UPDATE OF THE COUNTRY PROCUREMENT ASSESSMENT REVIEW (CPAR)
JUNE 2008

June 2008
ACRONYMS, ABBREVIATIONS, AND SHORT FORMS

CURRENCY
Currency Unit = Mozambican metical
US$1 = Mt$23

FISCAL YEAR
2008

AfDB African Development Bank
The Bank The World Bank
BLI Base Line Indicator
CAS Country Assistance Strategy
CFAA Country Financial Accountability Assessment
CIP Centro de Integridade Pública
CPI Compliance and Performance Indicator
CPAR Country Procurement Assessment Report
CPPR Country Portfolio Performance Review
DAF Finance and Administration Department
G-19 Donors Coordination Committee
GoM Government of Mozambique
IGF Office of the General Finance Inspector/General Finance Inspectorate (internal audit)
JÚRI Bidding Committee
KfW KfW Bankengruppe
MDB Multilateral Development Banks
Methodology OECD New Common Benchmarking and Assessment Methodology for Public Procurement Systems (Version 4)
MF Ministerio das Finanças/Ministry of Finance
MISAU Ministry of Health
MPWH Ministry of Public Works and Housing
NCB National Competitive Bidding
OECD DAC Organization for Economic Cooperation and Development – Development Assistance Committee
PAF Performance Assessment Framework/Quadro de Avaliação de Desempenho (QAD)
PEFA Public Expenditure and Financial Accountability
PRSC Poverty Reduction Support Credit
Regulations/Regulamento Decree 54 of December 2005: Country Procurement Regulations
SACU Southern Africa Customs Union
SADC Southern African Development Community
SBD National Standard Bidding Documents
SISTAFE  Sistema de Administração Financiera do Estado
TA  Administrative Tribunal/Mozambique Supreme Audit Institution/Tribunal Administrativo
UGEA  Unidade de Gestão das Aquisições/Procurement Management Unit
UFSA  Unidade Funcional de Supervisão das Aquisições do Estado/Functional Unit for Supervision of Procurement
www.ufsa.gov.mz

UTRAFE  Technical Unit for State Financial Administration Reform
UTRESP  Technical Unit for the Reform of the Public Sector, Unidade Tecnica da Reforma do Sector Publico
Workshop  Launching Workshop of OCED Methodology on March 10, 2008

<table>
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<tr>
<th>Role</th>
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<tr>
<td>Regional Vice President</td>
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PREFACE AND ACKNOWLEDGMENTS

1. The preparation of this Country Procurement Assessment Review (CPAR) was agreed upon by Mozambique’s Government, the African Development Bank (AfDB), the Donors Support Group, and Bank management in support of the Government’s public procurement reform program. This CPAR was carried out in accordance with the Initiating Concept Memorandum (ICM) of the Bank, approved in the Minutes of the Review Meeting dated March 19, 2008.

2. This CPAR update is based on the findings of a cooperative effort between Mozambican officials and private sector representatives and a team of Development Partners including: the World Bank, AfDB’s and KfW. The preparation work included (i) a desk review of existing legislation and fiduciary reports; (ii) the visit of procurement experts to Maputo and Beira, which included individual discussions with officials representing some 12 state agencies and with managers of some private-sector entities; and (iii) the Workshop for the launching of the OECD Methodology carried out in Maputo on March 10, 2008.

3. The main official Government participant was the UFSA of the Ministry of Finance. The World Bank team consisted of Irina Luca (Lead Procurement Specialist and Task Manager), Antonio Chamoso (Procurement Specialist), Amos Malate (Procurement Analyst), and Slahedinne Ben-Halima (Procurement Consultant). KfW hired Procurement Consultant Efraim Jimenez, and AfDB appointed Auditor and Procurement Specialist Gabriel Maro. The mission worked under the guidance of V. S. Krishnakumar (Regional Procurement Manager, World Bank) and Michael Baxter, Country Director.

4. From the donors side the mission was led by Carsten Sandhop (Director of KfW-German Development Bank, Focal donor of the G19 Procurement Working Group).

5. From the Government side the exercise was led by MOF/UFSA, namely Dr. Antonio Laice, (Director Tesoro), Eusebio Saide, Director, and Albertina Furquia (Deputy Director) Direcção nacional do Patrimonio de Estado, Carlos Cornelius Jessen Junior (Coordenador) UTRAFE, Unidad Tecnica Da Reforma Da Administracao do Estado.

6. The mission would like to extend its gratitude to all Government officials, donors representatives, civil society and the public sector for their collaboration and the time dedicated to ensure the success of the mission (the names are listed in the attachment to this report).

7. Special thanks to Jane Rintoul (DFID) and the peer reviewers who have enhanced, with their insightful comments, the quality of the paper: Joel Turkewitz (Senior Public Procurement and Governance Specialist, South Asia Region, WB); Renaud Seligman (Senior FM Specialist, Africa Region, WB); Vivek Srivastava (Senior
Public Sector Specialist, Africa Region, WB); Asha Ayoung (Lead Procurement Specialist, OPCPR, Office of the VP for Operations Services, Procurement Policies and Services Group, WB); and Jean-Jacques Verdeaux (Senior Counsel, LEGIA, WB Office of the Senior VP, and General Counsel, Institutional Administration, WB).
# TABLE OF CONTENTS

ACRONYMS, ABBREVIATIONS, AND SHORT FORMS  
PREFACE AND ACKNOWLEDGMENTS  
TABLE OF CONTENTS  
EXECUTIVE SUMMARY  
I. INTRODUCTION  
II. COUNTRY AND STRATEGIC CONTEXT FOR PUBLIC PROCUREMENT  
   A. Country Background  
   B. The Importance of Public Procurement  
   C. Additional Studies Underlying the CPAR  
III. THE OUTCOME OF THE APPLICATIONS OF THE OECD DAC METHODOLOGY  
   A. The Methodology and Scoring  
   B. Main Findings from Assessing Mozambique Systems against International Good Practice (Baseline Indicators)  
      Significant Progress since the Last CPAR Assessment in 2002  
   C. Monitoring Procurement Outcomes—Compliance and Performance Indicators (CPI)  
      The Current Situation  
      Proposed Approach  
IV. DETAILED FINDINGS AND RECOMMENDATIONS BASED ON THE APPLICATION OF THE OECD DAC METHODOLOGY  
   Pillar I: Legislative and Regulatory Framework  
      Public Procurement Framework  
      Bidding Procedures  
      Registration and Qualification of Bidders  
      Advertising Bidding Opportunities  
      Eligibility  
      Bid Evaluation and Contract Award  
      General Conditions of Contract  
      Bidders’ Access  
      Bidder’s Right to Appeal Procurement Decisions
Pillar II: Institutional Framework and Management Capacity
The Overall PFM Architecture
Integration of Procurement in the Overall PFM Systems
Structure and Organization of the Procurement Function
Capacity Building
Managing Information Systems
UFSA Supervision Functions
The UGEA Functions
Centralized Government Purchasing vis-à-vis a Decentralized Procurement Regime
Procurement at the Provincial Level
Procurement Oversight at the Community Level
Need for a Risk-Based Approach in Oversight in Procurement, in Particular at the Subnational Level
E-Procurement
Funding
Pillar III: Procurement Operations and Market Practices
Business Climate
Competitiveness and Participation of the Private Sector
Contract Supervision
Records Management
Pillar IV: Integrity and Transparency of the Public Procurement System
Legal and Regulatory Framework
Complaints Mechanism
Strengthening the Demand for Good Procurement
Mapping Stakeholders
Ethical Behavior and Anticorruption
Internal and External Control and Audit Support

V. PROCUREMENT IN BANK-ASSISTED PROJECTS
Fiduciary Risks
Piloting Procurement Country Systems in Bank Operations

VI. RECOMMENDED ACTION PLAN
FIGURES IN BODY OF REPORT

Figure 1: Mozambique Statistics, 2006
Figure 2: Economic Classification of Central Government Spending (percentage of GDP)
Figure 3: PEFA Procurement Indicator
Figure 4: PAF Procurement Subindicators
Figure 5: Mozambique: OECD Methodology Comparative Analysis 2002–2008 Rating of Base Line
Figure 6: Progress since the 2002 CPAR (comparative table)
Figure 7: OECD DAC Scores
Figure 8: Compliance Indicators: Sources
Figure 9: Scenarios for Data Collection
Figure 10: Impact/Costs for Various Scenarios
Figure 11: Public Expenditures in the Priority Sectors
Figure 12: National and Subnational Government Entities (as percentage of total expenditures)
Figure 13: Proposed Performance Indicators
Figure 14: List of Legal Regulations on Procurement in Mozambique
Figure 15: Methods of Procurement under the Mozambique Legislation
Figure 16: Characteristics of the Procurement Registry
Figure 17: The Structure of PFM Reform Management in Mozambique
Figure 18: UFSA Organization Chart
Figure 19: Procurement Process
Figure 20: Mozambique Merchandise Trade with the World
Figure 21: Number of Registered Firms
Figure 22: Cases Involving Possible Fraudulent and/or Corrupt Behavior Related to the National Institute of Social Security (INSS)
Figure 23: Public Tender for the Introduction for Nonintrusive Inspection (Scanning) of Containers at Main Ports in Mozambique under BOT Regime (2004)
Figure 24: Complaint Mechanism
Figure 25: Colombia: A Legal Model for Civil Society Participation
Figure 26: As Instituições Mais Honestas
Figure 27: 2006 Global Integrity Scorecard, Mozambique
Figure 28: Corruption in Mozambique: A Summary
Figure 29: Facts on CREE
Figure 30: Mozambique Portfolio Share: Total Net Commitments, April 2008
Figure 31: Key Areas of Risk
ANNEXES—Published as a separate volume

ANNEX A: APPLICATION OF THE OECD DAC METHODOLOGY: BASELINE INDICATORS 1
ANNEX B: THE SOURCE OF DATA FOR THE COMPLIANCE AND PERFORMANCE INDICATORS 67
ANNEX C: SUMMARY CHECKLIST OF ACCEPTABILITY OF THE GOVERNMENT PROCUREMENT PROCEDURES FOR NATIONAL COMPETITIVE BIDDING (NCB) 79
ANNEX D: LIST OF LAWS, REGULATIONS, AND SUPPORTING MATERIAL 85
ANNEX E: LIST OF PEOPLE INTERVIEWED 87
ANNEX F: OVERALL PROCUREMENT RISK ASSESSMENT 89
ANNEX G: TOOLKIT FOR THE EVALUATION OF CAPACITY AT THE SUBNATIONAL GOVERNMENT LEVEL 91
ANNEX H: DETAILS OF THE ACTION PLAN 101
ANNEX I: ELECTRONIC GOVERNMENT PROCUREMENT (E-GP) READINESS SELF ASSESSMENT 117
EXECUTIVE SUMMARY

A. INTRODUCTION

1. This Country Procurement Assessment Review (CPAR) update is conducted jointly by the Mozambique Government, the World Bank (Bank), the African Development Bank (AfDB), and the donor community with a view to update the diagnostic work carried out in 2002. The update is considered highly opportune in view of the progress achieved since the last review and in consideration of the increased Government focus on monitoring the performance of Public Financial Management (PFM) reforms, including public procurement. In this context, the objectives of the CPAR have been defined as follows: (i) to assess the public procurement systems using OECD DAC Methodology, 1 (ii) to recommend a monitoring mechanism to measure procurement systems compliance/ performance and progress toward acceptable international standards, and (iii) to identify the areas of opportunity for improvement and recommend an action plan.

B. THE COUNTRY AND STRATEGIC CONTEXT FOR PUBLIC PROCUREMENT

2. Mozambique is one of the strong-performing countries in Africa, with rapid growth and good results in poverty reduction. Between 1996 and 2006, following a devastating civil war that ended in 1992, the economy grew at an average annual rate of 8 percent (the highest in Africa for a non-oil producing country). Sustained future growth is expected to be driven by investments complemented by second-generation reforms. In this context, the Government is engaged in a comprehensive PFM reform program supported by the donors’ community, including the Bank-

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1 The Methodology for assessment of national procurement systems developed by OECD/DAC ([http://www.oecd.org](http://www.oecd.org)) is intended to provide a common tool that developing countries and donors can use to assess the quality and effectiveness of national procurement systems. The long-term goal is for countries to improve their national procurement systems to the point that they meet internationally recognized standards, enabling greater effectiveness in the use of funds. The Methodology includes a numeric scoring with defined criteria that will enable the monitoring of progress and performance of the Public Procurement system.
3. In Mozambique, public procurement is a central pillar of public-expenditure management in light of the large volume of funds involved but also because of its relevance to the private sector and to the governance agenda.

- A significant portion of public spending occurs through the public procurement process. About $1 billion per year is spent on procurement of goods, services, and works, accounting for about 15 percent of the GDP and 55 percent of total public expenditures. This is quite high considering that globally the share of public procurement in government expenditures typically ranges between 12 and 20 percent\(^2\). It is also noted that an important share (about 75 percent) of the funds for capital expenditures is provided by international organizations/donors.

- Furthermore, public procurement is an important source of revenue for the private sector. The contractors interviewed have identified the Government as their main client. (In many cases, 80 to 100 percent of their business depends on Government contracts). Hence, the way public procurement operates has a great impact on the development of the private sector and its capacity to take advantage of the important business opportunities that public procurement offers.

- Finally, governance issues are high on the Government agenda, as corruption is seen as a challenge. It is well recognized that public procurement is one of the most vulnerable areas to corruption. A robust and well-functioning procurement system with safeguards in place and a high degree of integrity plays a central role in mitigating corruption in the use of public funds.

4. The aforementioned considerations underscore the importance of public procurement in Mozambique’s context. Given its large share in public expenditures, it is apparent that even modest efficiency improvements in the workings of the system could potentially yield substantial savings, on the order of 1 to 2 percent of the GDP and 8 percent of public spending. Hence, the Government and public interest in continuing the process of reforms in public procurement and the donors’ commitment to support this important agenda.

5. Public procurement reforms are an integral part of the Government and Development Partners strategy for Mozambique:

- The overarching Mozambique strategy, PARPA, the Plano de Acção para a Redução da Probreza Absoluta para 2006-2009, seeking to reduce the poverty rate from 54 percent to 45 percent by 2009, underscores the importance of public procurement reforms. PARPA II calls for more effective management of public funds, more transparent and efficient government public procurement, and the

\(^2\) OECD DAC PAPER: Mainstreaming and Strengthening Public Procurement: a Strategic Framework, 2004
consolidation and expansion of the integrated financial management system (e-SISTAFE).

- **The Global Strategy for Public Sector Reform**, which has entered into a second phase (2006–2009), addresses cross-cutting areas that are relevant to procurement (e.g., public management and administration, the judicial system, PFM systems, and systems for monitoring public sector performance).

- **The Country Partnership Strategy (CPS) for the Republic of Mozambique (April 24, 2007)** supports the PFM agenda and underscores the need for a CPAR update to address performance monitoring in public procurement.

- **The Memorandum of Understanding between the Government of Mozambique and the Program Aid Partners** (including the World Bank) for the provision of Direct Budget and Balance of Payments Support, signed on April 5, 2004, highlights the importance of the Government bringing public procurement up to internationally acceptable standards and the need for a mechanism to follow up on the process and practice of improving the procurement system.

C. OTHER RECENT ANALYTICAL STUDIES RELEVANT TO THE CPAR-UPDATE EXERCISE

6. An assessment of the PFM system was recently conducted using the PEFA Methodology\(^3\) for the 2006 budget cycle. It is worth mentioning that Mozambique is one of the first countries in the world to have completed two PEFAs, a testimony to the Government interest in monitoring the performance of PFM reforms.\(^4\) This PEFA assessment is extremely relevant to procurement and has informed the CPAR exercise. Consistent with the findings of the CPAR, PEFA acknowledged the progress achieved by Mozambique in promoting competition, and establishing a complaint mechanism (albeit still to be strengthened) but pointed to a possible abuse of direct contracting (*ajuste directo*).

7. A second document is the IMF Report on the Observance of Standards and Codes (ROSC) Fiscal Transparency Module which refers to the procurement legislation as

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\(^3\) The goals of the PEFA Program are to strengthen recipient and donor ability to (i) assess the condition of country public expenditure, procurement, and financial accountability systems, and (ii) develop a practical sequence of reform and capacity-building actions in a manner that encourages country ownership, reduces the transaction costs to countries, enhances donor harmonization, allows monitoring of progress of country PFM performance over time, better addresses developmental and fiduciary concerns, and leads to improved impact of reforms. The report and activities are detailed in http://www.pefa.org.

a good example of public consultation and highlights some irregularities in public procurement as they come out of the Report of Tribunal Administrativo for the 2004-2005 State Accounts audit.

8. Finally, the Performance Assessment Framework (PAF), is a matrix document whereby the Donors have agreed with the Government of Mozambique on a series of macroeconomic and social markers to track the performance of governance implementation of the PARPA. The CPAR has assessed the markers for the procurement function and, in defining the performance-monitoring mechanism, the CPAR team has built on the performance markers identified in the technical note for the procurement indicator in the Quadro de Avaliação de Desempenho (QAD, or PAF).

D. METHODOLOGY

9. The joint team has used an internationally recognized procurement assessment tool developed by the OECD-World Bank Roundtable on Strengthening Procurement. The tool has been designed to enable users to determine the extent to which national procurement systems contain the features of a well-performing system. The CPAR process has been highly participatory, involving the Government, private sector, civil society, and donors. A launch workshop was organized to introduce the OECD DAC Methodology and was used to generate information regarding the Compliance and Performance Monitoring (CPI) indicators.

10. The key findings and recommendations of the CPAR are presented below. They cover: (i) the progress and status of the Mozambique’s public procurement systems, (ii) the key achievements and areas of opportunity, (iii) the recommended compliance/performance monitoring system, and (iv) the proposed action plan.

E. MOZAMBIQUE PUBLIC PROCUREMENT AS OF JUNE 2008

11. The findings of the benchmarking assessment are captured graphically in the figure below: Mozambique: OECD Methodology Comparative Analysis 2002–2008, Rating of Baseline Indicators. The assessment confirmed that, since the last CPAR (2002), Mozambique has made significant progress in establishing the foundations of a sound procurement system. In particular, Mozambique has made notable progress in the area of developing the legal and regulatory framework for public procurement with more opportunities for improvement in the areas related to institutional capacity, oversight and the integrity and transparency of the systems.

12. In addition to continuing to improve its systems, the Government should now focus its attention on the implementation and performance of the systems. Of special concern to the Government is the transparency and integrity of procurement. An
International NGO—Global Integrity—in the 2006 Mozambique Integrity Scorecard rates procurement at 2 (weak) on a scale of 1 to 4. Overall, the 2007 Corruption Perception Index for Mozambique has been rated 2.8 (out of 10). In its quest to combat corruption, the Government is monitoring the implementation of an anticorruption strategy. To this end, anticorruption plans have been prepared by each ministry, with procurement being identified as an area in need of improvement. The CPAR-proposed monitoring system will support the Government’s efforts by offering a tool with which to measure progress in this area.

13. The situation in public procurement prior to the approval of the new law (2005) is described by the Centro de Integridade Publica (CIP) as “dramatic,” leading to an inefficient use of public resources and to a system highly vulnerable to corruption. CIP further states that a report prepared by KPMG Mozambique (2004) for the Ministry of Planning and Finance showed that there was no procurement management whatsoever, no information about the type of goods and services that needed to be purchased and about the time frame for tender processes. The synthesis document of the Joint Review Aide Memoir (2004) pointed out that, in Mozambique, various businessmen reported that there was no transparency in public tenders and spoke of preferences to particular companies who were bribing members of the evaluation committee.

**Mozambique: OECD Methodology Comparative Analysis 2002–2008**

**Rating of Base Line Indicators**

![Graph showing rating of base line indicators](image)

14. The CPAR confirms the progress achieved by Mozambique since the last CPAR 2002. Given that the most significant advance was recorded after the elaboration of

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5 Global Integrity is an independent, non-profit organization tracking governance and corruption trends around the world. Global Integrity works with local teams of researchers and journalists to monitor openness and accountability.

6 CIP Public Procurement and Transparency in Mozambique, Oct. 2007. The case of scanners for non intrusive inspection.
the Public Procurement Regulations (Regulamento) of 2005 and creation of the regulatory body (UFSA) one could infer that Mozambique made good progress towards meeting the requirement of OECD DAC indicator 2(b), one of the two indicators for procurement monitored under the Paris Declaration of March 2005, that commits the adherents to the Paris Declaration to demonstrable improvements. Another indicator, 5b, relates to increased reliance on country systems by donors as countries are able to demonstrate that their systems function at a certain level of quality as measured by OECD DAC indicators. The progress is still to be shown as currently more than 50 percent of donors’ funds are not channeled through the Single Treasury Account and one of the reason relates to lack of harmonization of procurement rules.

