they administer consultant contracts effectively?</p> <p><b>Answer:</b> Yes</p>
<p>2. <i>Is the winning consultant firm normally chosen by comparing competitive proposals submitted by a short list of qualified firms?</i></p> <p><b>Answer:</b> Yes</p> <p>Where do implementing agencies obtain the information necessary to develop short lists? If not, specify what other methods are used and when they are used.</p>

<b>Answer:</b> From funding agencies and records of previous tender exercises
3. <i>Do requests for proposals clearly describe the selection process and evaluation criteria?</i> <b>Answer:</b> Yes
4. <i>Do the Terms of Reference describe the requirements of the assignment clearly and completely, including background, scope and objectives, deliverables, time frame, anticipated staff-time, and government contributions?</i> <b>Answer:</b> Yes
5. <i>Is selection based only on technical considerations or also on price?</i> <b>Answer:</b> Weightage for technical consideration higher
6. <i>Are technical criteria detailed and appropriate and their relative weights reasonable?</i> <b>Answer:</b> Yes, on both technical and price.
7. <i>If price is also a selection factor, are technical evaluations completed before opening and consideration of price proposals?</i> <b>Answer:</b> Yes Are the relative weights chosen for each factor appropriate? <b>Answer:</b> Yes
8. <i>Are there standard conditions of contract?</i> <b>Answer:</b> Yes Are they fair and equitable to the consultant? <b>Answer:</b> Yes Do they adequately protect the interests of the client? <b>Answer:</b> Yes
9. <i>What form of compensation is used? Unit rates? Lump sum based on milestones? Other?</i> <b>Answer:</b> Generally percentage fee and lump sum both are based on milestone
10. <i>Are consultants required to submit proposal, performance and/or advance payment securities?</i> <b>Answer:</b> Performance and advance payment securities – Yes. Proposals – No.
11. <i>Is there a conflict of interest policy provision included in the conditions of contract? (If so, describe)</i> <b>Answer:</b> Yes
12. <i>Are evaluations conducted by committees with appropriate expertise?</i> <b>Answer:</b> Yes
13. <i>Are general criteria broken down into appropriate detailed criteria agreed by the evaluating committee before conducting the evaluation?</i> <b>Answer:</b> Yes
14. <i>Are all criteria applied consistently, fairly and impartially by the evaluators? Are the individual score sheets kept as part of the procurement record?</i> <b>Answer:</b> Yes
15. <i>Are evaluations conducted individually by each member of the committee and the results averaged?</i> <b>Answer:</b> Yes
16. <i>Are new factors or weights added after the issuance of the request for proposals which are considered during the evaluation?</i>

**Answer:** Only factors and rates determined before the closing date are taken into consideration for evaluation and bidders informed by way of addenda

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

**Answer:** Yes

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

**Answer:** Yes

<b>Annex F - Procurement Performance</b>		
<b>VOLUMES</b>		
1. <i>What are the approximate annual values of public procurement for goods, works, and consultant services, respectively? If possible, distinguish between procurement for projects and ongoing programs.</i>		
<b>Answer:</b> Not available in consolidated form		
2. <i>What are the approximate percentages of goods, works, and consultant services financed by external donors?</i>		
<b>Answer:</b> Not available in consolidated form		
3. <i>What percentage of public procurement follows competitive bidding procedures? Other methods?</i>		
<b>Answer:</b> Not available as percentage basis		
4. <i>What percentage of competitively bid procurement is donor financed?</i>		
<b>Answer:</b> Not available in this breakdown but as per project		
<b>GENERAL EXPERIENCE</b>		
1. <i>Are government organizations generally perceived by suppliers/contractors/consultants/the public as fair and efficient in their procurement practices?</i>		
<b>Answer:</b> Yes		
2. Which of the following factors are considered to be problems by persons familiar with public procurement in the country?		
	<b>Yes</b>	<b>No</b>
Inappropriate or outdated laws and regulations		Ö
Poor compliance with and enforcement of existing laws		Ö
Poor information about procurement needs		Ö
Shortage of experienced professional staff	Ö	
Poor training of procurement staff	Ö inadequate	
Low pay for procurement staff		Ö
Poor procurement training as above	Ö	
Weak procurement planning	Ö	
Poor procurement methods and procedures		Ö

Lack of good standard procurement documents		0
Poor technical specifications (Goods only? Works?)		0
Cumbersome contract approval procedures		0
Lack of clear delegation of contracting authority		0
Interference by higher level officials		0
Inadequate appeals mechanism		0
Lack of anti-corruption measures and enforcement		0
<b>EXPERIENCE WITH WORLD BANK-ASSISTED PROJECTS-</b> To contact Ministry of Finance for reply		
1. <i>How many Bank projects have been completed in the country? Are now underway? In which sectors?</i> <b>Answer:</b>		
2. <i>Which organizations have been responsible for procurement on these projects?</i> <b>Answer:</b> CTB and implementing Agency		
3. <i>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?</i> <b>Answer:</b>		
4. <i>Do project audits/completion reports/supervision reports indicate significant procurement problems? Have any cases of misprocurement occurred? Describe.</i> <b>Answer:</b> No		
5. <i>Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe.</i> <b>Answer:</b> No		
6. <i>Does the Bank receive a large number of complaints about procurement procedures, selection decisions in the country?</i> <b>Answer:</b> No		
7. <i>Are contracts generally awarded within the planned, usual time frame that would be required for similar operations by other experienced and efficient organizations?</i> <b>Answer:</b> Generally Yes		
8. <i>Are there serious problems or conflicts between national and/or local practices and World Bank Guidelines which should be addressed on an interim basis pending implementation of recommended long-term action plans?</i> <b>Answer:</b> Not serious apart from public bid opening of bids		

### Annex G - Private Sector Procurement

1. *Is there a reasonably well-developed private sector which freely trades goods and procures works and other services?*

**Answer:** Private sector has a long standing tradition of international trade relations and its buying power is higher than the public sector.

2. *What is the approximate volume of such procurement? Are any private sector contracts comparable in size to those in the public sector? Are they for goods, works or other types of contracts?*

**Answer:** Private sector supplies represent about 65% of the GNP. The private sector opens bidding through short lists for projects the same size as the public sector ones especially in the hotel trade. This is for construction, supplies and services.

3. *Who are the main importers of raw materials and finished goods? Are they traded/imported on the basis of the INCOTERMS? Do they allow payment through documentary credits?*

**Answer:** The first raw materials importer is the state company STC with about 10% of all imports, followed by the private groups, Rogers, IBL and Desbros. They import using Incoterms and payments are by documented credit.

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

**Answer:** All systems of supplier selection exist: central procurement agencies, courtiers, shows, regular suppliers, e-commerce and brand representatives. Better prices, better delivery dates, and more flexible payment methods are always sought after.

