MADAGASCAR

Second Country Procurement Assessment Report

October 17, 1995

AF3DR
Bertrand Ah-Sue
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1. GENERAL INFORMATION AND SUMMARY.

1.1 Country Data: In 1994, Madagascar had a population of 13 million inhabitants and a Gross National Product (GNP) of about US$ 2.2 billion. Imports amounted to about US$ 700 million. The Government's budget was US$ 465 million, of which US$ 160 million was for Government procurement. It represented about 25% of total imports.

1.2 First Country Procurement Assessment Report: The first Country Procurement Assessment Report (CPAR) on Madagascar was carried out in 1984. The report was based mainly on an examination of Decree No. 70-089, the existing Public Procurement Code at the time. That assessment concluded that (i) since the Code had a provision that allows agreements reached under external financing to prevail over national regulations, therefore in the case of International Competitive Bidding (ICB), Bank Guidelines would automatically apply and (ii) some important features under National Competitive Bidding (NCB) procedures were considered not acceptable, namely private bid opening and restrictions applied to foreign bidders for registration and opportunity to bid.

In 1986, as a result of the CPAR, it was decided that assistance on procurement reforms would be provided by the Bank. The Accounting and Management Training Project (Credit No. 1661-MAG) which was due to be appraised by AF3PH was thus used as the vehicle to provide such assistance and supported the: (i) revision of Decree No. 70-089 (ii) creation of a unit within the Ministry of Finance to be responsible for public contracts and (iii) equipment for this unit and training for staff involved in procurement processing.

During the implementation period of the procurement component of that project in 1990, staff mainly from AF3IN identified that apart from the need to revise the legislation, there were major issues with procurement processing resulting in long delays, such as the excessive involvement of the Commission Centrale des Marchés (CCM), in the procurement review process. Technical support on procurement was then provided by a Bank Task Force led principally by AF3IN staff.

The Code was updated and Decree No. 91-056 was issued on January 29, 1991. The revisions contained in the new decree did not completely meet Bank's expectations. However, two resolutions agreed with the Malagasy Authorities greatly improved...
procurement processing (i) the use of Standard Bidding Documents was introduced and its implementation carried out under the Arrêté No. 0892-92 of March 6, 1992 and (ii) the Commission Centrale des Marchés (CCM) was replaced by a Commission ad hoc des Marchés under Decree No. 91-471 of September 26, 1991 by the transitional Government during that period. The Commission ad hoc des Marchés became less involved in technical aspects, which was one of the main complaints against the CCM. After operating for three years in a temporary capacity and to the satisfaction of the authorities, it was made permanent and re-named the new Commission Centrale des Marchés (CCM) under Decree No. 94-624 dated September 28, 1994. The following report is the second CPAR on Madagascar.

1.3 Date of Report: October 17, 1995

1.4 Basis of Report: The second CPAR is based on the findings of a Bank mission consisting of Bertrand Ah-Sue, AF3DR which visited Madagascar between June 23 and July 10, 1995 and is supplemented by a desk study done at Headquarters. The list of documents used in its preparation is shown in Annex 3. The list of persons met figures in Annex 4.

1.5 Acceptability of Country's Procurement System: The procurement regulations of Madagascar are in general acceptable except for the features listed below, in particular, the double envelope system used in bid opening (which is strongly discouraged by the Bank under NCB and is unacceptable under Bank Guidelines under ICB) and the point system in bid evaluation for works. The approval process for signing contracts is still too lengthy and requires an excessive number of steps causing undue delays. The incompatibilities of the regulations with Bank Guidelines, have not been a hindrance to procurement processing on the whole, because most projects have been using the Bank's standard bidding documents. Project staff are fairly conversant with Bank Guidelines and procedures as a result of intensive procurement workshops held in Madagascar in 1993 and 1994. While the technical quality of the work done by the Borrower can be considered acceptable, the time taken to process contracts is still not satisfactory because of the lengthy contract signature process. Insufficient contract programming and follow-up and lack of advanced procurement action also contribute to the delays and to slow disbursement.

Category I: Unacceptable features for the purposes of Bank financing in the procurement of goods, works and commodities, and in the engagement of consultants. Waivers or changes that must be addressed in the credit documentation are:

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2 This Decree also increased the responsibility of the sector ministries in contract award decision making.