15. The key areas were progress was achieved to date are summarized in the following chart:

<table>
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<tr>
<th>CPAR 2002 (before decree 54/05)</th>
<th>CPAR 2008 (after decree 54/05)</th>
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<tr>
<td>Procurement is mostly a technical function.</td>
<td>Public procurement is an integral part of the PFM system based in the SISTAFE architecture.</td>
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<tr>
<td>Outdated and fragmented legal and regulatory framework.</td>
<td>The modern legal and regulatory framework is generally aligned to international good practice.</td>
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<tr>
<td>No tools for practitioners.</td>
<td>A manual and a set of (nine) standard bidding documents and contracts based on international standards exist.</td>
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<tr>
<td>Noncompetitive process (contractors selected from a list), nontransparent evaluation process.</td>
<td>Open competition is the default setting. Transparent and objective evaluation and qualification criteria are being created.</td>
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<td>Lack of advertising.</td>
<td>Public advertising is mandatory.</td>
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<td>No regulatory body in charge of public procurement</td>
<td>A regulatory body was created in 2006.</td>
</tr>
<tr>
<td>Training of staff involved in procurement almost nonexistent.</td>
<td>A professional training program is being conducted by UFSA.</td>
</tr>
<tr>
<td>Procurement of goods centralized in the Ministry of Finance.</td>
<td>Procurement is decentralized to specialized procurement units (UGEAs) down to the level of the provinces and districts.</td>
</tr>
<tr>
<td>IFIs were “ring fencing” their operations, taking exception to every single aspect of the national procurement rules.</td>
<td>International financiers increasingly rely on Mozambique’s systems for National Competitive Bidding, with fewer exceptions to the national regulations, and move to organically integrated project implementation units.</td>
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7 One-third of the countries will improve one grade level on the four-point scale defined under OECD DAC Methodology.
8 A two third reduction in the percentage of aid to the public sector not using partner countries’ procurement systems.
9 State Financial Administration System
16. In spite of the progress achieved, implementation of the rules and regulations remains a challenge. Out of the areas for improvement presented under Section F, below, the following six opportunities for improvement stand out as most important:

- **Transparency and information:** the availability of reliable procurement information to enable effective procurement management and public monitoring

- **Appeal mechanism:** an effective complaint mechanism to disclose abuse of the systems and allow for effective remedies while maintaining the efficiency of the process

- **Oversight and integrity:** effective internal control and audit mechanisms sensitive to “red flags” on fraud and corruption to ensure enforcement and limit abuse

- **Capacity:** a capacity-building system for public procurement mainstreamed into the national systems

- **Alliances:** an effective “coalition of the willing” within and outside the Government (civil society, private sector, media) to champion and ensure transparency and integrity in public procurement and maintain the momentum of the reforms

- **Legal framework:** Further improving the legal and regulatory framework based on (i) issues identified under the CPAR; (ii) feed back from further experience acquired in implementing the Regulamento and (iii) by removing any conflicts with other laws.

**F. KEY ACHIEVEMENTS AND AREAS OF OPPORTUNITY BY PILLAR**

17. The assessment has identified areas of opportunity for improving procurement performance. It is worth noting that, taking full advantage of such opportunities depends, to a great extent, on how well public procurement is integrated in the overall Strategy for Public Sector Reform that addresses cross-cutting areas and is extremely relevant to procurement in such areas as civil service reforms, capacity building, public management and administration, improving the judicial systems, the business climate for the private sector, strengthening PFM processes (including oversight), and fighting corruption.

18. The analysis follows the four pillars of the OECD DAC methodology:
PILLAR 1: LEGAL AND REGULATORY FRAMEWORK

19. This pillar examines the coherence of the legal and regulatory framework from the highest-level national law to the detailed regulations, manuals, and bidding documents and examines their existence, availability, and quality.

20. In Mozambique, work on this pillar appears to have had the most significant progress (3/4 of maximum accomplishment). In 2005 a new legal public procurement framework was set in place as an integral part of the SISTAFE law, which squarely places procurement in the context of Mozambique Public Financial Management Systems. The new public procurement regulation (Regulamento) is predicated on the principles of competition, transparency, efficiency, economy, and equal opportunity. Standard bidding documents following the Bank’s model and a manual of procedures have been prepared and made available to procuring units at both centralized and decentralized levels.

21. Notwithstanding these important achievements, the CPAR identified a few areas in the legal and regulatory framework that offer opportunities for improvement.

22. One area identified relates to bidders’ access to public procurement. Good practice indicates that bidders should not be subject to unjustified requirements that are not essential to their capability to fulfill the contract. Appropriate conditions of participation foster competition, value for money, and equal opportunity. In this area, key impediments are (i) some onerous requirements for foreign firms, for instance, having to provide evidence of not being engaged in bankruptcy procedures in Mozambique or having a local representative each time they bid; (ii) extensive documentary information as a condition of bid submission; (iii) the use of the suppliers’ nationality as an eligibility criterion for domestic preference for goods manufactured in Mozambique; (iv) reserved procurement, albeit an exception; and (v) not sufficient clarity on contractor registration as a condition of participation in bidding.

23. The second area identified is related to transparency and integrity in public procurement. Transparency is essential to a procurement process that fosters competition and increases confidence in the system while reducing opportunities for corruption. In this respect, some identified deficiencies follow:

- The Regulamento does not clearly state that opening of bids takes place immediately after the bid submission. Such a clarification would enhance the confidence in the integrity of the bids.

- There is no independent forum through which to appeal the decision of the procurement entity, which raises doubts on the impartiality of the complaints mechanism. In addition, the requirement to pay a fee for lodging procurement complaints inhibits the right to complain and defeats the principles of fairness and
transparency. It is therefore strongly recommended that the Government withdraw this requirement.

24. The third area relates to procurement and contract management, which is critical to the timely delivery of Government services. In this area the opportunities identified include strengthening regulations and manuals by (i) adding the concept of procurement planning, a key procurement management tool; (b) identifying as unacceptable the practice of slicing contracts to avoid open competition; and (b) specifying instructions for adequate record management to allow for proper procurement/contract administration and oversight.

25. The following are recommended:

- Strengthen the legal and regulatory framework, which forms the legal basis for efficient and transparent public procurement. UFSA will have to assess the above issues and decide how to best address them. Some may lend themselves to clarifications and instructions, while others would require a revision of the Regulamento.

- Monitor the application of the law and identify areas that need to be further improved so when the Regulamento is revised key lessons from experience are also incorporated.

- Address public procurement in the context of other national systems of laws and regulations that might impact on procurement. Key performance issues may be caused by provisions in other laws that affect procurement outcomes. UFSA should use the opportunity to identify, whenever relevant, possible bottlenecks in other laws and regulations, including inconsistencies with the Regulamento (e.g. documentary requirements under TA law and the Regulamento) and bring them to the attention of the relevant authorities.

PILLAR 2: INSTITUTIONAL FRAMEWORK CAPACITY

26. This pillar looks at the institutional framework of public procurement and how the procurement system as defined by law is integrated in the overall management and governance systems.

27. The Integrated Mozambique Financial Management System (SISTAFE) law issued in 2002 has placed the institutional framework for public procurement in the PFM architecture (i.e., as a subsystem under State Assets). It is supported by a state-of-the-art, online IT system known as e-SISTAFE. While by design procurement is integrated in the PFM structure, this integration is not yet fully effective. First, since the procurement module is not part of e-SISTAFE, the pre-contract procurement processes and controls are not automated. Furthermore, not all funds related to public procurement are channeled through SISTAFE (e.g., it hosts less than 50 percent of the donors’ funds). Finally, there is no linkage between procurement
planning and budget preparation. This may be one of the reasons for the high variances between the budget and actual expenditures and the poor quality of future projections, as identified by the PEFA exercise.

28. Within the SISTAFE architecture, UFSA was established as the regulatory entity with functions that are consistent with the role of lead procurement agency. A relatively young agency, UFSA has been quite successful in asserting itself as the central public procurement authority through capacity-building programs and by providing, shortly after its creation, adequate tools for public procurement operation (bidding documents and manuals). Further, UFSA has established a website that disseminates a wealth of useful information on the legal and regulatory framework, bidding documents, invitations to bid, and selected statistics on public procurement. In order to be fully effective, however, UFSA needs stronger financial support and the assistance of other Government agencies with a role in public procurement.

29. Procurement implementation units (UGEAs) are being established throughout the country. The geographic extensiveness of Mozambique (11 provinces, 128 districts that operate as agencies of the central government, and 33 urban municipalities) poses a real challenge that amplifies the need for rigorous planning and robust capacity-building programs.

30. The following are recommended:

- Improve integration of public procurement in the PFM systems in order to ensure that procurement is properly managed throughout the process and, conversely, information from procurement is incorporated in the budget cycle. In this respect, (i) develop procurement planning and improve the linkage between procurement planning and budget preparation, (ii) in the medium term implement the asset management/procurement module as part of e-SISTAFE, and (iii) develop price data bases to improve cost projections.

- Improve the implementation of procurement rules by strengthening the capacity of UGEAs to perform and manage their procurement as well as the capacity of other participants to the procurement process. In this respect, adopt a more strategic/sustainable approach to capacity building, including professionalization of the procurement function through accreditation and certification of personnel and more targeted training. This should be designed as part of the overall Capacity Building Program of the Government under the Public Sector Reforms strategy, which also addresses the incentive structures. Target with specific messages all stakeholders who need to know about procurement, including the private sector, auditors, managers, politicians and civil society.

- Emphasize the technical aspects of procurement and the availability and capacity of technical specialists that support procurement by preparing technical specifications for goods and works and terms of reference for consultants.
• Enhance the ability of UFSA through appropriate funding and human resources to carry out its function of monitoring and improving procurement outcomes and strengthen its integration in the network of institutions in charge of public procurement.

• Ascertain that UFSA as the lead body for procurement is not associated with any procurement transaction. (International practice requires that lead procurement agencies are not involved in transactions or associated with transactions.) The Ministry of Finance’s (MOF) Department of Asset Management, where UFSA is housed, which is currently authorized to conduct some procurement, should divest itself from any procurement function to avoid having UFSA be in a situation of conflict of interest, or the perception thereof.

PILLAR 3: PROCUREMENT OPERATIONS AND MARKET PRACTICES

31. This pillar looks at the operational effectiveness and efficiency of the procurement system at the level of the implementing entities in charge of the individual procurement actions.

32. In spite of the significant progress achieved through the establishment of Procurement Units, named UGEAs (about 500 so far) and the capacity-building activities carried out (including exposure to internationally financed projects), the capacity to conduct good procurement, especially at the decentralized level, is weak and the performance uneven. There is a dearth of staff specialized in procurement. Given the weak capacity, the Regulamento is not consistently applied and information from various sources suggests that: direct contracting is abused, especially for recurrent procurement. In MOH, for example, 74 percent of hospital consumables are purchased through direct contracting. Standard bidding documents/contracts are not always used and/or some of the clauses are removed (e.g., penalties for delayed payments). The quality of records is not up to standards in the absence of clear instructions, there is no procurement planning culture, and contract slicing may be a problem. Furthermore, the lead time for procurement is quite long, and one of the bottlenecks often quoted is the length of approvals that need to be obtained from Tribunal Administrativo (TA). (According to the law, the TA approves all the Government-financed contracts irrespective of size.)

33. While private-sector representatives have unanimously saluted the Regulamento and the transparency it brought into the system, they raise concerns about some deficiencies related to payment delays; extensive, sometime repetitive, documentary requirements; extended bidding processes; onerous conditions for obtaining bid securities and contract management issues. Private-sector firms appear to have difficulty accessing credit and their cash flow is further worsened by frequent delays in payment.

10 The TAs, in their review of the 2006 accounts, identified abuse of direct contracting and removal of the Fraud and Corruption clause from the contracts as required under a 2004 law.
34. Finally, information about procurement is scarce. It is known that systematic and reliable information on public procurement is key to an effective management toward desired outcomes. While UFSA has made a laudable effort to collect information on procurement, it is not sufficient and cannot be used as an effective management tool, either at the central or UGEAs level.

35. The following are recommended:

- Establish greater transparency in interaction between the Government and the business sector. Pursue input from the business sector on procurement practices in a systematic fashion through surveys and communication with business associations and enhance competition by enabling the development of the capacity of the private sector to participate in procurement.

- Engage the Tribunal Administrativo through appropriate channels in the process of improving procurement performance by increased efficiency in contract approval process. The Authorities may also consider the benefits of focusing TA capacity on its ex post auditing function and progressively shift away from its ex ante review function.

- Improve procurement outcomes by increasing the efficiency of contract management: address contract management through training, disseminating good practice in terms of works supervision, contracts amendments, reception of goods works, final payments, and dispute resolution.

- Develop systems for procurement monitoring and evaluation: UFSA should embark on the creation of an information system for public procurement in collaboration with the UGEAs and by engaging the oversight agencies (IGF for internal audit and TA for external audit). Identify systemic issues and improve the systems in concert with other agencies that have responsibilities in the area of public procurement.
PILLAR 4. INTEGRITY AND TRANSPARENCY OF PUBLIC PROCUREMENT

36. This pillar assesses whether public procurement and its environment are able to operate with integrity and with appropriate control systems and have appropriate measures in place to address the potential for corruption in the system.

37. There is general consensus about the fact that public procurement has been identified as the area most susceptible to corruption. Being a major interface between the public and the private sector, it offers multiple opportunities for different actors, public or private, to divert funds for private gain. Fraud and corruption can be found at any stage of the procurement cycle. For example: abusing direct contracting, manipulating procurement needs at the design stage of the tenders to favor certain bidders, using subjective evaluation criteria, breaking the confidentiality of the bidding process, using techniques to hide bribes during contract execution, soliciting “facilitation payments” to obtain licenses and permits and to register companies. Shortcomings identified by the Government of Mozambique in procurement/contract execution are illustrated in the figure below, “Cases Involving Possible Fraudulent and /or Corrupt Behavior Related to the National Institute of Social Security (INSS).”

38. The threat and cost of corruption for Mozambique has been acknowledged by the Government, which has mounted policies to address this challenge. A 2006 Government strategy indicates that during a survey 70 percent of those interviewed identified corruption as one of the most serious problems and that it is increasing in both public and private sector. A 2005 survey by Austral Consultoria e Projetos indicated that all groups surveyed consider that corruption in the public sector is particularly serious. In the same survey, procurement was cited as one of the most corrupt services after customs, obtaining licences and courts.

39. Discussions with members of civil society indicated that there is no clarity on the process to be followed by the anticorruption agency in charge of enforcing these regulations. Another inhibiting factor is the fact that while the anticorruption law urges people to report problems, there is no effective protection mechanism for whistleblowers. Finally, according to the Centro de Integridade Publica, no case has been taken to court by the anticorruption agency to date. Figure 23, page 50 includes a well-documented example of bad procurement (public tender for the introduction of nonintrusive inspection—scanning—of containers at main ports in Mozambique) with no administrative or legal consequences so far.

40. An efficient and transparent public procurement system with adequate control mechanisms is key to the avoidance of fraudulent and corrupt practices in the area of public spending. Given that many of the areas covered under this topic are not entirely under the control of the procurement function, further progress comes from alliances with other branches of Government and through increased awareness of

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11 OECD DAC Integrity in Public Procurement, 2007
12 Republic of Mozambique, Anti-Corruption Strategy, Maputo, April 2006
the civil society. While Mozambique has an Anticorruption Strategy and there are adequate provisions in the Regulamento, and bidding documents regarding conflict of interest, fraud, and corruption (including sanctions), there is not much evidence of prosecution of corrupt practice or due process for bidders debarment. In this context, the initiative of the Ministry of Labor (major results shown below) stands out as a very good example for action against corrupt and fraudulent practices and implements Government’s anti corruption strategy in an exemplary way.

Cases Involving Possible Fraudulent and /or Corrupt Behavior Related to the National Institute of Social Security (INSS)

<table>
<thead>
<tr>
<th>The examples point to the following areas of weakness: abuse of direct contracting, poor contract estimates, nonenforcement of contractual provisions, political pressure, possible collusion, and poor contract management resulting in poor quality of construction</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The examples point to the following areas of weakness: abuse of direct contracting, poor contract estimates, nonenforcement of contractual provisions, political pressure, possible collusion, and poor contract management resulting in poor quality of construction</strong></td>
</tr>
<tr>
<td>• Payments two years after the contract completion for activities that were not stipulated in the contract.</td>
</tr>
<tr>
<td>• Construction project INSS delegation in Tete: (i) use of unjustified direct contracting; (ii) 100 percent payment before the signature of the contract and approval by TA; and (iii) payments for activities not stipulated in the contract.</td>
</tr>
<tr>
<td>• The final cost of Gaza construction project of INSS being six times the estimate.</td>
</tr>
<tr>
<td>• Maputo-Beira-Nampula low-cost housing condominiums: the bid price of the successful bidder was US$15,000 per condominium (US$45,000 estimate), while the actual cost was US$100,000 (considered exorbitant).</td>
</tr>
<tr>
<td>• The awarding of a contract for 10 million Mt for an erosion protection wall for the INSS Matola delegation after the rejection of the lowest bid of 1 million Mt. In spite of the high price, the quality was so poor that the construction was damaged by the rain immediately after conclusion of works.</td>
</tr>
<tr>
<td>• Contract for construction of INSS delegation Gaza awarded for $572,000. Contract amount was increased to $1.143,000. The Contractor has asked for a 75 percent increase in price justifying increase in the price of materials.</td>
</tr>
<tr>
<td>• Works in Nampula for the reconstruction if INSS delegation: award to a “preferred” bidder even after the evaluation committee had selected another contractor. The evaluation committee recognized that it was under pressure from the management.</td>
</tr>
</tbody>
</table>

Source: Ministry of Labor

41. The Government should continue to receive support from the international community in improving public procurement, which is one of the key avenues for combating corruption. To this end the following are recommended:

- Improve the coordination between the monitoring and oversight (i.e. audit) of public expenditures (including procurement) between UFSA, IGF and TA, to take advantage of existing synergies, avoid duplication of efforts and resources and increase impact.

- UFSA to establish a risk management model to be conducted by Ministries with UFSA support.
• On this basis, adopt a risk based approach in Financial Management and procurement audit (e.g. UFSA to establish a system of certification of UGEAs in collaboration with IGF) and calibrate oversight according to the level of risk.

• Step up enforcement of the fraud and corruption (F&C) strategy and related provisions in the Regulamento and bidding documents through (i) clear instructions for their enforcement (for example, due process for bidders’ debarment), (ii) increased awareness about “red flags” among procurement specialists and auditors through training, and (iii) use of the M&E system by key ministries to monitor the performance of the Sectoral Anti-Corruption Action Plans.

• Strengthen the complaint mechanism, the cornerstone of any procurement system, by addressing existing deficiencies, including by devising an appropriate appeal mechanism for bidders to be able to appeal the decisions of the procuring entities. An effective complaint mechanism supports the Government oversight function and F&C agenda and the benefits far outweigh its cost.

• Increase the demand for good procurement by engaging the civil society and private sector to report on cases when there are violations of the system without fear of retribution; increasing awareness and establishing a hotline for procurement related complaints could be useful in this respect.

• Build into e-SISTAFE: in addition to procurement controls for procurement compliance, capabilities to generate data used to detect systemic irregularities.

42. As a corollary to the above, while UFSA will be at the center of the process for driving further the public procurement agenda, the full success of these actions depends on the effective coordination of public-sector reforms and cooperation (with clear responsibilities) between the various actors involved in financial management and public sector reforms.

G. MONITORING FOR RESULTS

43. In formulating a recommendation on the monitoring mechanism, the joint mission assessed the systems UFSA is currently using to collect information from UGEAs, took into account the conclusions of the stakeholders’ Workshop, and was guided by the following goals:

• Create a simple mechanism that builds to the extent possible on the existing systems;

• Focus on large-spending entities in the first year and refine the system by incorporating lessons learned from experience and scale up; and
• Define the indicators in consideration of the areas of greatest opportunity identified as a result of the OECD DAC assessment.

44. *Data collection*: Four options for the data gathering needed for the compliance and performance indicators were considered. Using e-SISTAFE as a source of data to UFSA has been identified as the medium-term solution (once the procurement module is integrated into e-SISTAFE) while the immediate solution envisions a mechanism whereby UGEAs report directly to UFSA the information needed and UFSA further elaborates the national indicators. Other methods are audits (to address the quality of procurement oversight) and surveys (to address perception of public procurement by various stakeholders). Until this system becomes operational the other systems will continue to operate (e.g. PAF indicators). Eventually they will merge into one.

45. The M&E system will support the action plans of the ministries in monitoring the anticorruption strategy by providing signals on the areas most prone to abuse.

**H. ACTION PLAN**

46. The suggested action plan builds on the key areas of opportunity identified in this CPAR update based on the OECD DAC Methodology.