5. *What kind of procurement practices do private sectors' purchasers and employers generally follow? Do they differ for goods, works or services?*

**Answer:** For services, consultants are often chosen through acquaintances or due to the fact that the client and the consultant belong to groups with linked finances, performance criteria and references are also important however. Private sector, for construction, uses short lists of well known companies..

6. *Is private sector procurement planning adequate? Do firms carry out market surveys and use other available information when they prepare their cost estimates? Is packaging done well? What level of technical, schedule and other detail goes into their procurement plans?*

**Answer:** The timetable in construction is of utmost importance and work has to be completed within the time frame otherwise large penalties for being late are charged. Market studies are carried out only if the importer is certain to receive government approval which is tightly controlled. Product wrapping is on par with international quality but administrative restraints applicable to new imports somewhat hinder importers.

7. *Do firms ever carry out open bidding preceded by advertising?*

**Answer:** No

8. *Are bids invited from short lists (as for LIB)? If so, describe what criteria are used to develop the short lists. Are standing lists developed by use of periodic pre-qualifications? Are reasonable technical and financial criteria used? How often are standing lists updated?*

**Answer:** Private sector's short lists are drawn from experience and references. In the public sector, companies are graded on an A to E basis. This list is drawn up in a way that is not always transparent. using a list of references and criteria supplied by the companies. The law of 1997 also

determines criteria used for the designation of « national » companies as opposed to « foreign » ones in order to apply the 7.5% national preference. Existing lists are modified from time to time.

9. *Under what circumstances is sole source/direct contracting permitted?*

**Answer:** Negotiated contracts are attributed below the budget level requiring going through CTB. for small contracts and in emergencies

10. *How detailed are the bidding documents used to invite bids for goods, works or services?*

**Answer:** Bidding documents are usually most detailed especially for public works with technical notes from private consultants as required by the Ministry to determine the main components

11. *What criteria are used to determine the winning bidder? Cost, quality/compliance with specs? Time of delivery or completion? Familiarity?*

**Answer:** Selection criteria is based on references, competence, past experience and timely completion for construction. For smaller work, selection criteria is more flexible.

12. *Do private sector procuring entities usually carry out price negotiations with the apparent winner after bids are submitted?*

**Answer:** Procuring entities often negotiate prices and conditions after the bid is awarded but before signing the contract.

13. *Do private sector companies monitor procurement and contract implementation efficiently? Do they utilize modern computerized methods?*

**Answer:** Yes, everything is totally computerized..

14. *Are employees required to follow corporate ethics policies and procedures? Describe.*

**Answer:** The mission was unable to gather sufficient information on this subject.

15. *Could some private sector procurement practices be adopted by the public sector? Indicate which.*

**Answer:** Yes, certainly, especially in the obligation to adhere to delivery dates and impose high penalties in the event of lateness.

16. *Has there been any experience with private sector contracts for the provision, operation, maintenance of infrastructure for various public services (BOO/BOT/BOOT/etc.)? Describe.*

**Answer:** Public service concessions in the private sector that we came across do not operate as BOO/BOT/BOOT etc. but either as interest groups where the state remains the majority holder with private management, or by leasing the land with a private operating contract (see FOM), after bidding.

### Annex H - Checklist comparing National Competitive Bidding Procedures and World Bank Policy

	Yes	No	Bank Policy
1. Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?		Ö	Not allowed
2. Are there primary boycotts which are established by law?		Ö	Only primary boycotts are acceptable
3. Are bidding opportunities advertised in the local press?	Ö		Required
4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?	Ö except in emergencies		Required
5. Are contractors/suppliers pre-qualified for large/specialized contracts?	Ö		Required
6. Are minimum experience, technical and financial requirements (for pre -or post-qualification) explicitly stated in the documents?	Ö		Required
7. Is an invitation to pre-qualify advertised for each procurement involving large or complex potential contracts?	Ö		Required
8. Are joint ventures with local firms required for foreign firms' eligibility?		Ö	Not allowed
9. Are joint venture partners jointly and severally liable?	Ö		Required
10. Are there set limitations to the number of firms who can bid for a contract?		Ö	Not allowed
11. Are parastatals allowed to bid?	Ö Only DWC		Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law and (iii) are independent from borrower and its purchasing/contracting authority
12. Are bidders required to register with a local or federal authority as a prior condition for bidding?	Ö but not ... ..		Should be discouraged. Acceptable only if registration criteria, process and cost reasonable/efficient and

<i>*Local construction companies have to register. Foreign construction companies cannot register and are not generally allowed to bid. Suppliers of goods do not register.</i>	applicable for Bank financed contracts		qualified foreign firms not precluded from competing.
13. Are extensions to bid validity allowed?	Ö		Acceptable only if justified by exceptional circumstances
14. Are there restrictions on the means of delivery of bids?		Ö	Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.
15. Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?		Ö	Not allowed
16. Are there restrictions on sources of labor and material?		Ö	Not allowed, except for unskilled labor, if available locally
17. Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?	Ö but not systematic	Ö	Required
18. Is a "two envelope" bid opening procedure permitted for procurement of goods or works?		Ö	All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round. Not allowed
19. Is automatic re-bidding required if too few bids are received?	Ö		Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result
20. Is "bracketing" used in bid evaluations? Rejection of bids outside a range or "bracket" of bid values.		Ö	Not allowed
21. Is award made to lowest evaluated qualified and responsive bidder?		Ö	Required
22. Are price negotiations conducted with "winning" bidders prior to contract signature?		Ö	Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price. (See Guidelines para 2.60)
23. Are price adjustment provisions generally used?		Ö	Not required, but recommended for works contracts of 1 year or more in

			duration when domestic inflation rate is high
24. Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?	Ö		Required (to be acceptable they should be balanced, reasonable and clearly address the most important issues that lead to problems during performance, e.g. risk allocation, payment, inspection, completion/acceptance, insurance, warranties, changes, contract remedies, force majeure, governing law, termination, etc.)
25. Are contract scope/conditions modified during implementation?		Ö	Acceptable, but advance Bank approval of changes subject to prior review needed if required under the Loan Agreement.

## **C. Other Relevant information**

### **1. Aide Mémoire of the Country Procurement Assessment Review (CPAR) Mission (January 22<sup>nd</sup> to February 2<sup>nd</sup>, 2002)**

#### **1. Introduction**

1.1. Context of the CPAR. The 2001 CAS, under discussion between the Government of the Republic of Mauritius and the World Bank, proposes an assistance instrument that is different from those used in the past. Instead of carrying out a number of investment operations in selected sectors and individual pieces of sector work, a series of annual loans to finance Mauritius' overall budget would be provided to support key policy reforms, known as Public Expenditure Reform Loans (PERL). A pre-requisite for the use of PERLs is that there is agreement and understanding between Mauritius and the Bank on the adequacy of overall fiduciary accountability and procurement rules governing Mauritius' public sector. It has thus been agreed that a Country Procurement Assessment Review (CPAR) should be carried out as soon as possible before the presentation of the first PERL to the World Bank Board. The purpose of the CPAR is to assess (i) the efficiency, economy and transparency of the public procurement system; (ii) commercial practices in the private sector particularly in relation to importations, and (iii) the institutional capacity of bodies dealing with procurement in the country.