3 A summary checklist of the acceptability of the Borrower's procurement procedures for competitive bidding is shown in Annex 1.
(A) For Investment Operations:

For ICB

- The utilization of the double envelope system in bid opening and in examining prequalification proposals for goods and works should be abandoned.
- The use of the point system in bid evaluation for works which has just been introduced should be stopped.
- Provision for bid securities for the procurement of goods and works should be introduced.
- The tendency to amend evaluation criteria after Bank prior review of procurement documents under certain projects should be stopped.
- Certain government owned parastatals may be ineligible to participate in bidding on Bank-financed projects (LNPTB and FTM).

For NCB

- The use of the point system in bid evaluation for works (as above).
- No provision for bid securities (as above).
- Advertising should be systematically done. A registered list of bidders should not be used instead, unless it remains open and is updated regularly.
- Certain government owned parastatals may be ineligible to participate in bidding on Bank-financed projects (LNPTB and FTM).

For Consultants

- There is no particular issue, except that two firms, RINDRA (an audit firm) and CFC (a management training consultant firm) appear to be still Government owned and should not be included on consultant shortlists for Bank-financed operations.

(B) For Adjustment Operations:

- There is no particular issue requiring legal agreement measures.

Category II: Features that the Bank recommends be changed in order to conform with good international and domestic procurement practice.

(A) For Investment Operations:

- The utilization of the double envelope system in bid opening and in examining prequalification proposals for goods and works should be abandoned.
- More systematic use of Letter of Credit should be made for payment to suppliers.
- The requirement that the bank issuing performance securities be sanctioned (agrée) by the Ministry of Finance should be modified. Good reputation of the bank should be sufficient.
(B) For Adjustment Operations:

- Complaint from importers that there is uneven application of import duties for the same type of imports should be addressed.

(C) Other Issues:

- Customs clearance should be computerized to permit on line exchanges between Customs services and the pre-shipment company and reduce variances between duties assessed and duties paid.

1.6 Actions Required: The procurement seminars carried out in Madagascar have been very beneficial to the Borrower's staff. We should repeat them every year to ensure an adequate understanding of Bank's procurement policies and procedures. We should also continue to interact with the Government to resolve the incompatibilities with Bank Guidelines and the issue of delays in contract signing. Contract programming and follow-up and advanced procurement action should be systematically applied under every project. the Government should be encouraged to install computer system for clearing imports.

1.7 List of Staff Members particularly familiar with procurement in the country, by sector:

<table>
<thead>
<tr>
<th>Mr. J.F. Dréau, AF3IN</th>
<th>Mr. P. De Naurois, AF3IN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. A. Labeau, AF3IN</td>
<td>Mr. P. Canel, AF3IN</td>
</tr>
<tr>
<td>Ms. M. Teymourian, AF3IN</td>
<td>Mr. M. Simeon, AF3AE</td>
</tr>
<tr>
<td>Ms. M. Barton-Dock, AF3AE</td>
<td>Ms. I. Valencia, AF3AE</td>
</tr>
<tr>
<td>Mr. A. Bichara, AF3AE</td>
<td>Mr. C. Trapman, AF3AE</td>
</tr>
<tr>
<td>Mr. Q. Khan, AF3PH</td>
<td>Ms. M.O. Waty, AF3PH</td>
</tr>
<tr>
<td>Mr. P. Mersier, AF3PH</td>
<td>Mr. D. Viens, AF3PH</td>
</tr>
<tr>
<td>Ms. E. Murray, AF3PH</td>
<td>M. Lioy, AF3PH</td>
</tr>
<tr>
<td>Mr. S. Gray, AF3IE</td>
<td>Mr. Y. Terracol, AF3IE</td>
</tr>
<tr>
<td>Mr. N. Bouzaher, AF3IE</td>
<td>Mr. A. Baide, AF3IE</td>
</tr>
<tr>
<td>Mr. P. Ballard, AF3IE</td>
<td>Mr. P. Demangel, AF3C2</td>
</tr>
<tr>
<td>Ms. E. Hubert, AF3C2</td>
<td>Mr. C. Rey, AF3MG</td>
</tr>
<tr>
<td>Ms. F. Bentchikou, LEGOP</td>
<td>Mr. R. Soopramanien, LEGAF</td>
</tr>
<tr>
<td>Mr. D. Freese, LOAAF</td>
<td>Mr. J.J. Raoul, AFRSA</td>
</tr>
<tr>
<td>Mr. S. Bhattacharya, AFRSA</td>
<td>Mr Y. Wong, AF3MG</td>
</tr>
<tr>
<td>Mr. B. Bosquet, AF3MG</td>
<td>Mr. O. Seck, AF3MG</td>
</tr>
<tr>
<td>Mr. D. Randriamanampisoa, AF3MG</td>
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</tbody>
</table>