47. It is expected that such actions will further advance the public procurement systems toward international standards and will help the Government of Mozambique meet the objectives of effectiveness and integrity in the use of public money. This is essential to the delivery of timely and good quality services to the population, fighting poverty and combating corruption. Part of the efficiency is expected to result from the increased integration in the use of funds under CUT (Single Treasury Account) and national procurement systems, irrespective of the funding source.
<table>
<thead>
<tr>
<th>Area of Opportunity</th>
<th>Action</th>
<th>Date of Start and Completion</th>
<th>Short-Term Action/Quick Win</th>
<th>Responsible Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transparency and Information</strong></td>
<td>Develop a simple system for collecting information from UGEAs and auditors (until SISTAFE can provide this information).</td>
<td>Q4 2008</td>
<td>A consultant should help UFSA establish the reporting system. A price data base for standard purchase items should be created.</td>
<td>UFSA/Procurement entities</td>
</tr>
<tr>
<td></td>
<td>Establish an action plan to implement the asset management module (includes procurement), including built-in performance indicators.</td>
<td>2009 to 2010</td>
<td>A consultant will review the business case for procurement.</td>
<td>UFSA+SISTAFE</td>
</tr>
<tr>
<td></td>
<td>E procurement strategy implementation</td>
<td>2010</td>
<td>Readiness assessment 2009</td>
<td></td>
</tr>
<tr>
<td><strong>Capacity</strong></td>
<td>Elaborate a strategy for national and subnational level.</td>
<td>2009</td>
<td>A METAPLAN stakeholders workshop should be held. Continue to train the trainers/auditors and private sector</td>
<td>UFSA + Função Pública</td>
</tr>
<tr>
<td></td>
<td>Prepare a simple tool for capacity/risk assessment of UGEAs.</td>
<td>2009</td>
<td>Assess similar tools and adapt them.</td>
<td>UFSA/IGF</td>
</tr>
<tr>
<td></td>
<td>Enhance UFSA ability through appropriate funding and human resources to carry out its functions of monitoring/improving proc. outcomes.</td>
<td>2009 to 2011</td>
<td>Use international organization funds in the short term.</td>
<td>MF</td>
</tr>
<tr>
<td><strong>Appeal Mechanism</strong></td>
<td>Perform a study regarding independent body for dispute resolution and contract disputes.</td>
<td>2009 to 2010</td>
<td>UFSA will establish a panel composed of reputable persons.</td>
<td>MF</td>
</tr>
<tr>
<td><strong>Oversight and Integrity</strong></td>
<td>Define instructions for enforcement of F&amp;C provisions (e.g., debarment). Prepare an ethics code</td>
<td>2009</td>
<td>Create procurement manual and ethics awareness about corruption flags.</td>
<td>UFSA + Funcao Publica</td>
</tr>
<tr>
<td></td>
<td>Partnership with TA TA to increase the thresholds for prior review based on capacity.</td>
<td>2009 to 2010</td>
<td>Establish standard requirements for procurement audits</td>
<td>UFSA and TA</td>
</tr>
<tr>
<td></td>
<td>Partner with IGF.</td>
<td>2009 to 2010</td>
<td></td>
<td>UFSA and IGF</td>
</tr>
<tr>
<td></td>
<td>Elaboration of an ethics code</td>
<td>2009</td>
<td></td>
<td>UFSA &amp; Função Publica</td>
</tr>
<tr>
<td><strong>Coalitions</strong></td>
<td>Plan to communicate and elicit feed back from external stakeholders</td>
<td></td>
<td></td>
<td>UFSA</td>
</tr>
<tr>
<td><strong>Legal Framework</strong></td>
<td>Refine Regulamento, Manual, instructions and address possible conflicts with other law</td>
<td>2010</td>
<td>Provide instructions and clarification to address gaps in the law.</td>
<td>UFSA</td>
</tr>
</tbody>
</table>
MOZAMBIQUE

COUNTRY PROCUREMENT ASSESSMENT REPORT

I. INTRODUCTION

1. The current Country Procurement Assessment Report (CPAR-update) is the result of the collaborative effort of a team composed of representatives of the World Bank, the African Development Bank (AfDB), KfW Bankengruppe (KfW), and the Government of Mozambique (GOM). The joint team conducted this assessment in March 2008. The main findings and recommendations are captured in this draft report, which is submitted to the Government for comments. After the incorporation of the Government comments, the report will be finalized and distributed.

2. This CPAR update has been defined as a lean exercise, meant to create a baseline (snapshot) of the public procurement systems in Mozambique and, on this basis, to identify the next steps in moving forward the public procurement modernization and reform agenda. In this context, the objectives of the CPAR have been defined as follows: (i) to assess the public procurement systems using OECD DAC\textsuperscript{13} Methodology; (ii) to recommend a monitoring mechanism to measure procurement systems compliance/performance and progress toward acceptable international standards; and (iii) to identify areas of opportunity and recommend an action plan for the improvement of the procurement function in the country.

3. The report consists of the following sections: I. Introduction; II. Country and Strategic Context for Public Procurement; III. The Outcome of the Application of the OECD DAC Methodology; IV. Detailed Findings and Recommendations; V. Procurement in Bank-Assisted Projects; VI. Recommended Action Plan; and VII. Annexes. The Annexes include details and supplemental information to the earlier sections.

\textsuperscript{13} Organization for Economic Cooperation and Development - Development Assistance Committee.
II. COUNTRY AND STRATEGIC CONTEXT FOR PUBLIC PROCUREMENT

A. COUNTRY BACKGROUND

4. Mozambique is one of the strong performing countries in Africa, with rapid growth and good results in poverty reduction. Between 1996 and 2006, following a devastating civil war that ended in 1992, the economy grew at an average annual rate of 8 percent (the highest in Africa for a non–oil producing country). In 2007, the rate was 7.3 percent (above what was planned), with the highest performing sectors being services, communication, and the construction industry. Economic expansion was made possible by overall macroeconomic stability, sound policy reforms, growth in agriculture, postwar reconstruction, megaprojects, and strong support from the development partners. However, as the Country Partnership Strategy (CPS) points out, this growth is also attributed to a postconflict catch-up effect that cannot last indefinitely. Sustained future growth is expected to be driven by investments complemented by second-generation reforms. In this context, the Government is engaged in a comprehensive Public Financial Management (PFM) reform program supported by the donor community, including the Bank-financed Poverty Reduction Support Credits (PRSCs) series, governance projects, technical assistance, and Economic Sector Work (ESWs).

<table>
<thead>
<tr>
<th>Figure 1 Mozambique Statistics 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population, total (millions)</td>
</tr>
<tr>
<td>Population growth (annual percent)</td>
</tr>
<tr>
<td>Surface area (sq. km) (thousands)</td>
</tr>
<tr>
<td>Life expectancy at birth, total (years)</td>
</tr>
<tr>
<td>Mortality rate, infant (per 1,000 live births)</td>
</tr>
<tr>
<td>GNI (current US$billions)</td>
</tr>
<tr>
<td>GNI per capita, Atlas method (current US$)</td>
</tr>
<tr>
<td>Prevalence of HIV, total (percent of population ages 15-49)</td>
</tr>
</tbody>
</table>

Source: World Development Indicators

5. In Mozambique a very significant portion of public spending occurs through the public procurement process. By way of illustration, the government of Mozambique spends almost $1 billion per year on the procurement of goods, services, and works, which accounts for about 14 to 15 percent of the PIB and 55 percent of total public expenditures.\(^\text{14}\) This is quite high considering that globally the share of public procurement in government expenditures is about 12 to 20 percent. It is also relevant to indicate that international organizations’ contribution to public procurement in

\(^{14}\) Based on the statistics in figure 1.
Mozambique is quite significant: about 75 percent of capital expenditures are foreign financed. This international contribution explains the high interest by the international donor community in the efficient use of public funds in Mozambique.

6. Given the large share of public procurement in the total public expenditures, it is apparent that even modest efficiency improvements in the operation of the system could potentially yield substantial savings on the order of 1 to 2 percent of the GDP. Hence, the Government’s and public’s interest in continuing the process of reforms in public procurement and the donors’ continued commitment to support this important agenda.

**Figure 2**

**Economic Classification of Central Government Spending (percentage of GDP)**

<table>
<thead>
<tr>
<th></th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Budgetary Allocations</strong></td>
<td>14.3</td>
<td>13.4</td>
<td>13.2</td>
</tr>
<tr>
<td><strong>Wages and salaries</strong></td>
<td>6.9</td>
<td>6.8</td>
<td>6.7</td>
</tr>
<tr>
<td><strong>Goods and Services</strong></td>
<td>3.5</td>
<td>3.2</td>
<td>3.2</td>
</tr>
<tr>
<td><strong>Interest on Public debt</strong></td>
<td>1.0</td>
<td>0.8</td>
<td>0.7</td>
</tr>
<tr>
<td><strong>Transfers</strong></td>
<td>2.8</td>
<td>2.6</td>
<td>2.5</td>
</tr>
<tr>
<td><strong>Capital expenditures</strong></td>
<td>9.4</td>
<td>8.2</td>
<td>11.0</td>
</tr>
</tbody>
</table>


7. Public procurement reforms are an integral part of the Government and Development Partners strategy for Mozambique.

- *The overarching Mozambique strategy, PARPA, the Plano de Acção para a Redução da Probreza Absoluta para 2006–2009,* seeking to reduce the poverty rate from 54 percent to 45 percent by 2009, underscores the importance of public procurement reforms. PARPA II (para. 494) states that government resources shall be used more rationally due to the expected reduction of the external support and given the increased budget-planning skills in the country. For that purpose, Government will increase the transparency and management of the public funds, will improve the payments of public works, and will adopt a more transparent and efficient government public procurement. The strategy underlines the importance of consolidating and expanding the State Financial Administration System (Sistema de Administração Financiera do Estado) further called SISTAFE and e-SISTAFE and to bring control systems up to internationally accepted practices. These commitments are the basis for the Government’s keen interest to adopt a monitoring and evaluation system of the national procurement system based on the OECD DAC Methodology.

- *The Global Strategy for Public Sector Reform,* which has entered into a second phase (2006–2009), addresses cross-cutting areas that are extremely relevant to procurement, such as capacity building, public management and administration, a build up of the judicial system, a revamping of the strategy for development of
human resources and the systems of incentives in the public sector, and improvement in the PFM process, including oversight and anticorruption measures. This points to the importance of effective coordination of reforms in the area of procurement with reforms taken up in other cross-cutting areas that can support the advancement of public procurement agenda.

- **The Country Partnership Strategy** for the Republic of Mozambique (April 24, 2007) supports the PFM agenda and underscores the importance of the sector and economic work in public procurement, thus defining the scope of this CPAR update in the CPS: Pillar I (Increased Accountability and Public Voice): “The ESW work on procurement (FY08) will be similar to a Country Procurement Assessment Review (CPAR) assessing what stage the procurement system has reached, defining performance indicators based on OECD DAC Methodology, and proposing the monitoring system to be put in place.”

- **The Memorandum of Understanding between the Government of Mozambique and the Program Aid Partners** (PAP, including the World Bank) for the provision of direct budget and balance of payments support, signed on 5 April 2004 (art. 11) addresses procurement in Mozambique. It states that “Government procurement will be done on the basis of Mozambican legislation on procurement. GoM will reform and bring up to internationally acceptable standards, as soon as possible, its legislation and system of government procurement. GOM and PAPs will agree on a mechanism to follow up on the process and practice of improving the procurement system.”

**ADDITIONAL STUDIES UNDERLYING THE CPAR.**

8. Two recent papers discuss in more detail procurement issues and have provided additional background information to this CPAR update: (i) Assessment of Public Finance Management in Mozambique, dated February 2008 and based on the PEFA methodology, further named PEFA, and (ii) the Performance Assessment Framework (PAF) of 2007.

**Assessment of Public Finance Management in Mozambique based on PEFA Methodology (April 2008).**

9. The PEFA assessment of the PFM systems and processes, suggests that changes for the better occurred in the period 2004 to 2006 and signaled emerging trends in 2007. This study was considered a remarkable event and testimony to the Government’s interest in monitoring the performance of PFM reforms. “Mozambique is one of the first countries in the world to have completed two PEFA assessments and has thus created a robust basis for assessing the progress over time in the implementation of
its PFM reforms.”

Assessment is based on thirty-one indicators related to critical dimensions of the PFM system.

10. In the PEFA report, the procurement function is dealt with as a specific indicator (PI-19, defined as “Competition, value for money and control in procurement”) with three subindicators. Figure 2 is the summary of the assessment by PEFA comparing the ratings given in 2004 and 2006. PEFA acknowledged the progress achieved by Mozambique in promoting competition and establishing a complaint mechanism—hence the improved rating from C to B. However, the subindicator measuring the quality of justification for direct contracting maintained the C scoring of 2004. The direct contracting remains a challenge in the procurement system; unless the Government curtails the direct procurement, economy and transparency will not be attained.

**Figure 3**
PEFA Performance Indicator

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Dimension</th>
<th>2004 Assessment</th>
<th>2006 Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>PI – 19: Competition, value for money and controls in procurement</td>
<td>(i) Evidence on the use of open competition for award of contracts that exceed the nationally established monetary threshold for small purchases (percentage of the number of contract awards that are above the threshold)</td>
<td>C</td>
<td>B</td>
</tr>
<tr>
<td></td>
<td>(ii) Extent of justification for use of less competitive procurement methods</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td></td>
<td>(iii) Existence and operation of a procurement complaints mechanism</td>
<td>C</td>
<td>B</td>
</tr>
</tbody>
</table>

Source: PEFA, April 2008

11. The CPAR analysis, based on OECD DAC, confirmed the positive trend evidenced in the PEFA (2004–2006) assessment in the area of competition and institutionalization of the complaint mechanism as well as the need to monitor more closely the direct contracting transactions. Taken together, these results suggest that Government procurement has improved substantially in the past three years. The PEFA assessment was based on the information available at the level of the Functional Unit for Procurement Supervision (Unidade Funcional de Supervisão das Aquisições do Estado) further called UFSA. This information was reported by

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the Procurement Management Units (Unidade de Gestão das Aquisições, further called UGEAs). This reporting is mandated under the provisions in the Regulations for Public Works Contracts and Procurement of Goods and Services by the State (Regulamento de Contratação de Empreitada de Obras Públicas, Fornecimento de Bens e Prestação de Serviços ao Estado) further called Regulamento. UGEAs are mandated under the Regulamento to report procurement-related information, including information on invitations for public bidding, information on direct contracting, and justification and information on complaints. According to this data, 71 percent of bidding was carried out through open bidding in 2006 and 85 percent in 2007. However, PEFA recognizes that during 2006 there was only partial data available, as UFSA was established in September 2006. Besides, there has been no system in place to ensure that all UGEAs systematically report this information. This points out to the need for a more robust information system, which is one of the major findings of this CPAR update report.

12. Another PEFA indicator where procurement may play a significant role relates to budget credibility and predictability (PI-2). The PEFA report suggests that the desired improvements have not been registered in relation to the credibility of the budget, as measured by the consistency of actual expenditures and revenue collections with originally approved budgets and projections. Some of the causes identified in the PEFA study are the fact that (i) new activities are being included within the budget, (ii) the cost of planned activities is not being properly assessed during budget preparation, meaning that the level of resources approved is not sufficient for their implementation, and (iii) sector ministries are responding to cuts in budget ceilings during the preparation process, not by cutting activities, but rather by trying unsuccessfully to trim costs. The CPAR team believes that an important role in ensuring the credibility of the budget is played by giving more attention to the planning dimension of procurement. Breaking down programs into activities and activities into procurement actions with adequate estimates and realistic implementation schedules can properly inform the budget-planning process and improve the budget credibility and predictability. The results of this CPAR update support the idea of better procurement-planning and procurement-implementation reports that will create the data for improved budget planning.

13. Finally, the internal controls and audit assessments are relevant to public procurement to the extent that they contain a procurement dimension. The PEFA report has shown improvement in indicators P-20 and P-21 relating to effectiveness of internal controls and audit that scored B, while the scope and nature of external audit performed measured in indicator PI-26 scored only a C+ (while timeliness and follow-up score higher). The CPAR team noted that the Office of the General Finance Inspectorate (IGF) and the Administrative Tribunal (TA) increasingly play a part in procurement audits. However, as this report points out, further work needs to be done to mainstream procurement audits as part of the audit process.

Performance Assessment Framework (PAF) Quadro de Avaliação de Desempenho (QAD)
14. The donors have agreed with the Government of Mozambique on a series of macro-economic markers to track the performance of the reform and modernization of governance.

15. The PAF technical note has five subindicators on procurement as presented in figure 4; the sixth is a new proposal recommended by the CPAR team to be added in order to monitor procurement planning. The CPAR team reviewed the technical note that supports the procurement indicators and concluded that they are consistent with areas that require monitoring as also revealed by the OECD DAC Methodology (e.g., institutional capacity, competition, transparency, operational effectiveness).

Figure 4
PAF Procurement Subindicators

<table>
<thead>
<tr>
<th>Area of Opportunity</th>
<th>Indicators for Monitoring Public Procurement</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Institutional capacity to carry out procurement</td>
<td>Percentage of UGEAs (including districts) formally created and properly staff as reported to UFSA and compared with UFSA strategic plan for UGEAs</td>
<td>95%</td>
</tr>
<tr>
<td>2</td>
<td>Percentage of UGEAs (including districts) actively conducting procurement as reported to UFSA and compared with UFSA strategic plan for UGEAs</td>
<td>85%</td>
<td>95%</td>
</tr>
<tr>
<td>3</td>
<td>Institutional capacity to monitor procurement</td>
<td>UFSA to retain the organizational framework as defined in Diploma Ministerial do MdF 141/2006; any vacancy should be filled in within three months. Percentage of jobs filled.</td>
<td>100%</td>
</tr>
<tr>
<td>4</td>
<td>Transparency and equal opportunity (use of open bidding)</td>
<td>Percentage of concursos publicos (regime geral) publicly advertised as recorded by UFSA as compared to the total number of adjudications recorded by UFSA.</td>
<td>90%</td>
</tr>
<tr>
<td>5</td>
<td>Limit non competitive procurement</td>
<td>Percentage of cases of ajuste directo well justified as per the regulations and recorded at UFSA</td>
<td>100%</td>
</tr>
<tr>
<td>6</td>
<td>Increase transparency, operational effectiveness and allow for adequate multi year budgeting.</td>
<td>Number of procurement plans for the 20 UGEAs with the highest volume of procurement prepared and reported to UFSA</td>
<td>5</td>
</tr>
</tbody>
</table>

16. As suggested in this CPAR update report, once the OECD DAC mechanism for collecting indicators is operational, the application of the compliance and performance indictors (CPI) of the OECD DAC Methodology will feed the information to calculate the PAF subindicators and the two monitoring systems will
converge. As set forth in Section III.C, Monitoring Procurement Outcomes—Compliance and Performance Indicators, the recommendations of CPAR team in respect to the systems of indicators for compliance and performance monitoring have built on the existing systems which have been already identified and agreed with the Government for monitoring governance. In developing this system, the CPAR team proposes a gradual approach that takes into account both the relevance of the indicators and the Government capacity to deal with this task.
III. THE OUTCOME OF THE APPLICATION OF THE OECD DAC METHODOLOGY

A. THE METHODOLOGY

17. The Methodology for Assessment of National Procurement Systems of July 17, 2006, was developed by the OECD/DAC–World Bank Round Table on Strengthening Procurement Capacities in Developing Countries. As explained in the User’s Guide, the Methodology for assessment of national procurement systems is intended to provide a common tool that developing countries and donors can use to assess the quality and effectiveness of national procurement systems. The detailed methodology can be found at http://www.oecd.org; its application to Mozambique situation is captured in Annex A. The methodology provides for two sets of indicators that complement each other and jointly provide a complete picture of the quality and efficacy of public procurement systems.

- **Baseline Indicators (BLIs)** address the formal and functional features of the existing systems when benchmarked against international practices. The systems and the corresponding 12 indicators and 54 subindicators are grouped under four pillars: (Pillar 1) Legal and Regulatory Framework; (Pillar 2) Institutional Framework and Management Capacity; (Pillar 3) Procurement Operations and Market Practices; and (Pillar 4) Integrity and Transparency of Public Procurement. The result is a snapshot (picture) of the procurement reforms at a moment in time.

- **The compliance/performance indicators (C/PIs)**, reflect how the systems actually operate, by examining a sample of procurement transactions and other relevant information deemed representative of the overall performance of the system. These indicators can be quantitative or qualitative (for example, based on surveys or interviews).

18. At this stage the joint mission has conducted the BLI assessment and made recommendations for a number of compliance/performance indicators and a mechanism to collect the data. Once the C/PIs are available, the two sets of indicators will provide a full picture of the performance of public procurement systems in Mozambique. In the near future, the Government and its Development Partners will meet again to combine the two types of indicators and to reflect on the gains from the overview of the full scope of the assessment.

SCORING

19. The Methodology specifies that the scoring system ranges from 3 to 0 for each baseline subindicator. A score of 3 indicates full achievement of a standard. A score of 2 is given when the system exhibits less than full achievement and needs improvements in the area being assessed, and a score of 1 is for those areas where
substantive work is needed for the system to meet the standard. A rating of 0 is the residual indicating a failure to meet the proposed standard. The score for each subindicator should be a whole number from 0 to 3.

**B. MAIN FINDINGS FROM ASSESSING MOZAMBIQUE SYSTEMS AGAINST INTERNATIONAL GOOD PRACTICE (BASELINE INDICATORS)**

20. The findings of the BLI assessment are captured graphically in figure 5. The detailed findings can be found in the following Section IV while the supporting justification and scoring tables are incorporated in Annex A1.

21. The snapshot in figure 4 of the public procurement systems as of June 2008 clearly indicates that Mozambique has made significant progress in the area of developing the legal and regulatory framework (Pillar 1). The system has more opportunities for development in the other pillars: (i) the Institutional Framework and Management capacity (Pillar 2); (ii) Procurement Operations and Market that most directly relate to the interaction of the public sector and the business community (Pillar 3), and (iii) the Integrity and Transparency of Public Procurement that deals with resolving procurement disputes, effective monitoring oversight and integrity systems (Pillar 4). The graphic and numerical assessment of the country procurement system before the start of the reform in 2005 is provided here for illustration purposes.
SIGNIFICANT PROGRESS SINCE THE LAST CPAR ASSESSMENT IN 2002

22. In order to better assess the progress of the procurement framework in the years since the enactment of the new procurement regulations, the CPAR team simulated what would have been the OECD DAC Methodology assessment in 2002. At that time, the Methodology was not available, but the report includes enough information to allow the team to simulate the assessment for comparison with the current national procurement framework. Such an assessment confirmed that, since the last CPAR (2002), Mozambique has made significant progress in establishing the elements of a sound procurement system. The overall rating of the procurement framework in Mozambique appears to have reached a level of 1.4 versus 0.4 in 2002 (a suggested increase of 3.4 times). The key changes are compiled in figure 6.