1.2. The mission composed of Mr. Slaheddine Ben-Halima, Senior Procurement Specialist (mission leader); Mrs. Marie Van Beek, Lawyer (Consultant); Mr. René Beckers, Private sector specialist (Consultant) and Ms Christine de Mariz, Economist (Consultant) stayed in Mauritius from January 22<sup>nd</sup> to February 2<sup>nd</sup>, 2002, to carry out the Country Procurement Assessment Review. Mr. Bernard Abeillé, Regional Procurement Adviser for Africa, joined the mission on January 28<sup>th</sup> to provide assistance to the mission team and provide it with guidance, given the peculiarities and context of this review. Upon arrival, the mission met at The Ministry of Finance with Mr. K. Guptar, Director Public Finance, Ministry of Finance, and Mr. Mohit Dhoorundhur, Principal Assistant Secretary. The mission is most thankful to both of them, and their staff, for their assistance in providing information and documentation (see list of documents collected in Annex 2), and for the arrangements they took (before and during the mission stay in Mauritius) to secure the various and numerous meetings and interviews that the team members needed to hold for the CPAR.

1.3. The mission was able to meet with (i) staff responsible of procurement in various ministries, particularly those who are the big spenders of public funds and the MPI, (ii) the Director of Audit (iii) the Central Tender Board (CTB) members, (iv) the chairman of the High Power Committee (HPC), (v) the members of the PAC, (vi) the customs and Port-Louis port authority, (vii) parastatals, (viii) members of the business community including traders and importers, contractors and providers of consultancy services (see list of persons met in Annex 1). The mission was assisted on a day-to-day basis by Mr. Dhoorundhur (and his team) who was designated, earlier before the mission arrival, by the Government, to the World Bank, as the coordinating person for the CPAR. Therefore, the questionnaire to be filled out by the national team of persons involved in the

procurement process, was sent to Mr. Dhoorundhur for communication to the national team. However, the latter did not have time to completely fill out the questionnaire before the arrival of the mission, but arrangements have been made to do it by mid-February.

## 2. **Mission Findings and Recommendations**

2.1. Pursuant to the satisfactory rating of the implementation of the World Bank financed projects portfolio, the mission expanded its review to the whole procurement system regardless of the source of financing. The preliminary findings confirm that the system of public procurement and management, and the environment in which the private sector is evolving, have reached an acceptable level, and that the present initiatives taken by the Government reflect its willingness to optimize the use of public resources. The current dynamic will certainly enable to achieve, in the medium term, the setting of an efficient and transparent management system in the institutions in charge of public procurement, as well as the promotion of a competitive private sector, operating in an environment conducive to its development and to the adequate implementation of public contracts.

2.2. The desirable improvements recommended by the mission are rather in line with the program that the Government has initiated. At this stage of the review, the main recommendations address the need to: (i) elaborate a legal framework giving the necessary orientations for the drafting of procedures and completion of regulations; (ii) standardize and computerize the procurement documentation, e.g. the bidding documents; (iii) strengthen the regulatory role of the CTB; (iv) train the staff in charge of public procurement at the level of all ministerial departments; (v) integrate the ex-post review of procurement compliance in the audits; (vi) streamline and simplify the import procedures; and (vii) review the economic performance and quality of imports carried out by the private sector and/or parastatal bodies.

2.3. Historical context. Mauritius' procurement system, similar to that found in other Anglophone countries, combines a stores system with tendering by a central tender board. Insofar as written, it states general principles. Attempts have been made to modernize the procurement system. A procurement law along UNCITRAL lines was introduced in 1999 but abolished shortly afterwards. While going back to its pre-UNCITRAL tender board system, the Government didn't give up on its plan to modernize procurement and to that end, it nominated a High Powered Committee (HPC) with a mandate to make recommendations for a new and modern procurement system that retains the best features of past and current laws. The HPC's report, to be furnished to the Prime Minister, is expected to be ready in early 2002. In parallel with the work of the HPC, a Prevention of Corruption bill and a bill relating to financial intelligence and money laundering have been prepared and just been sent to the National Assembly. The anti-corruption provisions and the prevention of money laundering in these draft bills are adequate to combat corruption in procurement and financial transactions.. The bill relating to Prevention of Corruption will create an authority/agency modeled upon the Hong Kong anti-corruption agency

2.4. Current legislation. The Central Tender Board Act of 2000, coupled with the Financial Management Manual of 1990 as amended, govern Mauritius' procurement until they will be replaced by legislation drafted pursuant to the HPCs recommendations. The system is currently incomplete.

The Financial Management Manual is meant mainly to give guidance on local purchasing and handling of low-value goods by Ministries and Departments. The procurement methods envisaged are direct purchase and invitation of quotations, called selective tendering. Procurement of works or of services of an intellectual nature are not addressed in the Financial Management Manual. Procurement by entities other than Ministries and Departments is not addressed.

- The Central Tender Board Act of 2000 establishes a Central Tender Board (CTB) and broadly outlines its functions: to tender for goods, works and services, in accordance with appropriate tender procedures, to be drafted by the CTB. So far there are no new or updated specific rules concerning required form of bidding documents, (pre)qualification of bidders, publicity, public bid opening, evaluation and contracting procedures and observance of time limits for various actions, or emergency procedures. Standard bidding documents and public procurement procedures were prepared and were subsequently incorporated in the Public Procurement Transparency & Equity Act 1999. However this act had to be repealed since it proved to be unwieldy and impracticable. Afterwards Government has reinstated the former CTB Act and at the same time set up a High-Powered Committee to review the latter act. In the meantime, the CTB has been utilizing the general principles and practices of public procurement many of which are contained in the defunct Act.
- There are no standard bidding documents-- which is leading to introduction of changes, not always appropriate or desirable, by contracting authorities. Moreover, this practice is a source of time waste – both for public and private sector entities --, and raises quality control issues, for reviewing authorities. Although the design of standard bidding documents has not been formalized a major part of the documents are in fact standard and have been used consistently over the years. They certainly need to be reviewed and updated.