1.8 Next Procurement Assessment Mission: Although the next procurement assessment mission does not have to take place before 1999, it will be necessary to undertake a few missions to resolve the issues identified above, in particular lengthy delays
in procurement processing and the incompatibilities with Bank Guidelines and address the above shortcomings.
2. PROCUREMENT LAWS AND REGULATIONS.

The main regulatory document Decree No 91-056 (including modifications brought to it under Decree No. 94-624 of September 28, 1994) was issued on January 29, 1991 replacing Decree No. 70-089. Its objectives are to (i) ensure better utilization of public funds through improved competitive practices; (ii) provide equal opportunities for bidders; (iii) provide clear rules to be adhered to by all bidders; (iv) promote the development of small and medium scale enterprises and (v) guarantee a fair treatment to contractors in the settlement of disputes. The Bank considered the new decree to be an improvement over the past one with the exception that it reinforced rather than reduced the control of the Commission Centrale des Marchés (CCM), the National Tender Board over procurement processed by contracting ministries/agencies. Its intervention in the prior review of bidding documents and in particular before contracts are signed causes lengthy delays. Prior to the decree issue, the Bank had the opportunity to review the draft and transmitted its comments on two occasions, on May 10 and July 2, 1990. The response from Madagascar was not completely favorable and the Bank, after several exchanges with the Malagasy authorities with no positive outcome, decided that, rather than concentrating its efforts on improving the regulations, it would instead encourage the use of Bank's standard bidding documents and enforce compliance with Bank Guidelines. There are several references in the decree stipulating that procurement procedures under agreements signed with external financing agencies prevail over the national regulations and therefore no major problem was encountered in ICB procurement processing under Bank financed projects.

2.1 List of Applicable Laws and Regulations: The following is a list of laws and regulations governing the national and international procurement of goods, works and services:

(i) Decree No. 91-056 of January 29, 1991 is a code on Government contracts and is the main regulatory document (together with Decree No 94-624 below) establishing the procurement procedures, defining institutional responsibilities and spelling out the regulations applicable to Government contracts.

(ii) Decree No. 94-624 of September 28, 1994 on modifications to certain clauses of Decree 91-056 on revised thresholds for establishment and review of contracts, on composition of the Commission d'Appel d'Offres (CAO) and the Commission Centrale des Marchés (CCM) and introduction of the point system in bid evaluation for works.

(iii) Arrêté No. 1006-Fin of March 6, 1970 constitutes the general conditions of contract for the procurement of goods (Cahier des Clauses Administratives Générales des marchés publics de fournitures).

(iv) Arrêté No. 1007-Fin of March 6, 1970 on standard bidding documents for the procurement of goods (Cahier des charges-type pour appels d'offres de fournitures).
(v) Arrêté No. 1008-Fin of March 6, 1970 constitutes the general conditions of contract for the procurement of works (*Cahier des Clauses Administratives Générales des marchés publics de travaux*).

(vi) Arrêté No. 1009-Fin of March 6, 1970 on standard bidding documents for the procurement of works (*Cahiers des charges-type pour appels d'offres de travaux*).

(vii) Decree No. 91-471 of September 26, 1991 on the composition of the *Commission d'Appel d'Offres (CAO)* and the *Commission ad hoc des Marchés* and the creation of the latter to replace the *Commission Centrale des Marchés (CCM)*.

(viii) Arrêté No. 0892-92 of March 6, 1992 introducing the use of standard bidding documents.