Figure 6
Progress since the 2002 CPAR

<table>
<thead>
<tr>
<th>CPAR 2002 (before decree 54/05)</th>
<th>CPAR 2008 (after decree 54/05)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement is mostly a technical function.</td>
<td>Public procurement is currently designed as a component of the Public Financial Management System based in the SISTAFE architecture.</td>
</tr>
<tr>
<td>Outdated and fragmented legal and regulatory framework</td>
<td>Modern legal and regulatory framework generally aligned to international good practice with specific requirements for international bidding</td>
</tr>
<tr>
<td>No tools for practitioners</td>
<td>A manual and a set of (nine) standard bidding documents and contracts modeled after the World Bank</td>
</tr>
<tr>
<td>Noncompetitive process (contractors selected from a list) Nontransparent evaluation process</td>
<td>Open competition is the default Transparent and objective evaluation and qualification criteria</td>
</tr>
<tr>
<td>Lack of advertising</td>
<td>Public advertising mandatory</td>
</tr>
<tr>
<td>No regulatory body in charge of public procurement</td>
<td>Regulatory body created in 2006</td>
</tr>
<tr>
<td>Training of staff involved in procurement almost nonexistent</td>
<td>A professional training program is being conducted by UFSA</td>
</tr>
<tr>
<td>Procurement of goods centralized in the Ministry of Finance</td>
<td>Procurement decentralized to specialized procurement units (UGEAS) in the line ministries, in the provinces and districts</td>
</tr>
<tr>
<td>IFIs were “ring fencing” their operations, taking exception to every aspect of the national procurement rules</td>
<td>IFIs increasingly rely on Mozambique systems for NCB and move to organically integrated project implementation units.</td>
</tr>
</tbody>
</table>

23. Figure 7 identifies the scores by pillar in 2008.

Figure 7
OECD DAC Scores
<table>
<thead>
<tr>
<th>Pillar</th>
<th>CPAR 2008</th>
<th>% of max. achievement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative and regulatory</td>
<td>2.29</td>
<td>75%</td>
</tr>
<tr>
<td>Institutional framework and management</td>
<td>1.00</td>
<td>33%</td>
</tr>
<tr>
<td>Procurement operations</td>
<td>1.50</td>
<td>50%</td>
</tr>
<tr>
<td>Integrity and transparency</td>
<td>0.94</td>
<td>31%</td>
</tr>
<tr>
<td>Average score</td>
<td>1.43</td>
<td>57%</td>
</tr>
</tbody>
</table>

- **Legislative and regulatory framework** scored 75 percent of the maximum rating which is indicative of the notable progress made by Mozambique in adopting a modern legislation substantially consistent with international practice and elaborating the main tools needed to apply the law (manual and bidding documents). Yet areas of opportunity have been identified in the areas of bidders’ access, complaints mechanism, procurement and contract management, domestic preference for goods.

- **Institutional framework and management capacity** has recorded the most significant progress since 2002 through the creation of the integrated PFM system including procurement and the establishment of UFSA as the central procurement body. However, this represents only one third of full marks. The key areas of opportunity are related to further integrating of procurement in the PFM system and building capacity (including enhancing UFSA capacity and funding to carry out its functions as the lead body for procurement and avoiding any association with procurement transactions).

- **Procurement operations and market practice** has also improved being now at 50 percent of full marks. The key areas of opportunity relate to better Government interaction with the business sector, improved access to credit, streamlined approval and records management systems and improved contract management practices.

- **Integrity and transparency of public procurement**: this pillar has reached only 31 percent of full marks. This is the pillar with the relatively lowest progress of the pillars as defined by the Methodology. The areas of opportunities include strengthening procurement oversight with the participation of all responsible entities involved (UFSA, IGF, TA) and adopting a risk based approach, establishing an independent appeal mechanism, elaborating instructions and assigning responsibilities for the application of the legal provisions related to fraud and corruption, engaging civil society and the private sector in the monitoring of procurement. It should be noted that many of the factors impacting the scoring of public procurement are not totally under the control of the procurement function.
C. MONITORING PROCUREMENT OUTCOMES—COMPLIANCE AND PERFORMANCE INDICATORS (CPI)

24. Besides conducting the BLI assessment, the CPAR team was asked to formulate and to recommend a system for monitoring procurement performance based on OECD DAC Methodology.

25. The Methodology points out that CPIs deal with how the system actually operates. They are more closely related to the application of the regulations and to the prevailing procurement practices in the country. Thus while the BLIs are more like a snapshot of the system design at a given time, the CPIs look at what is happening on the ground by examining a sample of procurement transactions and other relevant information that is deemed representative of the performance of the system.

26. The OECD DAC methodology comprises 36 compliance and performance indicators categorized under the 4 pillars. In order to gather information relevant to this exercise (mainly on sources of data, methods of collection, and periodicity) a Workshop was organized by the Government jointly with the Bank and other cooperating partners with participants from government, the private sector, and civil society. The conclusions and the CPAR recommendations regarding the proposed M&E mechanisms are presented below.

27. For more details on the Workshop outcome and recommendations, please refer to Annex B. The following paragraphs present the CPAR analysis, conclusions, and recommendations relating to the monitoring of performance and compliance indicators in the national procurement systems.

THE CURRENT SITUATION

28. The procurement framework in Mozambique does not currently provide for a mechanism to monitor and evaluate the procurement function. UFSA diligently compiles the information reported by UGEAs consistent with the Regulations’ provisions (information on advertising for public bidding, contract awards, direct contracting and justification, and complaints) and publicizes the related indicators on its website. However, this information is not consistently reported by all UGEAs, and not all areas where weak performance has been registered are monitored. There is, therefore, an area of opportunity for developing a more robust and comprehensive M&E system. Such a M&E system should be capable of producing the OECD indicators and other indicators agreed upon between the Government of Mozambique and the donors to monitor governance in procurement.
Sources of Data

29. The participants in the Workshop debated extensively over what would be the main sources of information for the indicators identified under the OECD DAC Methodology. UFSA’s website was well known by the participants as it is used (by UGEAs and the private sector) as a source of information on public procurement legislation, bidding documents, and some bidding opportunities. In the proposed system, the main source of information continues to be UGEAs, with the caveat that the information will be expanded beyond what is required under the Regulations. A mechanism is proposed to ensure systematic reporting by UGEAs. Other sources of information are the auditors (based on their audit of UGEAs), civil society, and the private sector (through surveys). The possible sources of information on public procurement data, as recommended by the Workshop participants, are displayed in figure 8. The figure identifies UGEAs as a main source of information regarding procurement, but it also indicates such other sources as the oversight agencies for audit information and civil society and the private sector for perception data.

The Collection Method

30. Several options were considered for assisting UFSA in setting up the M&E mechanisms: (1) to wait until SISTAFE develops modules for asset management and for procurement and internal control as required by the law (over the next two to three years), (2) to recruit auditors to collect data from a representative sample of UGEAs for immediate generation of information to create a baseline, (3) to establish a system whereby UFSA collects the data from UGEAs through periodical reports and further processes national compliance and performance indicators, and (4) to use a combination of 2 and 3, in which a consultant, in addition to advising UFSA on the system, also establishes the baseline. These are displayed in figure 9.
### Figure 9
Scenarios for Data Collection

<table>
<thead>
<tr>
<th>Possible Scenarios</th>
<th>Advantages</th>
<th>Disadvantages</th>
<th>Next Steps</th>
</tr>
</thead>
</table>
| 1. e-SISTAFE       | System based—reports available at a push of a button  
Versatile, comprehensive  
Minimizes human error, resulting in superior integrity of data  
UFSA and UGEAs will benefit from a set of robust information, easily available, that could meet the evolving management needs at the country and agency level.  
Sustainable and fully mainstreamed into the PFM systems  
Able to identify other relevant correlations between procurement and budget preparation and execution. | Not available in the next two to three years | The procurement “business case” (already available at UTRAFE) should be assessed for functionality to produce compliance and performance indicators. |
| 2. Auditors (private sector) performing the data collection and analytical work | Data integrity is reasonable with good design and sampling.  
It ensures some independence of review. | May be expensive depending on the number of indicators collected  
Not mainstreamed into the Government systems  
A short-term solution but not sustainable if outsourced | At this stage, IGF and TA could be engaged in the performance monitoring process by providing information on the audits and systemic issues identified. |
| 3. UFSA collecting and processing the information | Can be deployed relatively quickly  
In place by end 2008, first reporting June 2009  
Not very costly in terms of the system design | Risk regarding the integrity of the information.  
Labor intensive (both for UFSA and UGEAs, which limits the number of indicators). | Technical Assistance to UFSA to prepare a database  
Data quality controls should be set in place |
| 4. A mix of option 2 and option 3  
UFSA with the assistance of a consulting/audit firm creates a baseline and M&E. Subsequently UFSA updates the baseline | UFSA has available relatively quickly a baseline done by consultants who can advise on the next steps so lessons are learned from experience and incorporated in “UFSA M&E.” Less expensive than option 2 | More expensive than option # 3 | Technical assistance to UFSA (i) to prepare a baseline: (ii) to design the system for data collection. |
PROPOSED APPROACH

31. Based on the information available, the CPAR team favors the approach whereby UFSA establishes an M&E system by collecting data from UGEAs and other sources until the SISTAFE system takes over as the main source of procurement data to UFSA. The CPAR team consulted two large UGEAs. Their opinion was that the cost of periodically filling out ad-hoc forms with the basic data required for the compliance indicators would be manageable. The reporting will be based on a software package to be commissioned to a consultant. The option of using the Internet for UGEAs to report to UFSA, while it would be ideal, is not feasible given the poor connectivity and the limitations on the training capacity of the staff within the procurement function. The various options (in terms of impact, cost, and complexity) as discussed during the workshop are presented graphically in the figure 10.

![Diagram of Impact/Costs for Various Scenarios]

Figure 10
Impact/Costs for Various Scenarios

Note: The “Database at UFSA” referred to in the above chart is the current one (very basic). The “proposed database” for M&E (which is not identified in the chart above) is expected to have higher impact.

The Benefits of a Gradual Approach

32. In formulating a recommendation on the monitoring mechanism, the joint mission assessed the systems UFSA is currently using to collect information from UGEAs, took into account the conclusions of the stakeholders’ Workshop, and was guided by the following principles:
• Create a simple mechanism that builds to the extent possible on the existing systems.
• Focus on large spending entities in the first year and refine the system by incorporating the lessons from experience and scale up.
• Define the indicators in consideration of the areas of greatest opportunity identified as a result of the OECD DAC assessment.

Establishing Priorities and Selecting Entities

33. According to the 2008 PEFA study, the key spending ministries that account for 63.6 percent of total spending are Education, Health, Infrastructure, Good Governance, and Justice (see figure 10). It is also relevant that most of capital investment happens at the center, i.e., 89 percent. The following figures suggest the need, at least in the first stage, to limit the scope of indicators collection to the main spending entities in the country.

Figure 11
Public Expenditures in the Priority Sectors

<table>
<thead>
<tr>
<th>Despesa Pública Sectores Prioritários</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educação</td>
<td>20,9</td>
<td>19,9</td>
<td>20,1</td>
</tr>
<tr>
<td>Saúde</td>
<td>10,5</td>
<td>12,7</td>
<td>14,6</td>
</tr>
<tr>
<td>HIV/AIDS</td>
<td>0,4</td>
<td>0,7</td>
<td>1,5</td>
</tr>
<tr>
<td>Infraestruturas</td>
<td>13,2</td>
<td>18,7</td>
<td>16,4</td>
</tr>
<tr>
<td>Agricultura e Desenvolvimento Rural</td>
<td>4,4</td>
<td>3,9</td>
<td>3,4</td>
</tr>
<tr>
<td>Boa Governação e Justiça</td>
<td>9,7</td>
<td>8,9</td>
<td>12,5</td>
</tr>
<tr>
<td>Outros Sectores Prioritários</td>
<td>3,9</td>
<td>2,2</td>
<td>1,1</td>
</tr>
<tr>
<td>Sub-total Sectores Prioritários</td>
<td>63</td>
<td>67</td>
<td>69,6</td>
</tr>
</tbody>
</table>

Source: PEFA, February 2008,

Figure 12
National and Subnational Government Entities
(as percentage of total expenditures)

<table>
<thead>
<tr>
<th>Description</th>
<th>No. Entities</th>
<th>Recurrent %</th>
<th>Recurrent Amount</th>
<th>Investment %</th>
<th>Investment Amount</th>
<th>Total %</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Government</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Central</td>
<td>115</td>
<td>54</td>
<td>13,883</td>
<td>89</td>
<td>16,498</td>
<td>69</td>
<td>30,381</td>
</tr>
<tr>
<td>Provincial</td>
<td>11</td>
<td>43</td>
<td>10,860</td>
<td>6</td>
<td>1,067</td>
<td>27</td>
<td>11,927</td>
</tr>
<tr>
<td>District</td>
<td>128</td>
<td>2</td>
<td>525</td>
<td>5</td>
<td>899</td>
<td>3</td>
<td>1,424</td>
</tr>
<tr>
<td>Municipalities</td>
<td>33</td>
<td>1</td>
<td>260</td>
<td>1</td>
<td>171</td>
<td>1</td>
<td>431</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>100</td>
<td>25,528</td>
<td>100</td>
<td>18,635</td>
<td>100</td>
<td>44,163</td>
</tr>
</tbody>
</table>

Source: PEFA April 2008: Budget execution 2006
Recommendations

34. UFSA will continue to collect from all UGEAS the information they are supposed to submit under Regulations (mainly information on direct contracting, contract awards, publicity of public opening) and step up the enforcement by UGEAs. UFSA should further monitor the number of UGEAs who are reporting this information.

35. UFSA will launch an M&E process for the key spending ministries (with a sample of subnational UGEAs) based on the priority indicators derived from the menu of OECD DAC indicators. After piloting it for one year, UFSA may refine the collection mechanism and, based on the experience gained, may decide to extend it to the other UGEAs.

36. The CPAR team based on the mission findings, including the stakeholders’ Workshop, and consistent with the OECD DAC Methodology has recommended three types of indicators. The suggested subset of priority indicators to be collected from UGEAs are in the following areas: (i) related to transparency (e.g., use of open bidding versus direct contracting, adequate bid opening process, use of standard bidding documents); (ii) related to bidders’ access (e.g. bidders’ participation, reasons for rejection); and (iii) related to procurement and contract management issues (e.g., payment delays, contract supervision). These indicators build on PAF subindicators and on those already reported by UGEAs under the law. In the short term, support will be provided to UFSA to establish an information database and a mechanism for collecting the needed data from UGEAs. A second tier of other relevant indicators to measure procurement performance can be obtained in the following ways:

- From auditors, from IGF, and from TA: for example, quality of record management, existence and quality of procurement plans, objectivity of evaluation criteria, integrity of the bidding documents and contracts, adequate contract management provisions, and indicators of fraudulent behavior (e.g. collusion). Such information requirements need to be taken into account in the planning and conduct of their audit.

- Through surveys: perception of public procurement by other stakeholders (the private sector and civil society) will be obtained from surveys. Ideally, this should be addressed through broader governance surveys with a subset of procurement questions
The Indicators

37. UFSA may consider the following selected indicators (figure 13) to be collected from key UGEAs (all UGEAs will continue to report selected information as per Regulamento)

**Figure 13**

**Proposed Performance Indicators**

<table>
<thead>
<tr>
<th>Area of Opportunity</th>
<th>What Does It Measure</th>
<th>Indicators to Monitor Public Procurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional capacity to carry out procurement</td>
<td>Staff having been part of a proc. training program</td>
<td>Number of staff trained in procurement,</td>
</tr>
<tr>
<td></td>
<td>Existence of technical specialist to support procurement (write specs, TORs, conduct contract management and supervision)</td>
<td>Numbers of relevant technical specialists</td>
</tr>
<tr>
<td></td>
<td>If procurement plan used/current</td>
<td>Latest update of procurement plan</td>
</tr>
<tr>
<td>Competition, transparency and equal opportunity, integrity</td>
<td>• Use of open bidding versus direct contracting</td>
<td>(i) Methods used (value and #):</td>
</tr>
<tr>
<td></td>
<td>• Adequate public bid opening process</td>
<td>• percentage of <em>competitive</em> bidding</td>
</tr>
<tr>
<td></td>
<td>• Standardization of procedures</td>
<td>• percentage <em>limited</em> bidding</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• percentage <em>small</em> procurement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• percentage <em>direct</em> contracting</td>
</tr>
<tr>
<td></td>
<td>(ii) percentage of cases of open bidding where bids were opened immediately after submission with minutes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) percentage of transactions that use standard bidding documents</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iv) percentage of contract awards advertised as per Regulamento</td>
<td></td>
</tr>
<tr>
<td>Bidders’ access</td>
<td>Bidders’ participation</td>
<td>Average number of bidders per bidding – by method</td>
</tr>
<tr>
<td></td>
<td>Bidders’ rejection rate and rationale</td>
<td>percentage of bidders rejected, key reasons</td>
</tr>
<tr>
<td>Procurement and contract management issues</td>
<td>Payment delays</td>
<td>Percentage of late payment beyond the payment schedule.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Average number of days before payment is made</td>
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<tr>
<td></td>
<td>Procurement management</td>
<td>Average time for procurement cycle</td>
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<tr>
<td></td>
<td></td>
<td>Overall: advertising to effectiveness of which:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• advertising to submission</td>
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<tr>
<td></td>
<td></td>
<td>• bid evaluation</td>
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<tr>
<td></td>
<td></td>
<td>• contract award</td>
</tr>
<tr>
<td></td>
<td>Contract supervision</td>
<td>percentage of works contracts supervised by a designated staff (and percentage of which are consultants)</td>
</tr>
<tr>
<td>Integrity</td>
<td>Operation of the complaint mechanism</td>
<td>Number of complaints submitted/resolved</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Average number of complaints per transaction</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Percentage of cases resolved within the terms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>in the legal framework</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Number (percent) of complaints for which</td>
</tr>
<tr>
<td></td>
<td></td>
<td>UFSA advice was sought</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Percentage of complaints with security</td>
</tr>
<tr>
<td>Oversight</td>
<td></td>
<td>Number of procurement audits;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Percentage of audits with qualified opinions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Percentage of audits with Outstanding</td>
</tr>
<tr>
<td></td>
<td></td>
<td>recommendations</td>
</tr>
</tbody>
</table>

38. **Recommended next steps** for UFSA to establish a reliable M&E system based on the OECD DAC Methodology:

- Select a consultant expert in information systems and familiar with the indicators of the Methodology.

- Select UGEAs (among the key spenders) and agree with them on the reporting mechanism.

- Provide UGEAs with a software application to record their contracting activities and compile a report to be submitted quarterly to UFSA. The report is to be processed to validate the quality control mechanism of the system.

- UFSA to appoint a staff responsible for the M&E, who shall primarily be involved in collecting the data for the indicators.

39. In the short term this system would require manual data entry. Gradually automatic data feed into the M&E system, should be contemplated. To this end a consultant should be hired to review the SISTAFE system, assess the current situation, and assess a more efficient way to establish an automated M&E system with links to SISTAFE, the UFSA portal, and other information systems (for example, the Government’s Official Bulletin).
IV. DETAILED FINDINGS AND RECOMMENDATIONS
BASED ON THE APPLICATION OF THE OECD DAC
METHODOLOGY

PILLAR I: LEGISLATIVE AND REGULATORY FRAMEWORK

40. A modern legal framework has been established as part of the SISTAFE law. The Regulamento, issued in 2004, is generally modeled on international good practice. Some of the characteristics of the legal and regulatory framework are: (i) it is appropriate in coverage and scope; (ii) promotes competition by identifying open bidding as the default method; (iii) provides a basis for a transparent process as it defines rules for publicity, identifies quantifiable evaluation criteria, and allows bidders to protest; (iv) promotes integrity in public procurement by introducing conflict of interest and anticorruption provisions in the law and bidding documents. A Manual and an entire set of standard bidding documents, with General Conditions of Contract, generally modeled after the World Bank bidding documents, have been prepared, are available to all the users on the Web (www.ufsa.gov.mz) and are used by the agencies in charge of procurement. The legal and regulatory framework needs to be further strengthened, as identified by the CPAR in the areas regarding: bidders’ access, the need for an independent appeal mechanism, and strengthening certain procurement and contract management procedures. The benefits of domestic preference (where nationality of supplier is a factor for domestically manufactured goods) need to be re assessed in light of the country economic interests. Details on the progress and areas of improvement are provided in the following sections.

PUBLIC PROCUREMENT FRAMEWORK

41. The Mozambican procurement system builds on SISTAFE Law 9-2002 published in the Boletim da República on February 13, 2002. The law creates five subsystems: budget, accounting, treasury, asset management, and internal control. However, neither the law nor chapter 4 on “State Asset” subsystems mentions the word procurement, as such.

42. Paragraph 1 of article 67 of Law 9-2002 reads: “Compete ao Governo regulamentar a presente lei no prazo de 180 dias a contar da data de sua entrada em vigor.” On the basis of that article, the Government approved Decree 54/2005 of December 13,
2005, establishing the Regulations on Government Procurement, which became de facto the overarching body of law of the procurement function in Mozambique.

43. Article 3(x) of Decree 54/2005 created the *Unidade Funcional de Supervisão das Aquisições (UFSA)* as the national body to coordinate and supervise all the public procurement activities, to manage the data on procurement, and to provide training in procurement in the country. UFSA is the main government partner of this report.

44. Article 4 of the same decree declared the Ministry of Finance (MF) as responsible for the implementation of the Regulations. The same article established that the national standard bidding documents should be enacted jointly by the MF and line sector ministries.

45. Decree 30/2001 of October 15, 2001, established the Rules of the National Public Administration. The decree sets forth rules of conflict of interest, right to protest, right to information, filing procedures, for processes, and many others that would apply to the procurement function to the extent that each bidding and purchasing act is part of a government process.

46. Decree 23/2004 of August 20, 2004, established the rules of SISTAFE. Article 9.1.a defines procurement as being part of the State Asset subsystem: “O macro-processo da Administração do Patrimônio do Estado compreende os processos de (a) aquisições, alienações do Patrimônio do Estado e cessão de exploração”.

47. Article 12 of Decree 23/2004 decreed that there should be one supervision unit (Unidade de Supervisão) for each SISTAFE subsystem. Article 14 decreed that Implementing Units (Unidades Gestoras) should be established in the government bodies to implement the system.

48. Article 25 of Decree 23/2004 defined the role and duties of the Unidades Gestoras of the State Asset subsystem as: “b. Realizar os procedimentos de aquisição de bens e serviços no âmbito da execução do Orçamento do Estado e alienação do Patrimônio do Estado sob sua responsabilidade.”