2.5. Regulations. In the absence of the necessary regulatory framework, procuring entities and the CTB have filled the void with their own practices by extrapolating the various provisions found in the Financial Management Manual and applying them when tendering for larger-value contracts. Because of the low value threshold of contracts that have to be scrutinized by the CTB, the CTB has become an unifying factor in the whole procurement system, counseling ministries to follow more or less consistent practices. In addition, supply and management agents, placed in each ministry and part of each tender committee, are trained centrally and provide another unifying element. The CPAR will recommend a revision of the whole procurement legislation, its completion with appropriate regulations and standard bidding documents, and tie-in with related legislation (such as the Prevention of corruption Bill) and regulations (Financial Management Manual) which should be revised and adapted at the same time. It will also recommend a carefully planned introduction of the new legislation so that both public and private sector will be made aware of the changes.

2.6. Procurement practices. A large number of Mauritius' procurement practices are meant to enhance economy, efficiency and transparency.

An independent CTB with well-qualified members

- A preference for tendering of even rather low value contracts (below CTB threshold), and the invitation of at least three tenders (and often more) for even lower-value contracts.
- A reasonable time to prepare tenders.
- Generally, tenders are evaluated within 90 days.
- A debriefing process whereby the losing bidder can complain to the Ministry and the Ministry may refer the losing bidder to the CTB for debriefing
- A functioning court system
- A functioning audit system
- Few complaints about slow payments by public entities.

2.7. However, some other procurement practices found in Mauritius are not in compliance with the World Bank Guidelines and do not correspond to International good practices:

- Tendency to exclude foreign bidders, especially when after sale service is at issue.
- Slicing of contracts to avoid scrutiny by the CTB
- No pre-shipment inspection.
- No procurement planning.
- Non-public bid opening
- Evaluation criteria only summarily set forth in bidding documents
- Reliance on registration of contractors instead of pre-qualification.
- No publications of awards
- Confusion between lump sum contracts and contracts based on unit prices, which leads to frequent variation in contracts value as pointed out by the ODA audit reports.

2.8. These and other points will be more extensively addressed in the CPAR which will also describe the best world-wide practices. A general checklist of desirable points to be included in procurement regulations has already been handed to the government (see Annex 3 to the aide mémoire). Computerization and the introduction of standard bidding documents will also help to remedy some of the issues raised by these points. Non-public bid opening and non-publication of awards has led to accusations and rumors of corruption. CTB, as long as it still receives and opens tenders, should start public bid opening, in the presence of any bidder who's interested to attend, as soon as possible and bidding documents should immediately make mention of this and invite bidders to attend. Any short-term inconvenience this may lead to (lack of enough tender boxes and other practical considerations) could easily be overcome.

Public Sector Procurement Capacity. The capacity of public sector staff is far above the average level. Civil servants involved in procurement tend to be well trained and equipped. Filing of documents is generally done in such a way that audit is possible.

- Further computerization will definitively improve staff efficiency.
- The initiative to have the Technical University of Mauritius prepare training materials for supply officers can count on the full support of the World Bank.
- Mauritius and the World Bank will discuss training opportunities for Mauritius' supply officers in World Bank sponsored courses.

2.10. A new role for the CTB. It is generally expected that the CTB, in a streamlined and modernized form, will continue to supervise procurement. In addition to the current supervisory role, which should be facilitated by an increase in the thresholds for review and mechanization, the CPAR will make proposals for its enhanced new role as a regulatory entity that:

- Provides general procurement advice and maintains data banks;
- Keeps computerized statistics on procurement; and
- Enforces and updates the new procurement legislation.

The CTB new functions cannot succeed without lifting of thresholds for its review to a more realistic level, to ease the current burden of low-value contracts – currently 1,500 per year --which it has to review, and by introduction of standard bidding documents. The CPAR will make recommendations for new thresholds, which will vary according to the type of contract to be procured: higher for civil works, lower for services. The CPAR will also make recommendations on financing of the CTB access to outside expertise, training and equipment to fulfill its new role and to switch over to E-procurement.

2.11. Transparency. Mauritius' independent **Office of the Director of Audit (ODA)** which performs annual audits of public accounts, those of local authorities and of state enterprises on behalf of the National Assembly can be cited as a model for other countries. The audit reports are furnished to the Public Accounts Committee in Parliament which is chaired by the Parliament's opposition leader.

In the future the Director of Audit will cooperate actively with the newly to-be-set-up anti corruption agency in pursuing irregularities. In addition, the following issues ought to be explored:

- How the investigative/forensic functions of the Director of Audit can be strengthened with technical expertise.
- Whether public bodies who do not furnish the required accounts to the Director of Audit should continue to receive Government subsidies.
- Whether the mandate of the Director of Audit should be extended to include supervision of audited financial statements of companies in which the government holds a majority share.

2.12. The **internal audit** function has changed since May 2001 (following MoF Circular No 6 of 2001) when senior officers previously assisting the Chief Internal Controller in supervisory works have been posted to the larger Ministries and Departments. Internal Control Roving Teams are covering smaller organizations. It has

become a management tool for Accounting Officers in the administration of the respective Ministries and departments in the pursuit of value for money. Officers of Cadre who are in charge of Ministries and Departments now report progress to the ICC and seek guidance, only whenever required. The Internal Control Cadre (ICC)'s function is presently mainly focused on pre-service and in service training. The Director of Audit has drawn out attention to the fact that there should be no parallel audit which may be unconstitutional. The setting up of the new system and reporting to the Accounting Officers are in accordance with recommended auditing standards. With regard to procurement it is currently rather difficult to find comprehensive data enabling to compare consolidated figures showing the numbers of contracts per ministry, for what amounts and what procurement method was used. Nevertheless, and as per financial regulations, it is for the Accounting Officers of Ministries/Departments together with the Purchasing and Supplies Cadre who should institute appropriate systems of management information for their respective Ministries/Departments. The CPAR will recommend that such systems be put in place as soon as possible in all Ministries/Departments.

2.13. Consultation of civil society. The private sector is sometimes included in committees and bodies that decide on important pieces of legislation, such as the Construction Industry Development Committee (CIDB), the body that decides on the grading of contractors, but not in the HPC. Although not formally instituted, consultations between the Government on the one hand and the Chamber of Commerce and the Mauritius' Employers Association on the other hand are taking place regularly. A free press keeps the rest of the population informed, as does the publication of various official reports such as those of the Director of Audit and the Public Accounts Committee.

2.14. Accountability. Altogether the Mauritian audit system is working and the country is firmly committed to provision of a transparent climate were the general public can see and understand how public money is spent. But awareness of irregularities alone is not enough. Enforcement of laws, once they have been put in place by the National Assembly is part of good governance and so is self-policing of the Government, apart from and in parallel with the Public Accounts Committee's investigation.