2.2 **Scope of Application:** The existing laws and regulations for the procurement of goods, works and services apply countrywide to central government, including all ministries, *collectivités décentralisées* and state enterprises with the following exception: state enterprises with industrial and commercial vocation and enterprises with state majority holdings can adapt the regulations to suit their needs. Contracts\(^4\) have to be established according to formal bidding and public bid opening procedures for contract amounts of FMG 250\(^5\) million and above for works and FMG 150\(^6\) million and above for goods and services. Major contracts, typically above FMG 1000 million for works and FMG 400 million for goods and services are subject to the approval by the Minister of Finance and Budget. Small size contracts, typically between FMG 250 and 1000 million for works and between FMG 150 and 400 million for goods and services are approved by the responsible Ministers. In addition, all contracts above FMG 3000 million are subject to the approval by the Prime Minister. Responsibilities and thresholds are defined under Articles 4 & 5 of Decrees No. 91-056 and No. 94-624.

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\(^4\) Contracts for amounts below the thresholds do not follow formal bidding procedures. They are processed mainly through request of price quotations.

\(^5\) Increased from FMG 200 million (Decree No. 91-056) to FMG 250 million (Decree No. 94-624).

\(^6\) Increased from FMG 100 million (Decree No. 91-056) to FMG 150 million (Decree No. 94-624).
3. PUBLIC SECTOR PROCUREMENT.

3.1 Organization: There are two main organizations involved in public contracts: the *Commission d'Appel d'Offres (CAO)* and the *Commission Centrale des Marchés (CCM)*). In addition, at provincial level, there is the *Commission Régionale des Marchés (CRM)*.

Under the new Decree No. 94-624, the *Commission d'Appel d'Offres (CAO)*, unlike before, consists of members belonging only to the ministry responsible for the specific procurement. For ministries, the *Commission d'Appel d'Offres (CAO)* is comprised of at least four members, namely the financial, administrative and technical directors of the ministry and the secretary general of the ministry concerned as chairman. For provinces, *Collectivités décentralisées* and public enterprises located in the provinces, the *CAO* is chaired by the *Inspecteur des Services Provinciaux*. The *CAO* is responsible for bid opening, for bid evaluation (the technical work may be assigned to the project manager or some other expert but responsibility remains with the *CAO*), for clarification with bidders and for ranking of the bids. The bid evaluation including the ranking of the bids is recorded in minutes produced by the *CAO* and its ministry then decides on the contract award. The ministry then notifies the successful bidder subject to the approval thresholds as stated in 2.2 above and in Article 4 of Decrees No. 91-056 and No. 94-624. Details on the composition and responsibilities of the *CAO* are given in Articles 34 and 35 of the decrees.

The *Commission Centrale des Marchés* is composed of at least five members, the Director General of the Ministry of Finance, the Ministry of Plan and the Technical Ministry responsible for the specific procurement, a representative of the Chamber of Commerce and the Director General of *Contrôle des Dépenses engagées*, representing the Prime Minister as chairman. The *CCM* has the responsibility of ensuring that the regulations are followed in public contracting. In this regard, it examines the bidding document (including prequalification document) before tendering, it examines the draft contracts including the bid evaluation report and the contract award for sole source contracts, contract extensions, contract awards other than the lowest evaluated bidder and contracts differing from the bid document and the selected bid. If the *CCM* disagrees with the decision of the Technical Ministry, the matter is settled higher up by a Commission chaired by the Minister of Finance (for contracts up to FMG 1500 million) or the Prime Minister.

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7 In 1991, after the issue of Decree No 91-056 and at the time the transitional Government came to power, the Government decided to replace the *Commission Centrale des Marchés* by a *Commission ad hoc des Marchés*. This *Commission ad hoc* was created because of complaints against the *CCM*. It became less involved on technical review and was considered an improvement in the way it functioned. In 1994, the *Commission ad hoc* was re-named the *Commission Centrale des Marchés/Commission Régionale des Marchés under Decree No 94-624*.

8 This administrative structure dividing the country into regions, departments etc. is not yet in force. A law will be issued establishing this new administrative structure. Decree No. 94-624 has been issued creating the CRM in lieu of the Provincial Tender Board in anticipation.
Minister (for contracts above that threshold). In the provinces, the Commission Régionale des Marchés will operate in the same fashion as the CCM but for smaller size contracts.