49. Further, article 10 (y) of Decree 54/2005 defined the Unidade Gestora Executora das Aquisições (UGEAs) as the unit in charge of procurement, from planning to implementation, under the supervision of the sector Autoridade Competente.

**Figure 14**

**List of Legal Regulations on Procurement in Mozambique**

- Lei n.º 9/2002, de 12 de Fevereiro, que aprova o Sistema de Administração Financeira do Estado, abreviadamente designado por “SISTAFE”

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16 *Regulamento de Contratação de Empreitada de Obras Públicas, Fornecimento de Bens e Prestação de Serviços ao Estado*
BIDDING PROCEDURES

50. The procurement framework in Mozambique establishes three circumstances for government procurement: (i) a general/default case that would apply to most conditions (article 7), (ii) a special situation (article 8) applicable for procurement using rules of the financier, and (iii) an exceptional situation (article 9) that would include other procedures than open bidding. The current rules of competition for public procurement in Mozambique are summarized in figure 15.

<table>
<thead>
<tr>
<th>Method</th>
<th>Applies To</th>
<th>Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Concurso Público:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competitive Bidding</td>
<td>Default method</td>
<td></td>
</tr>
<tr>
<td><strong>Concurso Limitado:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited Bidding</td>
<td>Works &lt; US$76,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Goods &lt; US$38,000</td>
<td></td>
</tr>
<tr>
<td><strong>Concurso Pequena Dimensão:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small contracts</td>
<td>Works &lt; US$11,500</td>
<td>Up to 15 percent of the Threshold for Public Bidding</td>
</tr>
<tr>
<td></td>
<td>Goods &lt; US$5,800</td>
<td></td>
</tr>
<tr>
<td><strong>Ajuste Directo:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct contracting</td>
<td>Works &lt; US$3,800</td>
<td>Up to 5 percent of the Threshold for Limited Bidding</td>
</tr>
<tr>
<td></td>
<td>Goods &lt; US$1,900</td>
<td></td>
</tr>
<tr>
<td><strong>Concurso with prequalification</strong></td>
<td></td>
<td>Complex qualification requisites</td>
</tr>
<tr>
<td><strong>Concurso in two stages</strong></td>
<td>Complex scope</td>
<td>Precise technical specifications not available</td>
</tr>
<tr>
<td><strong>Reserved procurement(only nationals participate)</strong></td>
<td>Works $210,000</td>
<td>With the approval of the Ministry of Finance and Line Ministry</td>
</tr>
<tr>
<td></td>
<td>Goods $ 105,000</td>
<td></td>
</tr>
<tr>
<td><strong>Reverse auction</strong></td>
<td>Off-the-shelf</td>
<td>To be regulated</td>
</tr>
</tbody>
</table>
51. With the exception of the contracts financed by the international institutions (that finance the bulk, about 75 percent, of capital investment), the contracts financed from Government funds, generally of a lower size, are procured through simplified methods.

REGISTRATION AND QUALIFICATION OF BIDDERS

52. With Decree 54, the Government procurement abolished the previous registers held by the contracting entities and established a central registry. This central registry (maintained by UFSA) records information on contractors’ and suppliers’ legal eligibility to contract with the Government, their financial and technical capacity, and their tax status. Once registered, the contractors’ documentary submission requirements are expected to be reduced.

53. Currently, there are about 300 firms in the registry. Figure 16 compares the model features of an effective and transparent registry with UFSA’s registry. UFSA’s registry, as described the the Regulamento generally meets the characteristics of an efficient registry. In practice, the registry does not simplify the process from the bidders perspective because the Tribunal Administrativo still requires the full set of documents even for registered firms (see para 55).

**Figure 16**
Characteristics of the Procurement Registry

<table>
<thead>
<tr>
<th>Requirements for a Transparent and Efficient Registry System</th>
<th>UFSA Registry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidders should be allowed to register by mail and, if conditions allow, through the Internet.</td>
<td>It appears that in Mozambique bidders submit the documents in person.</td>
</tr>
<tr>
<td>Registration should remain permanently open to bidders, allowing for updating information at any time.</td>
<td>Meets the requirement.</td>
</tr>
<tr>
<td>Registration as a prior condition of bid is discouraged. Registration process criteria and cost are reasonable and efficient.</td>
<td>There is no prior registration requirement in the bidding document. Article 57 of the Regulamento indicates that the registry may be used to certify the qualifications, but it is not mandatory, i.e., qualifications “poderao ser comprovado pelos elementos do cadastro.” This is reinforced by the above clause in the bidding document. Documentary requirements should be revisited.</td>
</tr>
<tr>
<td>Time taken for registration should be reasonable.</td>
<td>The time for preparation of bids according to the Regulamento is not less than 30 days, registration with UFSA does not appear to be a condition for bid submission. Bidders may be registered automatically when awarded the contract.</td>
</tr>
<tr>
<td>Registration should not be used as a substitute for advertisement when open competition is required. However, when advertising for civil works, borrowers (the Government) could indicate the required minimum category of contractor specified in the registration system.</td>
<td>Registration is not used as a substitute for advertising—even under limited bidding, where bidders can be invited from those registered (contract &lt; $76k works and $38k goods), the same procedures apply as in open bidding in terms of advertising and public bid opening.</td>
</tr>
</tbody>
</table>
54. To conclude under UFSA Registry: (a) the prebid registration is voluntary, (b) it is administered by UFSA, and (c) bidders local and foreign may register any time and may be registered automatically after they are awarded contracts. However, the current regulation would benefit if supplemented by clear instructions to UGEAs and bidders so there is more clarity about the process. As a general recommendation, UFSA the Ministry of Public Works could monitor the use of the registry and identify if “in practice” there are bottlenecks that need to be addressed.

55. In addition, the Government/UFSA should reassess the documentary needs to see if there is room for simplification, and some conflicts should be addressed as regards the requirements under other laws. For instance, according to the Regulamento, once registered the bidders do not have to provide documentation to assess their technical and financial capabilities, unless there is a change in their status. However, the Tribunal Administrativo still requires the *Alvara* and other documentation in order to clear the award of contracts, because its law is not consistent with the Regulamento, which has simplified the documentary requirements when the bidder is already registered.

### ADVERTISING BIDDING OPPORTUNITIES

56. Advertising opportunities to bid in a manner that guarantees a wide dissemination and good competition is an essential ingredient in public bidding. The Regulations (article 29) define the key elements of an invitation to bid, and article 30 refers to the obligation to publish the invitations to bid at least two times in the newspapers and at the head office of the procuring agency with specific provisions for international bidding. It further requires that contracting agencies that have awarded a contract make it known to the other bidders by means of a notice published in the same means of communication as the invitation notice. However, advertising in newspapers is relatively expensive for low-value procurement and the circulation of newspapers is often confined to urban centers and does not guarantee a wide dissemination of the notices.

57. When revising the Regulamento it is advisable to mandate publication on the UFSA website for packages that may attract national and international bidders. This will save moneys for the newspaper publication and will increase publicity beyond the subscribers to the respective journals.

### ELIGIBILITY

58. The eligibility criteria stated in the standard bidding documents are quite robust.

- Article 8.1 refers to firms or persons subject to an administrative or legal decision (condemned or sanctioned on grounds of illicit actions, delinquency, and so

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17 Document issued by the Ministry of works to attest that the Contractor is registered with the Ministry of works and its grade (from 0-10), which is indicative of contractor’s capacity.
forth). References are also made to the Law 6/2004, regarding the obligation to have a Fraud and Corruption clause in all Government contracts.

- Article 8.2 addresses conflict of interest: are prohibited from bidding for works contacts (i) those involved in the design of respective works and the preparation of other related documents or (ii) those related in any professional capacity with the firms that have conducted the above works or holding more than 5 percent interest in these firms.

- Article 8.3 states that Government-owned entities can participate if financially autonomous, operate under the commercial law, and are not dependent from the Employer.

- Article 7.3 refers to the domestic preference.

The legal basis is defined in article 19 in the Regulamento. This section deals with firms ineligible because of sanctions, and COI but does not cover the regime of Government-owned entities.

**BID EVALUATION AND CONTRACT AWARD**

59. The relevant bid evaluation and contract award provisions in the Regulamento are close to international good practice, but there are areas where they lack in clarity. The evaluation principles, however, are clearly stated in the bidding documents. A sample evaluation form based on international organizations’ standards is incorporated in the Manual, and it was noted that it is disseminated both at the central and provincial level. The principles of good practice are stated in the following paragraphs, with details on how they are addressed in the national standard bidding documents.

60. *Evaluation criteria are specified in the bidding documents, and only these criteria are applied:* The National Standard Bidding Documents (SBDs) state that in order to evaluate the bids, the Employer will consider the criteria defined in the BDS. No other criteria or methodology will be utilized or permitted.

61. *Criteria other than price should be quantified in monetary terms.* The SBDs state that for each criterion (such as completion time, payment terms, and so forth) the Employer will apply an adjustment factor in a manner specified in the BDS.

62. *A contract shall be awarded to the qualified bidder offering the lowest-priced, technically responsive, evaluated bid.* The SBDs state that the Employer will award the contract to the bidder or bidders whose proposal has been considered substantially adequate and that was evaluated as the “lowest price” or “lowest ‘conjugated’ price,” provided that the bidder (i) meets the eligibility criteria and (ii) has demonstrated that is qualified to implement the contract in a satisfactory manner. (“Lowest ‘conjugated’ price” is used when other criteria than price are
being used. These criteria are called “technical” and can include payment schedule, completion date, and so forth.)

63. **Bidders are not eliminated from detailed evaluation on the basis of minor, nonsubstantial deviations.** The SBDs state that a bid that substantially conforms is one that meets all the terms and conditions specified in the bidding documents, without material deviations, reservations, or omissions. A material reservation, deviation, or omission is one (i) that affects in any substantial way the scope, quality, and the outcome of the works; (ii) that limits in a material way, inconsistent with the provisions in the bidding documents, the Employer’s rights and bidder’s obligations under the contract; and (iii) whose rectification affects unfairly the competitive position of other bidders who submitted substantially responsive bids.

**GENERAL CONDITIONS OF CONTRACT (GCC)**

64. The general conditions of contract, included in the standard documentation prepared by UFSA, are based on the GCC in the World Bank Standard Bidding Documents. And they are generally consistent with good practice. They do not seem to be adapted to large contracts (above 10 mil$) where for example the independence of the supervising engineer is more important and more complex ADR (Alternative Dispute Resolution) could be specified. There are some weaknesses which may become apparent for large works (usually above $10 mil).

65. The general conditions stipulate that the contractor is selected as a result of competitive bidding to carry out the works to the design and specifications supplied by the Employer, and that the supervision of the works is to be done by an Employer’s representative. They assign an active role to the Employer in the interpretation and administration of the contract, while the role of the supervisor is limited to quality control and certification of payments to the contractor. The specific responsibilities of the supervisor, however, are somewhat confusing, as they refer to the supervisor as the “one of the persons responsible for the interpretation of the conditions” and the inspections for final completion of the works are to be carried out “by the supervisor and/or the person designated by the owner.” Some of the tasks assigned to the Employer can also be delegated to the supervisor, enhancing the latter’s accountability and making the contract supervision more efficient. These inconsistencies need to be looked at again in order to make the conditions of contract clearer to both the contractor and the Employer.

66. The general conditions should also give more attention to procedures for ordering variations and submitting claims, making easier for the parties to carry out such variations.

**BIDDERS’ ACCESS**

67. Governments should not miss out on the benefits of competition by imposing unreasonable requirements. Eligibility criteria and procedures should not deny
bidders access to a bidding process or an award for reasons that are not related to their qualification to carry out the contract and allow blacklisting of bidders based on due process. Some of the areas that need to be addressed follow.

**Documentary Evidence**

68. An impediment to bidding may be also the number of documents required and whether they are a condition of bid submission or a condition of contract award. UFSA should examine the number of documents required for bidding and determine if there is any duplication among documentary requirements or if some of the documents can be a condition of award rather than bid submission (e.g. whether the company is under bankruptcy procedures or time sensitive documents whose validity may expire in the process of bid evaluation). Also instructions could be provided to UGEAs so they do not reject bids for small informalities or omission of “historical” information that is not subject to change (experience, financial status). CPAR identified the following as unreasonable:

- the request for foreign bidders to be asked to demonstrate that they are not under bankruptcy procedures in Mozambique (they should rather provide such evidence from the country where they are registered);

- the requirements for foreign bidders to have a local representative, which is a negative commercial practice that reduces competition and leads to collusion. However, when there is a legitimate request for after-sales services, the bidding document could include among its evaluation criteria the availability in Mozambique of spare parts and after-sale services. It is up to the bidder to decide whether to use a local representative or to establish its own service shop; and

- reserved procurement to nationals (albeit on an exceptional basis with the approval of the Ministry’s of financed and line ministry).

**Domestic Preference**

69. It is a well-known theorem in the classical theory of international trade that any restriction on free trade reduces welfare. Thus any form of preferential treatment of domestic firms is likely to be welfare reducing. Thus for the same reasons that the traditional approaches to protecting "infant industries" have been discredited, price/purchase preferences should not generally be recommended. However, such interventions continue to be politically popular and are not easily discarded. Accepting this reality, the next best option is to support the government in designing and implementing interventions that minimize the risk of harm and could potentially provided some economic benefits.

70. The Regulamento has provisions on domestic preference that are generally consistent with the good practice standards except for the procurement of goods
where “nationality” of the bidder is used as a criterion. On purely economic grounds the nationality of the bidder is not a useful criteria.

71. It would be useful to better understand what the GoM's specific objectives are with its discriminatory policies. The report recommends an economic analysis to reveal the costs and benefits of the current regime and provide material for substantive dialogue.

**BIDDER’S RIGHT TO APPEAL PROCUREMENT DECISIONS**

Good practice indicates that modern procurement regulations attempt to provide losing bidders with an effective way to submit protests pertaining to contract award. Complaints should be accepted at any time. Those received before bids are submitted should be addressed before bid opening. All others should be taken into account, but the response should be announced only after an award is recommended. When protests are submitted before awards are made, they may lead to reconsidering the award of the contract; when submitted after the award, their only consequence should be the bidder entitlement to compensatory damages for the cost of bid preparation. The Government should have an administrative process for dealing with complaints, including an independent reviewer to review the agency’s responses to complaints. Tender committees that are an arm of the Government can conduct only administrative reviews. Their membership does not allow for arbitration or quasi-arbitration.

72. In Mozambique the complaint mechanism (described in detail under Pillar IV, Complaint mechanism) provides only for hierarchical resolution of complaints and provides no independent appeal body before the judicial process. Tribunal Administrativo, besides it role as an auditor general, has functions related to settling disputes between the private citizens and the Government. While TA may also receive complaints by citizens, the process (which is judicial) is considered too cumbersome for a procurement appeal mechanism, which needs to provide quick solutions so it does not unduly delay the procurement process. The Government should explore options and, until such time when Government subscribes to the idea of creating an independent body to settle complaints in procurement and contract execution, UFSA could host an ad-hoc panel of experts to hear complaints. A study could be elaborated to provide guidance on how best to deal with this function in view of the roles played by other Government or non-Government entities (including the Tribunal Administrativo).

73. Other procedural issues that can be strengthened in the legal and regulatory framework, including in the Procurement Manual and instructions, are (i) the use of the procurement plan, (ii) the need to open the bids immediately after bid closing and prepare minutes of bid opening, and (iii) the need more stringent record-management instructions; (iv) the obligation of UGEAs to advertise on UFSA web for contracts above a certain threshold.
PILLAR II: INSTITUTIONAL FRAMEWORK AND MANAGEMENT CAPACITY

THE OVERALL PFM ARCHITECTURE

74. The Government has vigorously pursued a comprehensive reform program. The SISTAFE law marked the launching of this program, which has replaced the system inherited from the colonial administration, with legislation and management models more appropriate to the needs of a modern public administration. SISTAFE harmonizes rules and procedures in relation to the programming, management execution, and control of the state public treasury and the financial administration of state agencies. It is applicable to all state agencies and institutions, including those with financial and administrative autonomy.

75. SISTAFE placed the institutional framework for public procurement in the PFM architecture (i.e., as a subsystem under State Assets). The key components are graphically presented in figure 17. The Ministry of Finance is the Government institution in charge of the coordination of SISTAFE and has five directorates, corresponding to the five SISTAFE subsystems:

- Public Accounts Directorate (Contabilidade Publica)
- National Treasury Directorate (Tesouro Publico)
- National Budget Directorate (Orçamento do Estado)
- Internal Controls (Controlo Interno). This directorate houses the General Finance Inspectorate (IGF, or Inspecao Geral de Financas), which is in charge of internal controls.
- National State Assets (Patrimonio). This directorate houses UFSA, the Public Procurement Central Unit.

76. SISTAFE is supported by a state-of-the art online IT system known as e-SISTAFE. All subsystems are now integrated in e-SISTAFE, except for Internal Audit and State Assets (procurement is part of the latter). UTRAFE is the technical unit for State Financial Administration Reform that coordinates the PFM reforms and the implementation of e-SISTAFE.

77. The Tribunal Administrativo (TA) is an institution outside the executive, in the judiciary branch, that plays the role of both auditor general and appeals court for complaints against the Government. TA carries out the prior review of all public procurement contracts and conducts procurement audit as part of its role of external auditor (see 168-171).
78. Other institutions that are involved in the implementation of the reforms are: the Ministry of Planning and Development which is responsible for managing the planning cycle of the Government and the Ministry of Public Function which is coordinating and monitoring through UTRESP (Unidade Tecnica da Reforma do Setor Público) the progress of reforms and capacity building activities in Mozambique.

79. The above architecture points to the need for strong coordination between the various actors involved in the reforms, including public procurement, to avoid creating parallel systems.

**Figure 17**
The Structure of PFM Reform Management in Mozambique

Source: PEFA, April 2008

**INTEGRATION OF PROCUREMENT IN THE OVERALL PFM SYSTEMS**

80. Public procurement is designed as part of budget process. To this end provisions have been included in the Regulamento to ensure that there is no initiation of procurement without existing budget appropriation. Article 10 of the Regulamento clearly indicates that the Contracting Entity (*Entidade Contractante*) can initiate the procurement process only if there are budget provisions. PEFA also states that it is virtually impossible to make a commitment without prior budget allocation or a payment without a commitment. With these controls in place, aggregate fiscal discipline and the legality of transactions are now more likely to be achieved.

81. However, there are additional steps that should be taken in order to make procurement fully integrated in the PFM structure. First, since the procurement module is not part of e-SISTAFE, the precontract procurement processes and
controls are not automated. In addition, not all funds related to procurement are channeled through SISTAFE (e.g., currently less than 50 percent of the donors’ funds). Finally, there is no linkage between procurement planning and budget preparation; this may be one of the reasons for the high variances between the budget and actual expenditures and the poor quality of future projections, as identified by the PEFA exercise. The integration of the procurement module in SISTAFE and making procurement planning part of budget execution will certainly help in this process.

**STRUCTURE AND ORGANIZATION OF THE PROCUREMENT FUNCTION**

82. Within the SISTAFE architecture, UFSA was established as the central procurement authority with functions that are consistent with its role:

- initiating and recommending policy changes
- supervising/monitoring the procurement function and providing advice to contracting entities
- monitoring public procurement
- managing statistical data bases
- developing and supporting implementation of initiatives for improvement of the public procurement systems
- preparing and monitoring the implementation of strategies for capacity building
- providing implementation tools and documents to procuring agencies
- engaging other stakeholders in the process

83. UFSA operates within the Ministry of Finance as part of the Directorate of State Assets (DNPE) created pursuant to article 3 (x) of Decree 54/2005. The head of UFSA is Deputy National Director. There are three units within UFSA: Supervision, Training-Ethics-Cooperation-Control, and Registrar and Statistics.
A relatively young agency (established September 2006), UFSA has been quite successful in asserting itself as the central public procurement authority through capacity-building programs and by disseminating tools that are essential to the efficient public procurement operation (bidding documents and manuals). Further, UFSA has established a website that provides a wealth of useful information on the legal and regulatory framework, bidding documents, invitations to bid, and selected statistics on public procurement.

**CAPACITY BUILDING**

UFSA has launched a capacity-building program with the support of a Brazilian consulting firm. With the assistance of the consultants, UFSA has designed and delivered a series of training modules for procurement entities, the private sector, and auditors. So far about 1,400 people have been trained, and UFSA programs are highly appreciated. So far, there are 26 trainers (4 at UFSA, 11 at IFAPA, 1 Tribunal Administrativo, and 10 in the provincial UGEAS). The training program implemented by UFSA has played an important role in the dissemination of the rules and regulations of the procurement function. The time has come, however, to put forward for careful and detailed analysis all the possible options for the development of the human resources in the procurement function. In this respect, CPAR recommends that UFSA adopt a more strategic/sustainable approach to capacity building, including professionalization of the procurement function through accreditation, certification, and more targeted training. This should be designed as part of the overall Capacity-Building Program of the Government under the Public Sector Reforms strategy, which also addresses the incentive structures. This program should target specific messages to all stakeholders who need to know about
procurement, including the private sector, auditors, managers, politicians, and the civil society.

86. The final objective is for UFSA to divest itself from the actual delivery of the training and remain involved only in monitoring the capacity-building strategy (including certification and accreditation programs) and conduct regular evaluations of the quality of the training provided by outside institutions. This process could start with a stakeholders workshop using a methodology like METAPLAN to generate new ideas about the most appropriate training strategy.

MANAGING INFORMATION SYSTEMS

87. Information about procurement is scarce. It is known that systematic and reliable information on public procurement is key to an effective management toward desired outcomes. While UFSA made a laudable effort to collect information on procurement, it is not sufficiently robust to be used as an effective management tool neither at the central or UGEAs level.