- The creation of a monitoring unit within the Ministry of Finance to follow up on the Director of Audit's report is a welcome development.
- Supervision of contracts, once put in place, needs to be strengthened according to the Director of Audit 's report. This could be achieved by holding more accountable those who were entrusted – whether they are from the public or private sectors -- the responsibility of supervising the execution of contracts.

2.15. The private sector is well organized and its volume of imports (65%) is higher than of the public sector (35%). However, its development efforts are hampered by administrative hurdles representing the multiplicity of documents, required for importation, which could sometimes be a pretext for corruption. Otherwise, the

operations are computerized all the way from the point of entry to customs declaration, allowing a rapid availability of the goods in the market for consumption. Port authority service though efficient could be improved. However, the mission noticed that an impressive number of goods are subject to special authorization or import quota which may reduce the private sector's dynamic.

2.16. A state company, STC, is the first importer in the country (approximately 10% of total imports) thanks to granted monopolies or reserved importation quotas for goods deemed « sensitive », such as petroleum products, cement, flour and rice. STC management was not subjected to audit for the last two years. The private sector is not too much dependent on public demand for its survival, but reported to the mission the lack of consistency in public procurement regulations between one ministry and another. Though acknowledging that public procurement process is in general transparent, it pointed out to the fact that there are many instances where different administrations had diverging interpretations of the rules when carrying out bid evaluation.

### 3. **Conclusions, Next Steps and Action Plan**

3.1. Conclusions. As pointed out by the mission, the national willingness to enhance the efficiency, economy and transparency of the procurement system justifies a national program, in order to complete the on-going reform launched by the Government since 2000.

The action plan recommended by the mission addresses the actions that ought to be taken with respect to the five following areas: (1) legal framework; (2) Practices; (3) Structures and Capacities; (4) Controls; (5) Appeals and Anti-Corruption measures, as well as prevention of money laundering. They are detailed hereafter.

#### **Legal framework**

- (a) Issuing procurement legislation in line with the guiding principles shown in Annex 3; and
- (b) Integrate the provisions of the Central Tender Board Act 2000 and those of the Financial Management Manual in new legislation. Complete them on those points which are currently not regulated and cross-reference with all relevant related Acts, particularly those just enacted: The Financial Intelligence and Anti-Money Laundering Act 2002 and the Prevention of Corruption Act 2002.

#### **Practices**

- (c) issuing instructions to ensure public bid opening of bids and publication of awards;
- (d) enhancing the regulatory functions of the Central Tender Board (CTB);
- (e) issuing standard documents including: (i) Standard Bidding Documents (SBDs) for civil works, goods, and services and specific procurement as pharmaceutical, text books, commodities, supply and installation of complex industrial plants, lease contracts and concessions, and consultants services; (ii) pre-qualification documents; and (iii) bid evaluation forms;

- (f) installing a computerized procurement monitoring system;
- (g) introducing computerized data banks and other software with a view to gradually move to E-Procurement;

### **Structures and Capacities**

- (h) organizing systematic training sessions for staff dealing with procurement and private sector organizations;

### **Controls**

- (i) ensuring that (i) annual audits include procurement post reviews which will deal with the performance of contracting authorities in applying procurement regulations and (ii) Departments/Ministries put in place a system to monitor and have consolidated data on all contracts/purchases below the CTB review threshold;

### **Appeals and Anti-Corruption measures**

- (j) formalizing the appeal process currently in practice at the level of the Departments/Ministries and the CTB;
- (k) reviewing the role of the Director of Audit Office, (i) with respect to the scrutiny of procurement processing, in compliance with the requirements of section 19 of the CTB Act 2000, and (ii) in connection with the provisions of the Prevention of Corruption Bill;

### **Imports and Private Sector**

(l) The quality of services in the import domain is globally satisfactory. It could be improved if a number of administrative authorizations and very constraining formalities could be shed from the process. The mission main recommendations are to: (i) check the usefulness of current authorizations and delete those that bring no added value to the process or are obsolete; (ii) connect Customs Services and Ministries information networks; (iii) carry out an audit of STC to assess whether its procurement process meets the criteria of economy and efficiency; and (iv) facilitate access to training in procurement to the staff of private sector companies and parastatal bodies.

3.2. Next steps. A first report including detailed recommendations and a proposed action plan will be delivered by the World Bank to the Government before March 25, 2002. It is expected that it will serve the Government to finalize its own National Program. It is also anticipated that the Government will take immediate actions to adopt a “fraud and anti-corruption” bill and a prevention of money laundering bill acceptable to the Bank, and issue the necessary acts in order to ensure public bid opening of bids and publication of awards. The commitment to the enactment of legislation for procurement reform by 2002/2003 would be a prerequisite for the negotiations of the PERL.

3.3. The time-table below summarizes key steps of the action plan:

#	Actions	World Bank	Government	Tentative Dates
1	Aide-Mémoire of the January mission transmitted to Government	Country Director transmits the aide-memoire		Before 02/28/02
2	The Government would provide the Bank with: (i) feedback of the aide-memoire; (ii) a copy of the draft regulation for the Construction Industry Development Board before its adoption; (iii) assurance they adopt the "Prevention of Corruption" Act, and the "Financial Intelligence and Anti-Money Laundering" Act; and (iv) a copy of the draft instructions (a) to the Central Tender Board (CTB) to systematically open bids at public bid opening, and (b) to Ministries/Departments to publish contract awards decisions.		MoF to consolidate feedbacks from various sources including HPC recommendations	Before 04/30/02
3	Preparation of draft CPAR and internal clearance at the WB level	At appropriate internal Bank level		Between 03/15/02 and 06/10/02
4	Draft CPAR transmitted to Government	Country Director transmits the draft CPAR		Before 06/30/02
5	Adoption of the "Prevention of Corruption" bill, the "Anti-Money Laundering" bill , and instructions to ensure effectiveness of public bid opening and publication of contract awards		Government issues the act and directives	Before negotiations of the PERL or before 04/29/02
6	Create Procurement Reform Committee		Government	07/30/02

7	Government prepares its own national program		Government	Between 06/15/02 and 08/30/02
8	Government sends its own national program to the Bank and Request for financial support		Government	Before 09/15/02
9	The Bank provides its comments to the Government on the draft national program	Country Director transmits comments		Before 09/30/02
10	Adoption of the national program on the basis of which new procurement legislation can be drafted		Government	Before 10/27/02 or effectiveness of the Loan for the PERL
11	Technical Assistance selection and implementation		Government and Consultants	November 2002 through approx. November 2003
12	Joint review World Bank and Government of the national program related to the legal framework is completed		Government	Before the negotiations of the second PERL
13	Joint review with the Government of the completion of the entire national program		Government	Before the third PERL

**2. Note establishing points to be taken into consideration when writing regulation texts in the preparation of procurement procedures (january 2002)**

**CHAPTER I  
GENERAL CONSIDERATIONS**

**1. Introduction**

Improvement of public procurement procedures in public contracts is based on certain actions that will establish or reinforce efficiency and credibility in the public sector, sometimes referred to as « transparency », and in the effective use of private partners.