3.2 Procurement of Goods and Works.

ICB and Other Methods of Procurement

3.2.1 Standard bidding documents: National standard bidding documents for the procurement of goods and works have been available since 1970. These documents are specified under Arrêté No. 1007-Fin of March 6, 1970 and Arrêté No. 1009-Fin of March 6, 1970 respectively. Nevertheless, it appeared that their utilization was not widespread and a new effort to encourage the use of standard bidding documents was undertaken through the issue of Arrêté No. 0892-92 of March 6, 1992. At the same time, agreement was reached with the Malagasy authorities for project executing agencies to use Bank's standard bidding documents. This agreement was foremost in improving the quality of procurement documents used under Bank financed projects and ensuring better adherence to Bank Procurement Guidelines. Practically all executing agencies now use Bank SBDs. With the requirement of the New Bank Procurement Guidelines dated January 1995, this will be generalized for ICB; a problem may remain for national competitive bidding.

3.2.2 Advertisement of bids: For open competitive bidding, Article 24 of Decree 91-056 requires that the bid be advertised in the official gazette (journal officiel), or any other means, either by a bill or through a newspaper advertisement at least 30 days before the deadline for bid submission and in case of emergency, at least fifteen days. The advertisement is published in two dailies, the Madagascar Tribune and Midi Madagascar. Under National Competitive Bidding, some executing agencies may not advertise the bidding opportunity and may instead use a registered list of contractors. This is contrary to the national regulations as well as the Bank Guidelines (unless the register is updated regularly and is used in parallel with advertising).

3.2.3 Pre-qualification: According to Article 30 of Decree 91-056, prequalification may be undertaken for works contracts estimated to cost more than FMG 1000 million and goods contracts estimated to cost more than FMG 500 million. This pre-qualification is only valid if at least 3 firms are qualified. It should be noted that although Bank Guidelines do not specify a minimum number acceptable, such a situation if it arises would probably receive the Bank’s approval, but remedial measures must be undertaken in a repeat pre-qualification exercise to ensure a sufficient number of bidders. The pre-qualification "conditions" according to the decree are stated in the pre-qualification document. The list of pre-qualified contractors is finalized by the contracting agency on the basis of the recommendation of the CAO. The regulations are not specific enough about the principle of pre-qualification but do not appear to be in conflict with Bank Guidelines. The use of Bank's Standard Pre-qualification Document has prevented any major issue arising under Bank financed projects.
3.2.4 Bid opening, review, and evaluation: According to the regulations, the bids are opened within 24 hours of the submission deadline by the CAO. A two envelope system of bid opening is then carried out. The exterior envelope containing mainly administrative documents is opened first and the documents are read aloud in the presence of bidders or their representatives. The documents are then examined on their administrative responsiveness in a private session. Those found not responsive are then rejected. The inside envelopes containing the priced bids of only those found responsive are then opened again in the presence of the bidders. This double envelope system of bid opening as described in Article 35 of the Code is in total conflict with Bank Guidelines procedures for ICB and strongly discouraged for NCB. Under NCB, examination of conformity of specifications in the determination of responsiveness is a time consuming exercise and should be best left to technicians of the CAO. This issue has been raised with the authorities by the Bank without success. The recent Decree No. 94-624 maintains the practice of the double envelope system. Because of this article in the code, there is a possibility that executing agencies introduce this system in Bank's SBDs. Bank staff must therefore be vigilant in reviewing bidding documents to ensure that such a system is not introduced under Bank financing particularly for ICB.

The bid evaluation is then done either by the CAO or by project staff under the responsibility of the CAO. The CAO proposes to its ministry, together with its evaluation, a ranking of the bids. The contracting ministry then awards the contract on the basis of the recommendation of the CAO. The draft contract is then presented to the CCM for review before being passed on to the Contrôle Financier. The contract is also subject to the approval of the Finance Minister and Prime Minister depending on thresholds as stated in 2.2 above (see 3.2.6 also below).

There have been several instances of executing agencies, particularly under Education projects, misusing Bank SBD - Goods with regard to taxation. Under ICB, executing agencies have mistakenly taken into account import taxes in the evaluation. This is contrary to the SBD provisions as bids should be invited and priced on CIF/CIP basis and the bid evaluation should not include taxation. Bank staff should be vigilant and ensure that this does not happen.