88. Pursuant to Decree 54, UFSA receives information from UGEAS mainly on open bidding (concurso público), direct contracting (ajuste directo), contracts awarded, and some information on complaints (in case the ministry requests UFSA’s advice on complaint resolution). Based on this information, UFSA has developed a few data bases with procurement information. Some of the databases have been developed outside the Oracle platform of the UFSA website and are ad-hoc applications that need to be secured, including by automatic backup, hosting, and common access. There are no quality control systems in place. In some cases, dates were not precise and duplication of information was observed as the website has two sources of information for the Invitations to Bid: the national newspapers and UGEAs. UFSA may explore the introduction of an access based system with basic validation and filters to flag dupes.

89. UFSA efforts to publicize bidding opportunities and to complement information received from UGEAs with information from newspapers is laudable. Publicizing business opportunities is one of the most important functions and one of the key services UFSA provides to the private sector. Improving this process will result in better competition and value for money in Government procurement. Hence, this is an area where small improvements might have significant impact. CPAR recommends that the Regulamento mandate publication on the Web of contracts above a certain threshold. Until the Regulamento is changed, UFSA can take advantage of the obligation of UGEAs to send it invitations to bid. UFSA can provide specific instructions on how this reporting should be carried out so that it receives real-time information to post on the website.

90. There is increasing need for information with which UFSA can monitor areas where performance issues have been identified (direct contracting, public advertising of procurement opportunities, use of procurement plan, resolution of complaints, and
oversight). For this, UFSA needs to compile data that is both accurate and representative of the total number of procurement transactions in Mozambique. To this end, the CPAR has recommended that an M&E system for procurement be developed. (See Section III.C) The CPAR recommends that the website include a section on M&E where some, if not all, of the indicators are updated regularly and posted for public review, using a graphic technologies such as “traffic lights.”

91. To support this new function, UFSA should be adequately staffed. UFSA may consider adding an M&E section that would deal primarily with the statistical data collection, preparation of indicators, and date quality control.

**UFSA SUPERVISION FUNCTIONS**

92. According to the Regulamento UFSA is the entity in charge of coordinating and supervising all activities related to public contracting, management of the national data base system on procurement and capacity building (Regulamento, Art 1-y). UFSA has two specialized departments: one in charge of supervision the other in charge of cooperation with Internal and External audit (Controlo interno, externo). UFSA conducts inspections (27 in 2007) and provides capacity building support to UGEAs.

93. A clear distinction needs to be made between the role of UFSA (who should be “monitoring/supervising”, i.e. enabling, the procurement function) and the role of auditors of IGF (internal audit) and TA (external audit) who are “auditing” the procurement function. There are obvious synergies between these activities, and UFSA should coordinate them with IGF and TA to avoid duplication and turn into account existing synergies between procurement supervision and audit. A joint committee may be created as well as clear protocols of collaboration and exchange of information. UFSA role would include: to provide support to UGEAs in establishing systems for procurement risk management, internal control, capacity building (including for auditors), identifying performance issues, disseminating good practice. (Details about functions and roles by UFSA, IGF and TA are stated under paras 163-171.)

94. Information is essential to effective monitoring and oversight. Through the implementation of the M&E system proposed by this CPAR, this information will be systematized and used by UFSA to take appropriate actions to improve the national systems for procurement. This information (from UGEAs, auditors, complaints) together with the risk mapping of UGEAs will help the audit function prioritize its efforts both in terms of agencies audited and areas of focus.

**THE UGEA FUNCTIONS**

95. The procurement function is carried out by the UGEAs—procurement units in the public agencies—defined in the Regulamento as “units in charge of planning and
carrying out procurement and contract management.” So far there are about 500 UGEAS established at the central and provincial level.

96. UGEAs have been defined as self-standing entities with their own structure under the Permanent Secretary with the caveat that specialized UGEAs are also permitted. Most of the public agencies visited have a general UGEA under (Finance and Administration Department) DAF, while specialized procurement is conducted through specialized UGEAs under the respective specialized departments.

97. UGEAs seem to be well established at the central level and, generally, have a reasonable capacity, as they handle an important number of transactions and receive a lot of exposure to procurement from working with the Bank and the donors.

98. However, according to SISTAFE and the Regulations, procurement should be decentralized up to the smallest unit that has a budget allocation, except when there are benefits from centralizing the procurement at a higher level. The provincial and district governments are in the process of establishing their UGEAs as defined in the Decree.

99. The geographic expanse of Mozambique (11 provinces, 128 districts that operate as agencies of the central government, and 33 urban municipalities) poses a few challenges to the decentralization process. An additional challenge is posed by the fact that the district or municipal governance do not appear to have much credibility in the country. In a 2005 survey carried out by the consultant firm Austral Consultoria e Projetos, the district and municipal government were ranked fifth or sixth among the “least honest” institutions in the country. That poses a significant burden on the government as it tries to ensure that the new procurement regulations become effective, transparent, and economically sound in a decentralized environment. For that reason, this report includes a recommendation on a program of support of the procurement organization at the district level.

CENTRALIZED GOVERNMENT PURCHASING VIS-À-VIS A DECENTRALIZED PROCUREMENT REGIME

100. The CPAR team supports the initiatives of Government to concentrate the procurement in a centralized base, when warranted, so as to allow for strategic procurement and benefit from economies of scale.

101. Gaining the advantages of scale is a reasonable objective toward efficiency and economy. The Government carries out the centralized procurement of drugs and medical supplies (CENAM), of civil works (GACOP), and of textbooks. The CPAR team visited the latter. It is well established and is working on a plan to improve the management of the large-ticket procurement items. Some of the planning systems being developed at the Ministry of Education may be useful to UFSA as models to be offered to other national institutions when implementing large investments.
102. Centralized procurement, however, poses a challenge regarding the national distribution. UFSA needs to incorporate into the capacity-building strategy the area of supply chain management, which is so important in the management of inventories, in particular in health and education.

PROCUREMENT AT THE PROVINCIAL LEVEL

103. The CPAR team visited a regional education unit in the Beira Province subordinated to both the provincial government and the line central ministry. There is no UGEA per se and no personnel dedicated to procurement. Within the regional unit, DAF conducts procurement for general goods while the Planning Department is in charge of the works. This arrangement is similar to the organizational structure predating Decree 54, signaling that the implementation of the law is taking place gradually. There is much organizational and training work ahead at the provincial and district level. The implementation process would take several years before the framework adopted in 2006 consolidates throughout the country. The quality of procurement, including filing, was uneven among the units. The Civil Works Department seemed to have more experience in procurement, and the dossier selected that involved civil-works procurement was of good quality (more details on performance under Pillar 3, UGEAS’s operations).

PROCUREMENT OVERSIGHT AT THE COMMUNITY LEVEL

104. The Regulamento does not provide for specific provisions for communities procurement. Local community procurement has specific characteristics (i.e., small-volume procurement, weak capacity and administrative resources at procuring entity) that require:

- simplified planning,
- simplified procedures reflecting the small-volume procurement,
- simplified standard documents,
- mechanisms to involve the local community in the procurement process, creating checks and balances, and
- appropriate audit measures, such as social accountability mechanisms (peer control).

While the Regulamento does not provide for CDD procedures, UFSA may consider elaborating instructions based on the use of the procurement method *pequena dimensão* that offers flexibility for simplified procurement. If this is not sufficient a specific method needs to be included in the Regulamento.
NEED FOR A RISK-BASED APPROACH IN PROCUREMENT
SUPERVISION/OVERSIGHT, IN PARTICULAR AT THE SUBNATIONAL LEVEL

105. The CPAR mission identified several shortcomings in the overall procurement monitoring and auditing of the local government procurement. At present it appears that there is no effective supervision/oversight either by UFSA, IGF, or TA.

106. In supervising public procurement, an area of opportunity for UFSA (and auditors, as well) is to adopt a risk-based approach in assessing the capacity of UGEAs at the central but in particular at the subnational level.

107. A first step toward such an objective is to develop the capacity to assess the procurement implementation of subnational government and district UGEAs. For this purpose, UFSA needs a toolkit to assess the capacity of the implementation by UGEAs and units at the district level. The CPAR team recommends to UFSA a toolkit developed in Brazil for the same purpose: determination of the implementing capacity of the municipal entities. The toolkit was used successfully in other countries, such as Mexico and it is presented in Annex G of this report. It is based on the questionnaire used by the Bank in the assessment of the implanting capacity of the Borrowers. It is largely consistent with the model established in Pillars II and III of the OECD DAC Methodology for the organizational framework and operations in procurement.

108. The CPAR team invites UFSA to review the toolkit, adapt it to Mozambique, and once it is tested and proven to be useful, it should be added to the Procurement Manual and used each time that UFSA staff has contact with the target entities—during inspection visits, dissemination, training, and so on. Using a common toolkit for assessing the implementation capacity at the district or subnational level would allow UFSA to easily determine the weaknesses in each district UGEA. On the basis of the information collected from the application of the toolkit, UFSA could develop action plans to tackle those deficiencies. Such a selective approach would allow the optimization of scarce resources in technical assistance and training.

109. The toolkit is divided into six classic but, critical areas of procurement implementation: (i) structure and organization, (ii) staff, (iii) planning, (iv) operations and implementation, (v) record keeping, and (vi) control. The assessment allows for defining any item as indispensable, desirable, or not applicable for the UGEA. There are about 60 items presented in the form of questions to the answered by the officials in charge of the procurement function. If the item is indispensable a favorable assessment will add two points to the score; if the assessment of the item is negative, it will deduct two points from the score; and so forth. If the item is adjudged to be desirable only for the UGEA, the score will add one point if the assessment is positive or deduct one point if it is negative. If an item is determined not to be applicable to the respective UGEA, it will not add or deduct points.
Summing up the scores will determine, in numerical terms, the risk of the UGEA, revealing the areas of opportunity and strength and weaknesses of each entity.

**E-PROCUREMENT**

110. The benefits of online technologies for government operations are commonly described in terms of governance and efficiency. Online technologies as applied to Government procurement have the potential to greatly enhance accountability and transparency if this function which is especially vulnerable to poor practice and improper influence. Figure 19 illustrates the functionality required by government buyers.

![Figure 19 - Procurement Processes](source)

*Figure 19
Procurement Processes*


111. Given the complexity of e-procurement, best practice in the world has shown that the most successful e-procurement implementation has been based on a gradual approach.

112. The evolution of the e-procurement in Mozambique could benefit from the experience acquired in the development of the asset management module of the SISTAFE. UFSA in collaboration with UTRAFE should institute a working group to learn about e-procurement systems in the world. Countries who have successfully adopted e-tendering are: Mexico, Korea, Chile. E-purchasing (recurrent purchases from a catalogue) are Chile, Philippines. Philippines has also adopted the advertising component of e-tendering which is used for both locally and internationally financed contracts.
113. The usual steps in formulating an e-procurement strategy are:

- Assessment of current situation, of the readiness to implement electronic government procurement (i.e. EGP readiness assessment). Such assessment looks into each component that needs to be addressed to successfully implement e-government procurement. See annex I Electronic Government Procurement (e-GP) Readiness Self-Assessment (2004).

- Based on the findings of the assessment, e-GP implementation strategy will be developed to define next steps and actions.

114. The strategy will suggest how to move forward to implement e-procurement (beyond the website UFSA is already using to provide useful information on public procurement and bidding opportunities). UFSA is in charge of public procurement strategy and therefore would be the potential leader for the e-procurement strategy implementation as well. While UFSA could be in charge of the strategy for public procurement, including e-procurement, and will be the main user of information resulting from this strategy, UTRAFE could be considered to be the developer or administrator of the e-procurement initiatives.

FUNDING

115. Finally, in order to be fully effective UFSA needs stronger financial support and assistance from other Government agencies with a role in public procurement. UFSA faces a shortage of funds for financing consultancy services and staff, a problem which requires urgent Government intervention. Until now, financial support has been provided under the Bank-financed Public Sector Project. The next two or three years are crucial for the UFSA in consolidating its role and shaping and advancing the procurement agenda in Mozambique so as to improve the performance and the integrity of national public procurement systems.
PILLAR III: PROCUREMENT OPERATIONS AND MARKET PRACTICES

BUSINESS CLIMATE

116. Mozambique’s business climate is improving. The country was cited as one of the top five reforming countries in Sub-Saharan Africa in the 2008 Ease of Doing Business ranking. Fostering a competitive and responsible private sector through interventions aimed at improving the business environment and the investment climate is one of the objectives of PARPAII.

117. Mozambique is an open economy, dependent on the foreign market for imports of goods and services and for the development of large constructions projects. (See figure 20 for an overview.) The market has been subject to a process of trade liberalization since the start of the Economic Rehabilitation Program in 1987. Duty rates for imports have been lowered and harmonized into five ad valorem tariff bands from 0 to 20 percent. Mozambique demonstrated a commitment to regional integration in Southern Africa by participating in the Southern Africa Development Community (SADC) SADC trade protocol, which will lead to the creation of a free trade area among a dozen countries in Southern Africa. Mozambique is also part of the five-member of Southern Africa Customs Union (SACU. Both SADC and SACU include South Africa, which is the Mozambique’s largest trade partner.

118. Most Mozambique exports are related to a small number of industrial megaprojects, such as the Mozal aluminum smelter, the Cahora Bassa hydroelectric dam, and the Sasol natural gas pipeline, as well as certain agricultural/forestry/fishery commodities (prawns, sugar, cotton, and wood). Except for Mozal aluminum, there are relatively few value-added manufacturing exports. Imports are diversified and include fuel, electricity, vehicles, machinery, and consumer goods.

Figure 20

119. This openness of Mozambique market is reflected in some of the Regulamento’s provisions. The Regulamento allows for the bidding documents to be written in a foreign language and does not prohibit the participation of foreign bidders in public
procurement (with one exception, reserved procurement—see figure 15). When international competition is sought, the Regulamento requires publication of the invitation to bid in the National Bulletin or on a website and in any other relevant medium. UFSA could encourage firms to use its website as a one-stop shop for all international bidders. There are impediments to competition, however, described under Pillar I. Such impediments (like asking foreign bidders to have a local representative whether it makes business sense or not) may open opportunities for corruption.

120. The 2005 Austral Consultoria Survey points to areas of corrupt practices that affect the business climate. The following were identified as most critical areas: (i) dealing with customs, (ii) obtaining licenses and authorizations, (iii) navigating relationships with the courts, (iv) dealing with taxes, and (v) issues with Government contracts.

**COMPETITIVENESS AND PARTICIPATION OF THE PRIVATE SECTOR**

121. Government procurement has an important contribution towards PARPA's objective towards a competitive and responsible private sector, as it constitutes an significant source of business for the private sector. The interviews conducted with private firms (contractors) indicated that government contracts account for 80 percent to 100 percent of the private contractors’ business. Therefore, private-sector representatives have unanimously saluted the enforcement of Decree 54/05 and the transparency it has brought into the process in terms of advertising, public bid opening, and so forth. The key issues that have been identified include the (i) shortage of financing for the contracts that increase the project implementation time from months to years and lead to delayed payments; (ii) limited knowledge (especially for the small contractors) on how to take advantage of the business opportunities offered by public procurement; (iii) large volume of documentation required, sometimes duplicative; and (iv) hesitation to invoke the complaint mechanism and remedies clause under contracts (e.g., claim interest for late payment) given the dependency on the business with the public sector. Sometimes such clauses are dropped from the standard contracts altogether.

122. Some effort has also been made to determine if contractors internalize the hidden costs of delayed and prolonged implementation periods under the public contracts. Such a determination could not, however, be made in a meaningful way, as the Government is the main client for most of the private-sector firms interviewed. On the Government side there are concerns about the poor quality of implementation by some contractors and delayed implementation periods.

123. Understanding the needs of private sector is key in UFSA’s quest for improving the market for public procurement. UFSA should continue its dialogue with the private sector by means of professional associations and chambers of commerce. This process needs to be systematized to ensure that UFSA provides information useful to the private sector (e.g. on procurement opportunities, training) but also receives
information which is adequately processed and fed back into its management decisions.

124. A robust dialogue with the private sector, through business associations, will help identify issues and appropriate remedies. Below are some facts about the status of different industries that contribute to public procurement.

**Construction Industry**

125. Construction industry is one of the most vibrant sectors in Mozambique, registering the highest rate of growth over the past several years. Since the country’s infrastructure was badly damaged during the war, many large infrastructure projects have been undertaken: Maputo Port Development Project, the Limpopo and Sena Railway line, and the Zambezi Bridge Construction, for example. Infrastructure accounts for 50 percent of the Bank portfolio in Mozambique (including roads, railways, and power and water supply projects). International contractors come from neighboring countries South Africa and Tanzania but also from Portugal and India. Chinese competitors have gained ground in both foreign direct investment (FDI) and in public procurement, as their prices are often 25 to 50 percent lower than their competitors’.

126. The local industry is growing steadily, also thanks to opportunities offered by Government procurement. (An excerpt from the Registry of the Ministry of Public Works is provided in figure 21). There are about 1,500 local registered contractors. Most of the contractors can carry relatively small, maintenance works. A total of thirty-three can manage contracts valued at above $2 million. There are former state-owned construction companies (in Portuguese called ECMEPS) that have been privatized, and a few of them compete for very large contracts (above $10 mil) with good results.

**Figure 21**

**Number of Registered Firms**

<table>
<thead>
<tr>
<th>Class</th>
<th>Category</th>
<th>Number of Contractors Registered</th>
<th>Volume of work</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I,II,III,IV,V,VI</td>
<td>102</td>
<td>$14,000.00</td>
</tr>
<tr>
<td>2</td>
<td>“</td>
<td>181</td>
<td>$34,000.00</td>
</tr>
<tr>
<td>3</td>
<td>“</td>
<td>897</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>4</td>
<td>“</td>
<td>142</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>5</td>
<td>“</td>
<td>62</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>6</td>
<td>“</td>
<td>28</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>7</td>
<td>“</td>
<td>33</td>
<td>$2,000,000.00</td>
</tr>
</tbody>
</table>

Source: Ministry of Public Works
Consulting Services

127. Given the strong foreign assistance, the demand for consulting services is relatively high, and many assignments are carried out by joint ventures between national and international firms. Although there are some local consulting firms (especially in construction supervision), the industry is relatively young and suffers from the fluctuation of demand. Its future development and consolidation depends, in great part, on the ability of the industry to gain the professional stature and independence among its clients and to maintain high professional and technical standards in the services it provides.

Banking Sector

128. In respect to the banking sector, Mozambique has at present nine operating commercial banks. However, the market share is uneven, with Banco Internacional de Mozambique having a market share of close to 50 percent. The other large banks are Standard Bank, Barclay's Bank, and BCI Foment Bank, and all have representation countrywide. The remaining five banks are small banks with generally one to two branches.

129. All these nine banks do issue bank guarantees. However, it is common to receive complaints from bidders on the time taken to issue the bank guarantee, which may take up to 7 to 10 days. To address the risk of not obtaining a bid security in due time, it is recommended that bid security be expressed in absolute terms rather than as a percentage of the bid price. In this manner, bidders may start the process of obtaining a bid security before the bid price is established. A factor impeding the bidders to exercise their ability to complain, is the fact that the security for filing a complaint cannot be serviced by the Bank in three days after award, as required by the Regulamento.

130. Furthermore, the commercial banks take a very conservative approach. Whenever a bank guarantee is issued, a corresponding amount is withheld from the customer’s account. Very often the banks do not issue the bid securities and instead issue a comfort letter stating that the request is being considered and may be issued at a later stage, undermining the bidder's capacity to have a conforming bid security by the time the bids are submitted.

131. The Regulamento could be simplified and, in lieu of a bid security, the agencies may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of bid validity or they are awarded a contract and fail to sign it or are unable to submit the performance security they will be suspended for a period of time and declared ineligible. The security to lodge a complaint should be repealed.
UGEAs operations

132. In spite of the significant progress achieved through the establishment of the UGEAs (about 500) and the capacity-building activities carried out (including exposure to International Banks’ and donors’ projects), the capacity to conduct good procurement especially at the decentralized level is weak. There is a dearth of staff specialized in procurement. Given the weak capacity, anecdotal information suggests that direct contracting may be abused. (In the MOH for example, DAF procurement of consumables and office supplies showed direct contracting at 75 percent of all procurement.) Standard bidding documents/contracts are not always used and/or some of the clauses are removed (clauses related to payment delays, fraud and corruption). The quality of records is not up to standards in the absence of clear instructions. There is no procurement-planning culture, and contract slicing is common. Furthermore, the lead time for procurement is quite lengthy, and one of the bottlenecks often quoted is the time taken for approvals that need to be obtained from the Tribunal Administrative (according to the law, the TA approves all the Government financed contracts irrespective of size).

CONTRACT SUPERVISION

133. The Regulamento mandate that works contracts should be supervised by independent engineers. The Employer has an active role in the supervision of the contract and makes all decisions while the supervisor’s role is to assist him. Therefore, the supervisor is not independent and his impartiality is uncertain. The main responsibilities assigned to the supervisor in the general conditions are to certify payments to the contractor and to ensure that constructed work complies with the specification and drawings. On the other hand, the Employer is often poorly organized to properly discharge its responsibilities under the contract. The decision-making authority is not always clearly assigned, resulting in little accountability within his agency’s hierarchy. In addition, most agencies lack the adequate operational and human resources to properly manage large contracts. To improve supervision of work contracts, it is essential (i) to properly train the agencies’ staff or recruit consultants to carry out contract monitoring and administration, (ii) to revise the internal arrangements of the agencies for project administration, so that authorities and responsibilities are clearly defined and assigned, and (iii) to ensure the hiring of experienced consultants with high professional standards to assist the employer.