**2. Scope of application**

It is advisable that public contract regulations be applied to all administrative contracts particularly to concessions, delegation of public services, farming, public excises, management contracts, etc. given the considerable risks that exist when personal interests can outweigh public interest.

**3. Transparency**

Transparency in the procedures and behavior of the public purchaser are based on : effective advertising, public opening of the bids, objective criteria when evaluating bids, awarding the contract to the lowest bidder with no negotiations.

Rules and regulations play an important role (a little like in legal procedures) especially with open bidding. These procedural rules require using bidding documents that are given to competitors and will allow firm, unrestricted bids to be made, excluding any dispositions or mechanisms that could affect transparency. Procurement methods other than through bidding have to be appropriately restricted

**4. Balance amongst partners**

Modern regulations try to give losing bidders rapid recourse in the event of the irregular attribution of the contract. More generally, public sector contractual partners have to play an active role in the application of competition mechanisms and watch over them as does the contracting administration. They should also be subject to fair contract conditions. Some institutional mechanisms play a critical role in maintaining the balance between partners and transparency, two of modern regulations ; goals..

**5. Exceptions and derogations**

When deemed necessary by the public sector, contract regulations should include some exceptions to contractual common law such as : cancellation just for convenience and necessary derogations for international agreements..

## CHAPTER II DETAILED RECOMMENDATIONS

### 1. Rules and regulations play an important role (a little like in legal procedures) especially with open bidding The rules are as follows :

- Effective advertising, i.e. widespread enough (using the appropriate support) to give bidders the necessary time to prepare their bid, when the use of a computer is possible it should be used in order to reach the largest number of potential candidates;
- Public opening of bids i.e. the immediate opening of all financial bids with official minutes taken for the bidders ;
- Contract awarded without negotiation, as this would encourage bidders not to submit their best bid and would impact the perception of transparency which is one of the positives of the bidding system.

### 2. These rules require bidding documents to be used by competitors in order to receive firm, non-negotiable unrestricted bids :

- Utilization of evaluation criteria for non-discriminatory, publicized and strictly itemized bids expressed in financial terms. This is so that the «best » offer can be irrefutably identified. Itemization in monetary terms is the only method that allows true transparency in evaluation and gives bidders the opportunity to have effective recourse before the bidding authority;
- qualification, the future contracting partner should be considered to be qualified (or disqualified) as he meets (or does not meet) the criterias of qualification, and not by giving a « grade » to qualification;
- separating the examination of the bidder's qualification from his bid;
- awarding the qualified bidder who submitted the lowest offer.

### 3. These rules should exclude any dispositions or mechanisms that could affect their transparency. Particularly the following :

- Utilization of a double envelope system that could adversely impact the benefits obtained from the public opening of the bids ;
- Resorting to a grade system to evaluate the bids ; grading is an indirect way of expressing post-qualification results or the analysis of the technical characteristics of the bid ;

- Combining the evaluation of the bids with the bidders qualifications; this could mean that a bidder only marginally qualified could receive the contract as his offer was the lowest;
- Using pre-selection rather than pre-qualification : pre-qualification means inviting all bidders that the contracting administration has determined to be qualified to participate and is far more transparent than pre-selection which means inviting only a certain number of bidders. Pre-qualification also draws a larger number of bidders;
- Using non quantitative criteria such as the size of the merchandise or products sub treated at a national level, as this could cloud the foreseeable outcome of evaluation, or envisage any other form of preferential qualitative disposition ;
- Disallowing bidders for purely formal reasons;
- Requiring guarantees when they are not necessary, or in an excessive amount;
- Restricting access to foreign bidders for public contracts, except low value ones;
- Awarding numerous market extensions and more generally the use of additional clauses that modify a posteriori the rules governing the contract award ;
- Inviting competition on the basis of uncertain quantities (program and order contracts).

**4. Procurement methods other than by open bidding should be restricted within appropriate limits. Therefore ;**

- **These methods should be planned in a limited way within the contract rules ;**
- Each time that the goal to be reached by open bidding allows it, they should be replaced by more transparent procedures, thus 2 stage bidding should be chosen over competitive negotiation or restricted bidding, that does not present candidates with comparable guarantees ;
- In the same way, restricted bidding is only advisable in the following cases ; low value contracts and in situations where only a limited number of potential bidders are available.
- Procurement methods should be adapted to the desired objective ; it can be noted for example that consultant selection inevitably resorts to qualification criteria, this would not be advisable in the selection of builders or suppliers ;
- exceptions to open bidding, when necessary, outside of cases included in the existing rules should be accorded by an entity that is independent of the contracting administration.

**5. Another aspect of modern regulations is offering unsuccessful bidders the possibility of a quick appeal in the event of irregular contract attribution.**

- These appeals should constitute an independent appeal and not a hierarchic appeal. Particularly, contract commissions coming from the administration, can only examine administrative appeals. The composition of the commissions only allows them to render arbitration or quasi-arbitration, and it is necessary to provide an independent appeal body responsible for examining bidder litigation before the contract attribution is finalized.
- When the appeal is made before contract attribution it results in the decision of the said attribution to be perhaps changed.
- When the appeal is made after contract attribution the only result would be compensation to the unsuccessful bidder who should have been awarded the contract

**6. Contracting partners in the public sector should play an active role in the application of competition mechanisms and watch over them as should the contracting administration**

- This objective can be reached when bidders are willing to submit their best possible offer, established following evaluation criteria they have been made aware of ;
- Its accomplishment is subject to bidders being present at the opening of the bids and the knowledge that they will not be allowed to negotiate ;

**7. Contracting partners should also be given fair contract conditions. Particularly :**

- Regulations must include the general contract conditions whose repeated use will create a foreseeable climate ;
- Regulation should include dispositions relative to guarantees and penalties without, however, exposing the contracting partner to excessive contractual sanctions or without making these sanctions automatic which would take away from the contracting administration the flexibility it needs to control services in its best interest and in the best interest of those receiving the services ;
- Contracting partners should make timely payments as set forth in the contract ; sometimes payment schedules can oblige the contracting partner to finance several months of services, which discourages companies with restricted cash flow even though they may have sufficient technical guarantees ;
- For foreign suppliers, payment methods should include document credit , which is the most commonly used method for international transactions.

- When the contract time frame is longer than the period over which the bidder can control projected costs, the contracting partner can benefit from a fair price revision so that he can concentrate his efforts on the technical aspects of the contract ;
- Actualization should be a right for the successful bidder who is not responsible for unilateral delays on the part of the contracting administration and should not have to support the consequences.

**8. Some institutional mechanisms play an important role in the balance between partners and in transparency, modern regulations have these two objectives:**

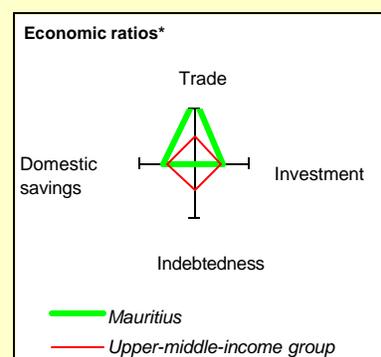
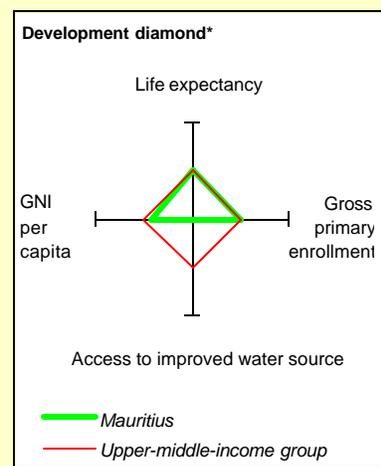
- Examination and control bodies are distinct from the contracting administration that launched the contract and are responsible for the analysis of the bids and for the proposal of attribution ;
- Mandatory accreditation is a heavy procedure that does not follow the evolution of technical and commercial capabilities of potential partners. When this procedure is used, the accreditation has to be constantly brought up to date, add guarantees and ensure a rigorous monitoring of accredited companies ;
- The envelope opening commission, in order to ensure transparency, should include representatives of all bidders who submitted bids ; .
- Trusteeship has the mandate to confirm the legality of all decisions made by the entity it governs, amongst others, for the attribution of contracts by the body under trusteeship and not to examine the opportunity.

...

### 3. Relevant Country information

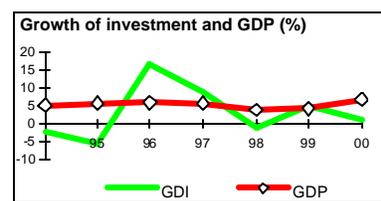
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<b>POVERTY and SOCIAL</b>	<b>Mauritius</b>	<b>Sub-Saharan Africa</b>	<b>Upper-middle-income</b>		
<b>2000</b>					
Population, mid-year (millions)	1.2	659	647		
GNI per capita (Atlas method, US\$) 2/	3.890	480	4.620		
GNI (Atlas method, US\$ billions)	4.6	313	2.986		
<b>Average annual growth, 1994-00</b>					
Population (%)	1.1	2.6	1.3		
Labor force (%)	1.6	2.6	2.0		
<b>Most recent estimate (latest year available, 1994-00)</b>					
Poverty (% of population below national poverty line)	..	..	..		
Urban population (% of total population)	41	34	76		
Life expectancy at birth (years)	71	47	69		
Infant mortality (per 1,000 live births)	19	92	28		
Child malnutrition (% of children under 5)	15	..	..		
Access to an improved water source (% of population)	84	55	87		
Illiteracy (% of population age 15+)	15	38	10		
Gross primary enrollment (% of school-age population)	106	78	107		
Male	106	85	106		
Female	106	71	105		
<b>KEY ECONOMIC RATIOS and LONG-TERM TRENDS</b>					
	<b>1980</b>	<b>1990</b>	<b>1999</b>	<b>2000</b>	
GDP (US\$ billions)	1.2	2.8	4.4	4.5	
Gross domestic investment/GDP	23.0	29.3	25.7	24.4	
Exports of goods and services/GDP	47.3	63.4	63.3	63.7	
Gross domestic savings/GDP	12.7	23.9	23.7	25.3	
Gross national savings/GDP	11.9	27.2	25.1	27.2	
Current account balance/GDP	-14.8	-1.5	-1.6	1.8	
Interest payments/GDP	2.4	1.6	1.3	1.2	
Total debt/GDP	42.2	35.9	41.1	38.7	
Total debt service/exports	13.3	8.5	12.3	11.0	
Present value of debt/GDP	..	..	..	..	
Present value of debt/exports	..	..	..	..	
	<b>1980-90</b>	<b>1990-00</b>	<b>1999</b>	<b>2000</b>	<b>2000-04</b>
<i>(average annual growth)</i>					
GDP 3/	6.2	5.4	4.3	6.9	5.2
GDP per capita	5.3	4.1	3.0	5.9	4.2
Exports of goods and services	10.8	5.6	2.7	5.5	3.0

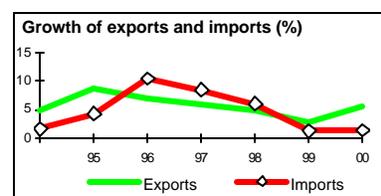


#### STRUCTURE of the ECONOMY

	<b>1980</b>	<b>1990</b>	<b>1999</b>	<b>2000</b>
<i>(% of GDP)</i>				
Agriculture	14.3	12.3	5.9	6.3
Industry	25.5	33.1	31.6	31.2
Manufacturing	16.0	24.3	24.0	23.5
Services	60.2	54.6	62.5	62.5
Private consumption	72.5	63.4	63.1	61.7
General government consumption	14.8	12.7	13.2	13.0
Imports of goods and services	57.5	68.8	65.3	62.8



	<b>1980-90</b>	<b>1990-00</b>	<b>1999</b>	<b>2000</b>
<i>(average annual growth)</i>				
Agriculture	2.3	-0.4	-23.3	25.9
Industry	10.0	5.4	5.8	7.0
Manufacturing	10.8	5.3	4.8	6.6
Services	5.6	6.3	5.2	6.7
Private consumption	6.7	5.5	2.1	5.1
General government consumption	3.7	4.8	5.9	6.1
Gross domestic investment	12.0	4.5	5.1	1.4
Imports of goods and services	12.6	5.2	1.3	1.4



Note: 2000 data are preliminary estimates.

1/ This AAG has been produced based on fiscal years data. For example, the year 2000 refers to FY starting in July 1, 2000 and ending in June 30, 2001.

2/ GDI per capita in Operational Guidelines of the World Bank is US\$ 3,800 for calendar year 2000. The GDI in this tables is for fiscal year 2000/01

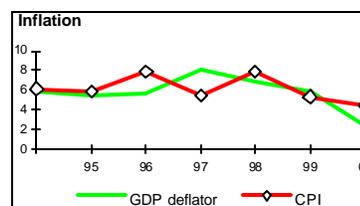
\* The diamonds show four key indicators in the country (in bold) compared with its income-group average. If data are missing, the diamond will be incomplete.