Contract Disputes

134. Mozambique generally has adequate framework for contract disputes, i. e. (i) is a member of New York Convention on enforcement of international arbitration awards; (ii) has Arbitration law 11/99, which allows for international arbitration, and (iii) has the procedures to allow the winner in a dispute to seek enforcement. Alternative dispute resolution mechanisms (arbitration, adjudicator mechanism) have been incorporated in the Standard National Bidding Documents. However, there is little information on how effective these procedures are.
Mozambican contractors are very aware of the fact that the government is practically their only source of employment and therefore are careful not to spoil existing business relationships and to avoid disputes. Although “Mozambique’s integrity scorecard” rates the judicial accountability as moderate (the highest rate when compared to other actors, i.e. the legislative, executive) the trust in the rule of law is weak (2 on a scale of 4), which points to the fact that the system to enforce judicial decisions is not really trusted. There are no records of adjudication or arbitration to resolve contract disputes with the government. Contracts financed by international financial institutions normally include dispute resolution provisions, such as conciliation, adjudication, and arbitration, but there are no records that these have ever been used. When conflicts arise, they are usually settled through direct discussions between senior managers of the two parties to the contract.

Contract Implementation

The Employer’s basic obligations to facilitate the contractor’s execution of the contract and to pay for the services are laid out in the legislation and the general conditions. There are some limitations in the GCC provisions as regards the independence of the supervising engineer and the use of variations orders and submission of claims (see GCC para 64-66); such clauses usually used in larger (normally above 10 mil) and for such contracts the documents need to be adapted accordingly. The contractor’s obligation of completing the works to the required standard and within the time stated are also laid out in the general conditions. The conditions are not explicit for some aspects such as the skill and care obligation of workmanship (also specific to larger contracts).

Mozambique can be commended for adopting model General Conditions of Contracts and standard contracts. Requirements for the supervision of works and reception of goods and services are defined in the Regulamento. This is a first and essential step to ensure that contracts contain all relevant clauses and that risks are equally and fairly allocated between the parties to the contract. However, during contract execution contractors interviewed have reported frequent bottlenecks in contract execution (delayed payments, frequent extensions of contracts, cost overruns, and sometimes removal of critical clauses). On the other side, Government employers face difficulties with contractors that do not deliver on time, and some of the cases have come to the attention of the higher political level.

Contract execution is particularly susceptible to corruption as it is not well regulated. Common corrupt practices in the postaward period include rendering of fictitious work, inflating the work volume, changing orders using lower quality materials than specified in the contract, and supply of goods of lower quality. Facilitation payments are often requested for licenses approvals and other authorizations as noted by the Austral Survey. Some malpractices identified by the Ministry of Labor are highlighted in figure 22. The initiative of the Ministry of Labor to publicize this information is laudable.
139. UFSA and oversight agencies should be mindful of flags of corruption such as: delayed payments, delayed certification of works (a signal that kick backs might be requested), frequent contract extensions, and cost overruns. Controls/audits in procurement should include physical verification of the supply of goods and execution of works.

**Figure 22**

Cases Involving Possible Fraudulent And /Or Corrupt Behavior Related to the National Institute of Social Security (INSS)

<table>
<thead>
<tr>
<th>The examples point to the following areas of weakness: abuse of direct contracting, poor contract estimates, nonenforcement of contractual provisions, political pressure, possible collusion, and poor contract management resulting in poor quality of construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Payments two years after the contract completion for activities that were not stipulated in the contract.</td>
</tr>
<tr>
<td>• Construction project INSS delegation in Tete: (i) use of unjustified direct contracting; (ii) 100 percent payment before the signature of the contract and approval by TA; and (iii) payments for activities not stipulated in the contract.</td>
</tr>
<tr>
<td>• The final cost of Gaza construction project of INSS being six times the estimate.</td>
</tr>
<tr>
<td>• Nampula low-cost housing condominiums: the bid price of the successful bidder was US$15,000 per condominium (US$45,000 estimate), while the actual cost was US$100,000.</td>
</tr>
<tr>
<td>• The awarding of a contract for 10 million Mt for an erosion protection wall for the INSS Matola delegation after the rejection of the lowest bid of 1 million Mt. In spite of the high price, the quality was so poor that the construction was damaged by the rain immediately after conclusion of works.</td>
</tr>
<tr>
<td>• Contract for construction of INSS delegation Gaza awarded for $572,000. Contract was signed for $1.143,000. The Contractor has asked for a 70 percent increase in price before starting the works justifying increase in the price of materials</td>
</tr>
<tr>
<td>• Works in Nampula for the reconstruction if INSS delegation: award to a “preferred” bidder even after the evaluation committee had selected another contractor. The evaluation committee recognized that it was under pressure from the management.</td>
</tr>
</tbody>
</table>

**Source:** Ministry of Labor

**RECORDS MANAGEMENT**

140. The Regulamento requires that all information regarding procurement is adequately filed. The quality of file management, however, varies significantly from agency to agency. At the agency level, the UGEA is responsible for managing the procurement files in a centralized cabinet, but the organization and facilities of UGEAs also vary and in most cases the filing system is in the early stages of development. For agencies that have several UGEAs, the procurement documentation is dispersed in the various units that participate in the process, making internal and external audits more difficult.

141. UFSA is aware of these deficiencies and appears to pay adequate attention during its supervision missions to the quality of the records; the supervision mission already performed by UFSA gave time to the topic. The CPAR team visited some UGEAs to look into the filing and whereas many have good record-keeping rules and
practices in some others, this is an area which calls for improvement. The main defects found were incomplete or fragmented files and lack of uniformity on the records. Given that in the country there is no electronic filing of procurement and contract documents, the paper trail is of paramount importance for audit, quality control, internal and external control, and the Bank’s fiduciary responsibilities. To this end, the record management could be improved through better enforcement of existing rules and regulations (including better supervision and oversight) and by providing more detailed instructions in the Procurement Manual.
PILLAR IV: INTEGRITY AND TRANSPARENCY OF THE PUBLIC PROCUREMENT SYSTEM

142. An efficient and transparent public procurement system with adequate control mechanisms is key to the avoidance of fraudulent and corrupt practices. One of the most publicized cases of Fraud and Corruption in procurement is presented in figure 23. There is general consensus about the fact that public procurement has been identified as the area most susceptible to corruption.\textsuperscript{18} Being a major interface between the public and the private sector it offers multiple opportunities for different actors, public or private, to divert funds for private gain. Fraud and corruption can be found at any stage of the procurement cycle. For example: abusing direct contracting, manipulating procurement needs at the design stage of the tenders to favor certain bidders, using subjective evaluation criteria, breaking the confidentiality of the bidding process, using techniques to hide bribes during contract execution, and soliciting “facilitation payments” to obtain licenses and permits and register companies. Figure 22, above illustrates shortcomings identified by the Government of Mozambique in procurement/contract execution. The initiative of the Ministry of Labor is a very good example for action against corrupt and fraudulent practices and implements Governments anti corruption strategy in an exemplary way.

143. The threat and cost of corruption for Mozambique has been acknowledged by the Government, which has mounted policies to address this challenge. A 2006 Government strategy indicates that 70 percent of those interviewed for a survey identified corruption as one of the most serious problems and that it is increasing in both the public and private sectors.\textsuperscript{19} A 2005 survey by Austral Consultoria e Projetos indicated that all groups surveyed consider that corruption in the public sector is the most serious. In the same survey, procurement was cited as one of the most corrupt after customs, obtaining licences and courts.

144. Discussions with members of civil society indicated there is no clarity on the process to be followed by the anticorruption agency unit in charge of enforcing these regulations. Another inhibiting factor is the fact that while the anticorruption law urges people to report problems, there is no effective protection mechanism for whistleblowers. Finally, according to the Centro de Integridade Publica, no case has been taken to court by the anticorruption agency so far. Figure 23 includes a well-documented example of bad procurement (public tender for the introduction of non intrusive inspection—scanning—of containers at main ports in Mozambique) with no administrative or legal consequences so far.

\textsuperscript{18} OECD DAC Integrity in Public Procurement, 2007
\textsuperscript{19} Republic of Mozambique, Anti-Corruption Strategy, Maputo, April 2006
This case involves a contractor who had strong links with the members of the Government, was in an obvious conflict of interest situation, and was awarded a $42 million contract. The media played a laudable role in bringing this to the surface, keeping the public interest alive and the case on the Government agenda until its final resolution.

**Lessons Learned**

**Subjective evaluation criteria**
- Use of subjective evaluation criteria might have led to the manipulation of the evaluation.
- The winning company was ranked first in the technical evaluation at a considerable distance from the second ranked bidder and this significant gap has easily made up for the higher price of this bidder.

**Conflict of interest was not addressed**
- Some of the evaluators had business interests in the winning company.
- The winning company is also in the business of export-import, and this cast doubts on the objectivity of its inspections.

**Major contract management deficiencies**
- The winning company submitted a bid with a US made equipment while it actually delivered China made equipment.

An efficient and transparent public procurement system with adequate control mechanisms is key to the avoidance of fraudulent and corrupt practices in the area of public spending. Given that many of areas covered under this topic are not entirely under the control of the procurement function, further progress comes from alliances with other branches of Government and through increased awareness by the civil society and other external stakeholders.

Hence, addressing fraud and corruption is everybody’s business, and in Mozambique the issues are tackled at various levels (legal, judicial, civil service reforms, customs and tax reforms, ombudsman, and accounting systems). In procurement, all the systems contribute in one way or the other to minimize the risk of corruption as described in the following paragraphs.
THE LEGAL AND REGULATORY FRAMEWORK

147. The first level where these issues are being addressed is in the legal and regulatory framework, as loopholes in laws and procedures may be abused. Mozambique generally has a robust regulatory framework and further improvements should address the area identified under Pillar I and other areas that may be identified during the monitoring process by UFSA.

148. In addition to the detailed regulation of the procurement process, the Regulamento, manual, and public bidding documents have specific provisions to address conflict of interest as well as corrupt and fraudulent acts.

- Regulamento has a specific chapter V (article 136 onward) detailing “Ethics and Illicit Acts.” In addition article 43 mandates the inclusion in contracts of an anticorruption clause and discusses conflict of interest.

- Law 6/2004, article 6 obliges all contracts financed out of public funds to include a clause on anticorruption clause.

- Bidding documents include anticorruption provisions, conflict of interest provisions, and conditions of participation by Government entities (see under Pillar I, Eligibility).

- Furthermore, an Anticorruption Strategy (2006-2010) has been prepared and an anticorruption agency and various commissions have been tasked with monitoring its implementation. Strengthening procurement as a mean to address corruption is mentioned under objective 4 of the strategy.

149. In spite of this progress in the formulation of regulations, there is not much evidence of prosecution of corrupt practices or due process for bidders’ debarment. There are indications that the fraud and corruption clauses are not consistently used in contracts as required by law, as noted by the Tribunal Administrativo in its audit of certain ministries for the year 2006. Some other instruments essential to combat corruption are presented in the following paragraphs.

COMPLAINTS MECHANISM

150. An effective procurement complaint mechanism is meant to bring forward possible violations of procurement procedures, which are frequently motivated by fraud and corruption considerations. In the opinion of most of the persons interviewed during the preparation of the CPAR, the system it is not frequently used as it is not trusted, and members of the private sector do not want to antagonize their main employer. The complaint mechanism in Mozambique is briefly described in figure 24.
Figure 24
Complaint Mechanism

- Complaints in the procurement function are regulated by articles 131 to 135 of the Regulamento. There are two types of recourse.

- Due to disqualification in the bidding process; the case is submitted to the bidding committee (Jury) for opinion within three days, and the purchasing agency is required to resolve it within three days. The protest entails submitting a request in writing accompanied by a security of 0.25 percent of the cost estimate within three days from notification.

- Alternatively, the award may be challenged on the grounds of departure from the Regulations or from the bidding documents or wrongful administrative acts. The protest shall be accompanied with a security, and it should be submitted within three days of notification of award. The recourse is resolved by the sector minister, who may consult UFSA. This recourse will suspend the process for five days, but a lack of ruling will not imply acceptance of the recourse or further suspension. The decision is subject to challenge in court at the Tribunal Administrativo.

151. CPAR identified weaknesses in the systems design. For starters, the decree 54 appears to limit the protest to the award of the contract. The response of prospective bidders on concerns about the neutrality of the specifications and other issues regarding the bid evaluation criteria are treated either as a clarification to the bidding documents or as part of citizen’s rights to information. Second, there is no independent body to look at the complaints. Third, the rules give only three days for filing complaints, and they must be accompanied by a guarantee in the amount of 0.25 percent of the contract cost estimate. Three days is not enough to get a guarantee in the national banking system. As a result of these factors, there are very few complaints officially filed within the system, and records about complaints are not well kept. Consequently, the compliance indicator relating to complaints will have to be manually processed from sampling.

152. Further progress in the integrity and transparency would require actions in areas that represent the greatest challenge in the procurement system. In the field of complaint resolution, the country system will gain a lot by establishing an independent body to settle complaints. Although is not an ideal set up, UFSA may host such a function at least until enough data about complaints and protests is collected over a few years and processed using a reliable tool. A case could then be made for setting up a truly independent body for dispute resolution to cover the bidding processes and contract management.
STRENGTHENING THE DEMAND FOR GOOD PROCUREMENT

153. Strengthening the demand for good governance and good procurement is a key element in the Government Anti-Corruption Strategy through the involvement of stakeholders—the private sector, end-users, civil society, the media, and the public at large—in the scrutiny of the procurement processes. Stakeholders may be involved in monitoring the whole process from prebidding to contract management and payment or at specific vulnerable points in the process (e.g., observation of the opening of bids, of the negotiations, and of contract management). Mexico, Colombia, Peru, and the Philippines are among the countries that have extensive experience in this area. Some countries, like Colombia, have formalized the support to the civil society, as described in figure 25.

Figure 25

Colombia: A Legal Model for Civil Society Participation

Colombia offers an appealing model of government promotion of civil society participation. The country enacted modern legislation (law 850 of 2003) on the role, rights and obligations of civil society oversight organizations (called “Veedurías Ciudadanas”) and the scope and nature of their work. The law grants citizens the right to organize oversight and control bodies and sets out the obligation for public agencies and officials to cooperate with them and facilitate their work. The law also promotes and regulates the creation of networks of oversight organizations and creates an institutional network to promote and support them (the members are the Attorney General, the Comptroller General, the Government Ombudsman, and the Ministry of the Interior). The law assigns the training of the oversight and control organizations to the School of Public Administration. The performance evaluation of the program is the responsibility of the Administrative Department of the Public Function. A Community Participation and Development Fund administered by the Ministry of the Interior finances training of oversight organizations and dissemination of the program. Progress in implementing the program has been difficult and slow mostly owing to shortage of resources to finance initial setup and administrative expenses of the oversight organizations. However, there are encouraging signs that the system is gradually taking root across the country. One of the major risks of the program is capture by local political bosses at the district and town levels for personal political gain.


154. Mozambique does not have a whistle-blowing mechanism on public procurement. CPAR learned that the capacity among local NGOs is weak. The country does not have an established system to measure or to monitor corruption in procurement. In the absence of such support systems, it appears that the media could serve as an important watchdog in exposing the negative effects of misconduct and corruption within procurement.
# MAPPING STAKEHOLDERS

**Figure 26**

**As Instituições Mais Honestas**

<table>
<thead>
<tr>
<th>Stakeholder Type</th>
<th>Agregados Familiares</th>
<th>Funcionários</th>
<th>Empresas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Instituições religiosas</td>
<td>2</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>ONGs</td>
<td>3</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Forças Armadas</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ministério da Educação</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MADEC</td>
<td>6</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Conselho de Ministros</td>
<td>3</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Governo Provincial</td>
<td>4</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>TDM</td>
<td></td>
<td></td>
<td>6</td>
</tr>
</tbody>
</table>

Source: 2005 Survey Austral Consultoria e Projetos

**Figure 27**

**2006 Global Integrity Scorecard Mozambique**

<table>
<thead>
<tr>
<th>Category I</th>
<th>Civil society Public Information and Media</th>
<th>Weak</th>
</tr>
</thead>
<tbody>
<tr>
<td>I-1</td>
<td>Civil society</td>
<td>Moderate</td>
</tr>
<tr>
<td>I-2</td>
<td>Media</td>
<td>Weak</td>
</tr>
<tr>
<td>I-3</td>
<td>Public access to information</td>
<td>Very Weak</td>
</tr>
<tr>
<td>Category II</td>
<td>Elections</td>
<td>Very weak</td>
</tr>
<tr>
<td>II-1</td>
<td>Voting and citizens participation</td>
<td>Strong</td>
</tr>
<tr>
<td>II-2</td>
<td>Election Integrity</td>
<td>Very Weak</td>
</tr>
<tr>
<td>II-3</td>
<td>Political Financing</td>
<td>Very Weak</td>
</tr>
<tr>
<td>Category III</td>
<td>Government Accountability</td>
<td>Very Weak</td>
</tr>
<tr>
<td>III-1</td>
<td>Executive</td>
<td>Weak</td>
</tr>
<tr>
<td>III-2</td>
<td>Legislative</td>
<td>Very Weak</td>
</tr>
<tr>
<td>III-3</td>
<td>Judicial</td>
<td>Moderate</td>
</tr>
<tr>
<td>III-4</td>
<td>Budget</td>
<td>Very Weak</td>
</tr>
<tr>
<td>Category IV</td>
<td>Administration and Civil Service</td>
<td>Very Weak</td>
</tr>
<tr>
<td>IV-1</td>
<td>Civil Service regulations</td>
<td>Very Weak</td>
</tr>
<tr>
<td>IV-2</td>
<td>Whistle Blowing Measures</td>
<td>Very Weak</td>
</tr>
<tr>
<td>IV-3</td>
<td>Procurement</td>
<td>Weak</td>
</tr>
<tr>
<td>IV-4</td>
<td>Privatization</td>
<td>Very weak</td>
</tr>
<tr>
<td>Category V</td>
<td>Oversight and Regulations</td>
<td>Weak</td>
</tr>
<tr>
<td>V-1</td>
<td>National Ombudsman</td>
<td>Very Weak</td>
</tr>
<tr>
<td>V-2</td>
<td>Supreme Audit Institutions</td>
<td>Moderate</td>
</tr>
<tr>
<td>V-3</td>
<td>Taxes and customs</td>
<td>Moderate</td>
</tr>
<tr>
<td>V-4</td>
<td>Financial sector regulations</td>
<td>Weak</td>
</tr>
<tr>
<td>V-5</td>
<td>Business licensing and regulation</td>
<td>Weak</td>
</tr>
<tr>
<td>Category VI</td>
<td>Anti corruption &amp; rule of Law</td>
<td>Weak</td>
</tr>
<tr>
<td>VI-1</td>
<td>Anti corruption agency</td>
<td>Very weak</td>
</tr>
<tr>
<td>VI-2</td>
<td>Rule of law</td>
<td>Weak</td>
</tr>
<tr>
<td>VI-3</td>
<td>Law enforcement</td>
<td>Very weak</td>
</tr>
</tbody>
</table>
155. The Austral consultaria survey ranked media as honest. The Integrity Scorecard characterizes media’s support of integrity as “weak.” Whatever the current situation, media should be encouraged to become an effective partner in the fight against corruption. The media may serve as an important Government partner in efforts to strengthen public awareness on procurement issues. CPAR recommends that UFSA establish a systematic dialogue with the media and invite the media to learn about the organization of the procurement function and feed it with news seeking an alliance toward better public procurement.

156. Civil society is perceived as a “moderate” supporter of integrity in the country (according to the 2006 Global Integrity Scorecard) in consideration of the fact that civil society is not yet a very effective actor in the governance arena. The mission met with one of the most prominent NGOs, Centro de Integridade Publica (CIP), which was established in 2006 to monitor the operation of anticorruption mechanisms and investigate specific cases. CIP made some laudable initiatives, such as engaging the private sector in signing an integrity pact of good behavior, transparency, and fair competition. As with the case of the media, CPAR recommends that UFSA include CIP and other similar agencies among its “allies” in the quest for good procurement.

ETHICAL BEHAVIOR AND ANTICORRUPTION

157. The fight against corruption in the country is at an infant stage. Laws and regulations where enacted by the Government at the request of the donors but their application is ineffective due to a lack of coordination among the main actors, lack of enforcement, lack of investigative capabilities, entrenched self interests, and little enthusiasm of the authorities.

158. Large government businesses are more vulnerable to collusion or favoritism. The widely used direct-contracting procedure is also a source of favoritism and lack of transparency. Overall, the reputation of the government procurement is low in respect to ring fencing corruption, and the general perception of the public and observers is that government procurement is tainted by improper influence and preferential treatment.

159. Government agencies management with UFSA support (through internal and external controls), IGF and TA have a role in helping identify “red flags” indicators of possible Fraud and Corruption.

160. Any improvement in this area needs more than procurement actions and regulations. It requires a functional attorney agency, police investigation, judiciary specialization, and incentives to denounce contract rigging and bribery. Nevertheless, in Mozambique there is a fundamental step toward reducing corruption that the procurement function should support: the creation of a body to
settle disputes during the bidding process and to review contract administration claims. The Government is not very keen on the creation of new entities. However, the judiciary system has failed to provide a mechanism that ensures speedy resolution of complaints, disputes, and therefore, the executive branch needs to step in to provide the entrepreneurs and the civil society with a dedicated forum in which to ventilate grievances in procurement. Such a need appears to be well justified in the opinions given in the 2005 survey on governance and corruption in the country.

161. Since then, the country has moved in the right direction, strengthening procurement institutions, financial management, and accountability. However, more could be done to provide comfort to the civil society and the entrepreneurs in public procurement.

![Figure 28: Corruption in Mozambique: A Summary](chart taken from Austral Consultoria e Projetos, Report on Governance and Anticorruption Diagnostics Survey of 2005, chart XI, page 22.)