3/ GDP at factor cost growth rate was 3.0 and 8.0 percent in 99/00 and 00/01, respectively.

### 3. Relevant Country information ( continued)

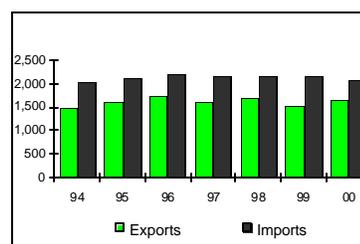
#### PRICES and GOVERNMENT FINANCE

	1980	1990	1999	2000
<b>Domestic prices</b>				
(% change)				
Consumer prices	26.5	12.8	5.3	4.4
Implicit GDP deflator	18.7	3.4	4.4	2.9
<b>Government finance</b>				
(% of GDP, includes current grants)				
Current revenue	21.7	22.8	20.4	18.3
Current budget balance	-4.2	2.8	-0.3	-2.9
Overall surplus/deficit	-13.6	-1.7	-3.8	-6.6



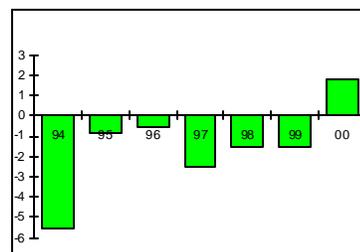
#### TRADE

	1980	1990	1999	2000
(US\$ millions)				
Total exports (fob)	361	1,261	1,523	1,633
Suvar	207	354	213	267
Manufactures	116	784	1,171	1,177
Total imports (cif)	628	1,608	2,158	2,056
Food	165	196	299	291
Fuel and energav	87	127	151	236
Capital goods	98	426	653	465
Export price index (1995=100)	..	91	83	80
Import price index (1995=100)	..	92	87	86
Terms of trade (1995=100)	..	98	96	94



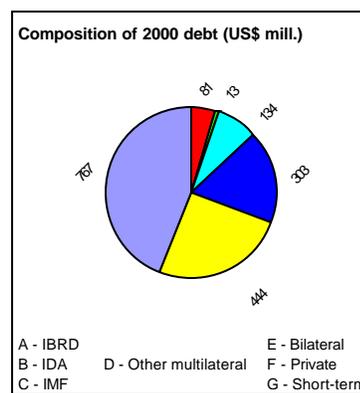
#### BALANCE of PAYMENTS

	1980	1990	1999	2000
(US\$ millions)				
Exports of goods and services	491	1,765	2,605	2,784
Imports of goods and services	659	1,901	2,735	2,787
Resource balance	-168	-135	-130	-2
Net income	-34	5	-35	3
Net current transfers	24	88	96	79
Current account balance	-177	-42	-69	80
Financial items (net)	172	206	153	105
Changes in net reserves	5	-165	-84	-185
<b>Memo:</b>				
Reserves including gold (US\$ millions)	92	741	688	790
Conversion rate (DEC. local/US\$)	8.0	14.9	25.5	27.6



#### EXTERNAL DEBT and RESOURCE FLOWS

	1980	1990	1999	2000
(US\$ millions)				
Total debt outstanding and disbursed	506	1,014	1,819	1,742
IBRD	45	172	97	81
IDA	20	19	14	13
Total debt service	70	164	347	333
IBRD	4	31	26	22
IDA	0	0	1	1
Composition of net resource flows				
Official grants	0	-1	0	-1
Official creditors	43	52	14	14
Private creditors	21	37	-113	-166
Foreign direct investment	1	24	13	223
World Bank program				
Commitments	18	29	5	0
Disbursements	15	6	2	5
Principal repayments	2	18	20	18
Net flows	13	-12	-18	-13
Interest payments	3	14	6	5
Net transfers	11	-26	-24	-18



#### **4. List of documents collected during the preparation of the CPAR and available in the archives of AFTQK**

Constitution of Mauritius

Finance and Audit Act 1982

Central Tender Board Act 2000

Central Tender Board (Amendment of Schedule No. 2) Regulations 2001

Central tender Board Circular CTB/GC/532/2/95

The Public Procurement Transparency and Equity Act 1999

The Financial Intelligence and Anti-Money Laundering Bill (January 29<sup>th</sup>,2002)

The prevention of Corruption Bill (No. IV of 2002)

Financial Management Manual (1990 edition)

Ministry of Finance Circular No. 6 of 1995

Ministry of Finance Circular No. 3 of 1997

Bidding documents:

-Annual tender for Pharmaceutical products and pharmaceutical chemicals (2002-2003)

-Tender documents for the construction of a state secondary school

General Conditions of Contracts (For use on Government Contracts for Building Works), Ministry of Works, June, 1990

The Construction Industry Development Board Act 1997, Act No. 25 of 1997

Draft (dated 10/12/01) of the Construction Industry (Registration of Consultants and Contractors) Regulations 2001.

Report of the Director of Audit for the year ended 30 June 2000 (Volume I) and for the year ended 30 June 1999 (Volume I and II)

First and second Report of the Public Accounts Committee of Mauritius National Assembly

Internal Audit Inspection Report, Review of Capital project, Ministry of environment, 29 November, 2000

Management Audit Bureau, Annual Report 1997 & 1998 and documentations

Audit des Engagements 1999-2000 du Projet de Tourisme Régional 6.ACP.RPR.520&7.ACP.RPR.067- Audit de clôture de tous les engagements au 31 décembre 2000

Audit of the Indian Ocean University project, January 1st to June 30 2000

Course outline for Certificate in Purchasing and Supply Management (1999-2000)

Proposal for a distribution platform in Mauritius, prepared by Freeport Operations (Mauritius) Ltd

Application for Pre-Market approval of Container, Contact material, food and prepacked food intended for Human Consumption of Ministry of Health and Quality of Life, The Food Regulations 1999

The Consumer Protection (Price and Supplies Control) Act 1999

Unclassified exemptions from Customs Duty 2001/2002

Fees and charges for Export transactions, Import transactions, Guarantees and other services at Mauritius Commercial Bank Ltd.

Mauritius Employers' Federation documentation an Annual Report 2000

Draft Capital Budget 2001-2002 with memorandum, Ministry of Finance

Development Works Corporation, Strategic Plan 2000-2003

Economic and Social Indicators, Issue No. 364, 366, 363, 360, Central Statistics Office, Ministry of Economic Development

Co-operation between the European Union and the Republic of Mauritius, Annual Report 2000, Delegation of the European Commission in Mauritius

Co-operation between the European Union and Seychelles, Annual Report 2000, Delegation of the European Commission in Mauritius

Coopération régionale Union européenne - Océan Indien, Rapport annuel 2000, délégation de la Commission Européenne en République de Maurice

Coopération avec la République fédérale Islamique des Comores, Rapport Annuel 2000, Bureau de la Commission Européenne

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