162. An ethics code may help further codify the principles of good procurement. In 2005, UTRAFE planned to hire a consultant to elaborate an ethics code for the procurement function. UFSA could take the leadership in drafting the code. However, of more significance than the contents of the code is the manner in which
such a code is prepared. The initiative would benefit if UFSA were to invite civil society, key and decentralized UGEAs, judges, academics, and a broad array of stakeholders to a workshop to propose an ethics code. The event and the task will give visibility to UFSA in a function that is perfectly aligned with its core responsibilities, in particular, the development of the procurement profession for which the ethics code is fundamental.

**INTERNAL AND EXTERNAL CONTROL AND AUDIT SUPPORT**

163. **Internal control** is the responsibility of the head of the executive in each organization. It means that, each minister and ultimately, the President, are responsible for ensuring that an adequate level of internal control is maintained in their departments, including on procurement.

164. UFSA is part of the Executive and has specialized knowledge of procurement and has a role in supporting UGEAs in developing their internal control systems through appropriate instructions and advice. At each agency/UGEAs level, internal controls include: (i) availability of and familiarity with relevant procurement legislation, manuals; (ii) merit based recruiting systems; (iii) appropriate filing systems; (iv) clear segregation of duties between staff conducting procurement (UGEAs), approving procurement (budget holders), checking for compliance of procurement (agentos de controlo interno) and processing payment (DAF); (v) functioning complaints mechanisms and (vi) mechanisms to assess risk levels.

165. Based on the inspections conducted, (27 in 2007) UFSA could systematize the findings from these actions for the benefit of all UGEAs and issue quarterly “clarification” notes to all UGEAs – so that there begins to be a set of “case” law about how to implement the law effectively. The notes could also form the basis for some of the continuing training that is going to need to take place. UFSA might also want to establish quarterly meetings at different places in the country so that the UGEAs can come together as a group and discuss core problems – this might also help creating a network of procurement professionals. UFSA should also support the process of mapping UGEAs – so that there begins to be a set of “case” law of procuring agencies by providing the tools for procurement risk management. The results of this assessment, normally conducted by agencies and validated by IGF or the ministerial inspectorate bodies when they exist, may be used by UFSA in their dialogue with UGEAs and DAFs on how best manage procurement risks in each ministry.

166. **Internal audit (or oversight)** is the responsibility of an entity that reports to the executive but should be functionally independent from it – in Mozambique this function is performed by a “sub sistema de controlo interno” (actually a system of internal audit) headed by IGF. IGF undertakes annual internal audits within the majority of the agencies of the central Government. According to PEFA in 2006, the coverage of audit activities by IGF represented 57 percent of the total of potentially auditable expenditures, meriting a B score.
167. UFSA could support IGF efforts in building the procurement knowledge of the auditors for them to be able to carry out effective audits in the area of procurement with increased focus on the quality of the procurement control systems in addition to transactions reviews. UFSA could also support the process of mapping UGEAs according to the procurement risk level of procuring agencies by providing the tools for procurement risk management. The results of this assessment, normally conducted by agencies and validated by UFSA or IGF (?), may be used by UFSA in their dialogue with UGEAs and DAFs on how to best manage procurement risks in each ministry. Ideally internal and external auditors should define their work plan based on this risk model set-up by UFSA and filled-in by each UGEA.

168. **External audit** is carried out by the Tribunal Administrativo (TA). TA is part of the judiciary branch and its authority extends to all state agencies and public institutions at central, provincial and local levels, including financially and administratively autonomous entities. The functions relevant to procurement are: (i) external audit; (ii) prior review of all contracts irrespective of value or nature financed out of Government funds; (iii) addressing complaints by citizens against acts of the Administration (acts as Tribunal de Contas).

169. There seems to be a lot of scope for improvement in this area as far as procurement is concerned. The mission is of the opinion that the prior review by the Tribunal Administrativo is essentially a documentary verification based on cursory review and not an in depth review of the quality of the process and bid evaluation. In addition, such reviews increase the lead time for procurement by at least one month (the standard response time) and up to three months (the maximum period for tacit approval). Some UGEAs have identified even higher turn around times. The limitations on the prompt turnaround are due to sheer volume of transactions. Within the Tribunal Administrativo, the same unit giving approvals to contracting activities also reviews personnel and human resources matters. Personnel issues outnumber contracting issues by 100 to 1. The twenty-five-member staff work force at the TA is overwhelmed by reviewing human resources actions. Therefore, delays and the quality of procurement reviews are generally inconsistent with efficient procurement cycle norms.

170. Finally, there is a conflict in the provisions of the external audit Law 13-97 and the Regulamento (Decree 54) regarding the documentary requirements for bid submission. This needs to be addressed as it creates confusion for bidders at the time of bid preparation.

171. The authorities may consider the benefits of focusing TA capacity on its ex post (external audit) function and progressively shift away from its ex ante review function. While recognizing that the executive branch of government has narrow leverage to influence the organization or service standards of the TA that belongs to the judiciary branch, the CPAR recommends that Government initiate a dialogue in the appropriate forums regarding the reform of TA’s procurement oversight based
on four points: (i) in the short run, divide labor between the staff handling procurement and those addressing HR issues, coupled with training in procurement to ensure due process; (ii) in the medium term, reach an agreement between TA and IGF for TA to discontinue prior review for institutions where IGF certifies a strong internal control; (iii) in parallel, further develop within TA the capacity to conduct external audits in procurement and increase the resources devoted to this activity; and (iv) assess to what extent the TA “appeal” function for complaints could meet the business needs of procurement and be housed by TA. Some of the proposed actions above do not require a change in the law, whereas others are consistent with the TA’s corporate plan.

The Commission for Foreign Economic Relations (CREE)

172. CREE is another level of control meant to oversee the use of the foreign funds, whether donated or credit for the country. For all contracts above $1 million, and some below this amount if needed, it is the responsibility of CREE to ensure that the activities are aligned with Government priorities and its strategic plan. CREE plays a useful function however its function and intensity of review should be periodically revisited and balanced against the improvement in the effectiveness of strategic planning and strength of the procurement systems.

**Figure 29**

**Facts on CREE**

CREE comprises the following ministers: Planning and Development, Finance, Foreign Affairs, Industry and Commerce, Tourism and the Governor of the Bank of Mozambique. CREE is chaired by the Prime Minister supported by the Technical Council composed of the Deputy Minister of Finance, and representatives from the ministries of Finance, Foreign affairs, Industry and Commerce, Tourism and an Executive Secretary.

The requests are submitted to the executive secretariat, which invites the Technical Council to analyze them, then call for a session CREE to decide on the clearance of the request.

Once a request is considered acceptable by the Technical Council, the decision process is taken within 15 days. The CREE meets at least twice a month.
V. PROCUREMENT IN BANK-ASSISTED PROJECTS

173. There are a total of 19 projects in the Bank’s portfolio, including two regional projects, 16 active investment projects, and 3 GEFs. These represent a total net commitment of US$923 million, of which 18 percent is grants and 82 percent is credits. The portfolio is composed of four main sectors: (i) infrastructure (56 percent); (ii) human development (20 percent); (iii) public sector and decentralization (18 percent); and (iv) agriculture and rural development (6 percent). (See figure 30). The average age of the portfolio is 3.7 years with oldest projects being National Water Development II and Railways and Ports Restructuring, at 8.8 and 8.5 years old, respectfully.

![Figure 30 Mozambique Portfolio Share](image)

174. The last CPPR addressed as key issues the slow implementation of the procurement reform, audit and financial management systems (Tribunal Administrativo and SISTAFE), and the lack of M&E systems. It is not a coincidence that the same issues affect the procurement framework of the country as examined in this CPAR report.
FIDUCIARY RISKS

Country Risk

175. The country procurement risk has been assessed as substantial (3) at the national level and high (4) at the subnational level (see Annex F). With the adoption of the Country Procurement Regulations (Regulamento/2005), generally aligned to international good practice, and the publication of nine bidding documents (for goods, works, consulting and technical services, and specialized health and text books), the use of the Government regulations has been adopted under Bank projects for National Competitive Bidding (NCB) and small-value consulting services, albeit with certain exceptions. Such exceptions/waivers from the current regulations are spelled out in the NCB letter attached (Annex C) and are meant to address the key areas where national procedures are not fully in compliance with Bank procedures. In addition, the NCB letter contains requirements that the Bank applies to all Borrowers consistent with its fiduciary policy approved by the Board of Directors (including fraud and corruption remedies and the right to audit). While some of the ambiguities in the Regulations are clarified in the bidding documents (evaluation criteria, the need to prepare minutes, and the participation by Government owned entities), there is need to revise the Regulations to bring clarity to the respective clauses.

Risk Mitigation Mechanisms

176. Since the internal controls in the implementing agencies are often weak, the Bank is designing specific risk-mitigation mechanisms in its projects. Such mechanisms are identified in the process of assessing implementing-agency capacity to conduct procurement at the time of the project preparation and later updated through project supervision. Over the past eight years, no case of misprocurement was recorded in the Bank files.

**Figure 31**
Key Areas of Risk

| Risk 1: Loss of benefits from competition when limiting participation for reasons unrelated to bidder’s qualifications |
| **Issue:** Certain requirements under Decree 54 are not entirely consistent with good international practice and may limit competition (requirement for foreign bidders to have a local representative or foreign bidders to provide evidence of not being subject to bankruptcy procedures in Mozambique). |
| **Action by the Bank:** Incorporate an NCB side letter in the legal agreement, whereby the Government accepts certain exceptions from the local regulations |
| **Action by the Government:** Improve/revise the legislative and regulatory framework |
Risk 2: Loss in efficiency because of delay in contract approvals

**Issue:** Lengthy internal review procedures

- According to Law 13/97, all contracts, irrespective of their nature or amount, need to be approved by the Tribunal Administrativo and documents should be in Portuguese. Given the limited capacity of the TA, delays of three months or more are usual.
- In addition, any contract estimated to cost the equivalent of $1 million or more should be cleared by the CREE, chaired by the prime minister, which introduces another level of approval.
- Finally, after the two approvals have been obtained, the contract shall also receive the clearance from the Departamento de Divisas within the Ministry of Finance. This clearance enables payments to a bank account outside Mozambique.

Combining the three levels of government internal reviews a delay of around 6 months for contract signature, after the completion of the evaluation report and Bank no-objection, is not unusual.

**Action by the Bank:** Engage the Government in a dialogue, especially on the VISTO (prior review) by the Tribunal Administrativo through the ongoing policy dialogue.

**Action by the Government:** The Government should engage through appropriate channels the TA to determine that TA adopt a risk-based approach in the prior review process.

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Risk 3: Inefficient procurement through abusing direct contracting

**Issue:** Lack of procurement planning leads to procurement decisions being made on an emergency basis and excessive use of direct contracting (e.g., to procure hospital consumables MOH is using direct contracting for 75 percent of the number of contracts).

**Action by Bank:** Procurement plan including direct contracting decisions are prior reviewed by the Bank.

**Action by Government:** Enforce Regulamento, introduce procurement planning, monitor use of direct contracting through reporting and audit.

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Risk 4: Inefficient procurement because of lack of capacity at PIU/UGEAs level

**Issue:**
There is dearth of qualified procurement staff. Hiring of consultants in Bank projects has not resulted in building up the capacity of the Government agencies to conduct procurement. There is no systematic/sustainable Government program for the training/certification of staff that work in procurement.

There is a shortage of technical specialists to help with the definition of the technical specifications and preparation of the TORs.

**Action by Bank:** Consultants assisting in procurement should have skill transfer responsibilities. Project launch workshop should provide detailed training in procurement tailored to the project needs. Support the Government in developing a certification program. TTL (Task Team Leaders) to identify during project preparation the type of technical knowledge important to procurement and identify the appropriate actions. UGEAs should be used as procurement-implementation units unless extenuating circumstances dictate otherwise. Bank prior review thresholds should be identified consistent with the risk level.

**Action by Government:** Elaborate a capacity-building strategy (mainstreamed in the public sector capacity-building program), including a certification program for procurement staff.

**Risk 5: Inefficiencies in service delivery because of poor procurement management**

**Issue:** procurement plans prepared only for Bank projects but not updated and publicized.

**Action by Bank:** Procurement planning is embedded in Bank projects. TTL, Procurement Specialists (PSs) to discuss during supervision the implementation status of contracts under procurement plans, agree on an updated plan to be publicized on the Web.

**Action by Government:** Mainstream procurement planning. Provide adequate instructions (including through the Manual of Procedures) and incorporate procurement planning in training programs.

**Risk 6: Document management and record keeping systems**

**Issue:** The quality of record keeping for procurement and contract management is poor, as noticed during the Bank, donors, and auditors supervision of procurement.

**Action by Bank:** Include clear instructions in the Operational Manuals and address such issues during supervision.

**Action by the Government:** Issue clear guidelines and instructions on record keeping. Include such provisions in the manual and in UFSA training sessions as well as auditors’ TORs.
Risk 7: Inefficient procurement given limited competition

**Issue:** the private sector is not well informed on bidding opportunities and the capacity at the national level to participate in bidding and manage contracts is quite low.

**Action by Bank:** Under Bank projects, mandate advertising in UNDB contracts of international interest. Bank could include in a project a capacity-building component for the private sector (bidding and contract management).

**Action by Government:** UFSA website could be put to better to use to advertise bidding opportunities by mandating publication above a certain threshold on the website. Conduct awareness campaigns and training programs for the private sector.

Risk 8: Inefficiencies in procurement because of the business environment

**Issue:** Banks issue bid securities against 100 percent collateral, and service time may last from 7 to 10 days. This may result in high cost of bids and inability of some qualified bidders to participate.

**Action by the Bank:** Advise clients to express bid securities requirements in absolute terms (rather than percentage of the bid). Use in NCB “bid securing declarations” rather than bid securities to simplify and lower the cost of bidding for the bidders.

**Action by the Government:** Introduce in the Regulamento the concept of “bid securing declaration”.

Risk 9: Fraud and corruption (F&C), collusion

**Issue:** Internal systems in the Government are not far reaching enough to systematically deal with serious violations of the Act. Lack of sensitivity to F&C indicators.

**Action by the Bank:** Set in place robust fraud and corruption risk-mitigation mechanisms, Bank fraud and corruption provisions, and remedies. Bank to be advised about complaints. Adequate prior review thresholds by the Bank.

**Action by the Government:** Step up procurement audit by including in the TORs of IGF and TA procurement audit provisions, Government/UFSA to issue clear instruction with due process for the debarment and sanctioning of bidders. Embed in procurement training specific sessions on identifying F&C flags. UFSA to monitor how complaints are being resolved and serve as an independent forum for complaint resolution (appeal) until a longer term solution is found.
PILOTING PROCUREMENT COUNTRY SYSTEMS IN BANK OPERATIONS

177. The CPAR recommendations, consistent with the OECD DAC standards, are meant to bring Mozambique systems closer to internationally acceptable standards and will pave the way toward the use of country systems. At this time, the CPAR findings will be taken into account in assessing Mozambique’s readiness for the application of country systems in Bank financed projects. The Bank intends to pilot the new approach in about eight countries worldwide before scaling up this operation. The steps to determine the country readiness as candidates for pilots are the following:

- Stage I: Selection of a pool of potential countries for piloting of UCS in procurement and assessment of the overall quality of each country’s procurement system. The selection of the candidate is based on the following:
  
  a. The overall PFM system
  b. The Bank past assessment and knowledge of the procurement system
  c. Findings from the OECD DAC assessment tool. (17 core subindicators should meet the criteria for a 3 rating; 10 should meet a 2 rating provided that an action plan is put in place of corrective measures to be met during implementation; 25 subindicators should meet a 2 rating
  d. Two subindicators 4(d) and 10(e) regarding the regulatory body and the complaints review body for which only a 3 or 0 rating can be obtained. If the country does not meet these criteria but would otherwise qualify, corrective measures could be included in the action plan.

- Stage II: Assessment of the consistency and equivalence of the country’s procurement system with the principles of the Bank’s procurement policies.

- Stage III: Assessment of compliance, performance, capacity, and fiduciary risks of the sector/executing agency level.

178. Mozambique did not express its interest in being a candidate under the UCS piloting program and this assessment has not been conducted as per the UCS methodology. If the country becomes a candidate at some point in time, the whole UCS methodology would apply including a review (re-assessment and validation process)
VI. RECOMMENDED ACTION PLAN

179. The CPAR team offers a list of activities for the consideration of Government which could define the next steps of the procurement reform and modernization. The plan is listed in consistency with the weaknesses of the system as perceived in the analysis of the baseline indicators. The plan addresses the following critical aspects of the procurement function in Mozambique:

- Need to further integrate the procurement function into the PFM systems including e-SISTAFE, information technology platform applied to financial management
- Need of a strategy for sustainable capacity building and training
- Need of procurement-career development
- Need of aggregated information about public procurement for decision making
- Need an independent body to review complaints in process and apply a contract dispute-resolution mechanism with procedures, appeals, fairness
- Need of a monitoring and evaluation system based on the OECD indicators
- Need of code of ethics for the public procurement function
- Need to support the network of procurement practitioners in the public and private sectors
- Need to reassess the domestic preference
- Need to reform and modernize to effectively reach the subnational and district governments
- Need to improve the external oversight
- Need to improve the internal oversight
- Need to develop skills on risk assessment in the procurement function
- Need to keep UFSA supported with external financing

180. A well-functioning procurement system that fulfills Mozambique’s objectives of high probity standards, poverty reduction, increased transparency, economy and efficiency in the use of public funds as well as promoting fairness and accountability is foreseeable in the future should the country follow a road map based on the assessment of the BLI and CI of the OECD DAC Methodology. In brief, these are the findings of the CPAR team regarding the procurement function of Mozambique:

- A system close to international best practices is already substantially achieved through a clear, comprehensive, and transparent legal framework.
- Substantial gains were also achieved in terms of clear functional responsibilities and accountabilities through the creation of the UGEAs.
- UFSA is being strengthened in its important role as the central agency responsible for overall policy/regulation formulation and for oversight in the application of procurement legislation.
- Tasks ahead should include a robust mechanism for enforcement, including an improved auditing system and complaint mechanism trusted by bidders.
- UFSA in alliance with the Função Pública should help create a cadre of staff with high technical and ethical standards.
- A continuous, targeted, sustainable training program is needed, but first a strategy should be developed.
- An increased use of databases and developing analytical capabilities is essential.
- More functionalities are needed in the UFSA website.
- The Government should adopt a risk-assessment initiative in subnational and district procurement.

### MOZAMBIQUE: COUNTRY PROCUREMENT ASSESSMENT ACTION PLAN

<table>
<thead>
<tr>
<th>Area of Opportunity</th>
<th>Action</th>
<th>Date of Start and Completion</th>
<th>Short-Term Action/Quick Win</th>
<th>Responsible Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency and Information</td>
<td>Develop a simple system for collecting information from UGEAs and auditors (until SISTAFE can provide this information).</td>
<td>Q4 2008</td>
<td>A consultant should help UFSA establish the reporting system. A price data base for standard purchase items should be created.</td>
<td>UFSA/Procurement entities</td>
</tr>
<tr>
<td></td>
<td>Establish an action plan to implement the asset management module (includes procurement), including built-in performance indicators.</td>
<td>2009 to 2010</td>
<td>A consultant will review the business case for procurement.</td>
<td>UFSA+SISTAFE</td>
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<td></td>
<td>E procurement strategy implementation</td>
<td>2010</td>
<td>Readiness assessment 2009</td>
<td></td>
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<tr>
<td>Capacity</td>
<td>Elaborate a strategy for national and subnational level.</td>
<td>2009</td>
<td>A METAPLAN stakeholders workshop should be held. Continue to train the trainers/auditors and private sector</td>
<td>UFSA + Função Pública</td>
</tr>
<tr>
<td></td>
<td>Prepare a simple tool for capacity/risk assessment of UGEAs.</td>
<td>2009</td>
<td>Assess similar tools and adapt them. Banks.</td>
<td>UFSA/IGF</td>
</tr>
<tr>
<td></td>
<td>Enhance UFSA ability through appropriate funding and human resources to carry out its functions of monitoring/ improving proc. outcomes.</td>
<td>2009 to 2011</td>
<td>Use international organization funds in the short term.</td>
<td>MF</td>
</tr>
<tr>
<td><strong>Appeal Mechanism</strong></td>
<td>Perform a study regarding independent body for dispute resolution and contract disputes.</td>
<td>2009 to 2010</td>
<td>UFSA will establish a panel composed of reputable persons.</td>
<td>MF</td>
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<tr>
<td><strong>Oversight &amp; Integrity</strong></td>
<td>Define instructions for enforcement of F&amp;C provisions (e.g., debarment). Prepare an ethics code</td>
<td>2009</td>
<td>Create procurement manual and ethics awareness about corruption flags.</td>
<td>UFSA + Funcao Publica</td>
</tr>
<tr>
<td>Partnership with TA</td>
<td>TA to increase the thresholds for prior review based on capacity.</td>
<td>2009 to 2010</td>
<td>Establish standard requirements for procurement audits</td>
<td>UFSA and TA</td>
</tr>
<tr>
<td>Partner with IGF.</td>
<td>2009 to 2010</td>
<td></td>
<td>scaffold procurement audits</td>
<td>UFSA and IGF</td>
</tr>
<tr>
<td><strong>Elaboration of an ethics code</strong></td>
<td>2009</td>
<td></td>
<td></td>
<td>UFSA &amp; Funcao Publica</td>
</tr>
<tr>
<td><strong>Coalitions</strong></td>
<td>Plan to communicate and elicit feed back from external stakeholders</td>
<td></td>
<td>Work with professional associations, NGOs</td>
<td>UFSA</td>
</tr>
<tr>
<td><strong>Legal Framework</strong></td>
<td>Refine Regulamento, Manual, instructions and address possible conflicts with other law</td>
<td>2010</td>
<td>Provide instructions and clarification to address gaps in the law.</td>
<td>UFSA</td>
</tr>
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