3.2.5 Bid and performance security: There is no provision in the Code for bid security. This has not prevented from introducing it in bid documents under Bank-financed goods and works contracts. Performance securities equivalent to 2 percent of the contract value (5 percent if there is a warranty period and 1% for small enterprises or cooperatives) are normally required except for works contracts that will go on for less than 6 months or costing not more than FMG 400 million. For goods and services, the exemption would apply for contracts with duration of 3 months or less or not exceeding FMG 200 million. More details on the performance securities are provided under Articles 54 to 57 of Decree no. 91-056. The performance security can be provided in the form of bank checks, bank

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9 The determination of responsiveness of the first envelope is based on an examination of (i) registration of the business (ii) technical and financial capabilities (iii) any legal exclusion to participate in bidding (iv) non-bankruptcy and (v) conformity of the bid with the specifications defined.
transfers or bank guarantees. All advances must be secured by a 100 percent bank guarantee. Mobilization advances are limited in total to FMG 500 million, broken down as follows, up to 20 percent for contract amounts up to FMG 200 million, 10 percent for contract slices between 200 million and 1000 million FMG and 5 percent for contract slices exceeding FMG 1000 million. For works contracts, total advances are limited to 60 percent of contract values, up to 30 percent as mobilization advance and up to 60 percent as advance on material on site. Retention money of 5 percent is also provided in contractual agreements. In general, the above requirements for performance securities, advance and retention monies are acceptable and their provisions under Bank-financed projects have not been an issue except that executing agencies may request that securities be furnished by a financial institution sanctioned ( agréé e) by the Ministry of Finance instead of, by a generally reputable institution.

3.2.6 Contract award and ratification procedures: As stated in 3.2.4 above, the contract award is made by the contracting agency/ministry on the basis of recommendations of the CAO. The draft contract has to be presented to the CCM for review and is also subject to further approvals as per thresholds as defined in para. 2.2 above. The contract award, approval and signature process involves about 13 different persons or entities and is the main cause for undue delays affecting project implementation.

According to a survey carried in 1991, it took on average between 6 and 7 months from bid opening to contract signature for both ICB procurement and recruitment of consultants. For NCB, the average was 3 months. Although the averages for ICB and consultants are longer than the average bid validity period of 4 months, these averages are rather better than for the rest of Africa where averages of between 8 to 12 months are common. A recent survey, based on information retrieved from the MIS, (see Table 1 next page) shows that while the introduction of SBDs has improved the quality of procurement documents and may have improved the processing time during bid document preparation, this has not reduced processing time after bid submission; the number of approvals and signatures required for contract signing continues to adversely affect the procurement processing time.

In contrast, under the AGETIPA project, on average, the time taken between bid opening and mobilization (including signing of contract) is about 2 weeks. This quick signing of contracts translates into much lower prices. Contractors have stronger confidence in AGETIPA and are willing to offer much more competitive bids (see footnote below).

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AGETIPA in Madagascar is a non-government agency specialized in labor intensive urban works and operates similarly to the AGETIPES/AGETURS in West Africa. It has full delegation for procurement and payment to contractors. AGETIPA has five full time staff and has a work program of US$ 7.5 million. In its first year of operation, it has disbursed US$ 3.5 million and executed 120 works contracts. It is an agency that works very efficiently and it appears that prices obtained under its contracts are much below (as much as 50%) those obtained from the same contractors under Government contracts.
Table 1

Procurement processing
Average time between bid opening
and
Contract signing (months)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Procurement Methods</th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ICB</td>
<td>NCB</td>
<td>Consultants</td>
<td></td>
</tr>
<tr>
<td>Infrastructure</td>
<td>9.5 (26)</td>
<td>5.1 (18)</td>
<td>n.a</td>
<td></td>
</tr>
<tr>
<td>Industry &amp; Energy</td>
<td>7.3 (12)</td>
<td>n.a</td>
<td>5.6 (5)</td>
<td></td>
</tr>
<tr>
<td>Agriculture</td>
<td>3.9 (3)</td>
<td>2.9 (1)</td>
<td>7.7 (16)</td>
<td></td>
</tr>
<tr>
<td>P. H. Resources</td>
<td>5.1 (13)</td>
<td>2.5 (2)</td>
<td>4.5 (37)</td>
<td></td>
</tr>
<tr>
<td>All Sectors</td>
<td>7.6 (54)</td>
<td>4.7 (21)</td>
<td>5.5 (58)</td>
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</tbody>
</table>

Note: 1. Figures in brackets indicate number of contracts listed in the MIS that had bid opening and contract signature dates. The average processing time is based on these contracts.

2. Quite a high percentage of contracts entered under F384 in the MIS does not contain complete information on contract processing times. Task Managers should ensure that this is done.

3.2.7 Contract payments: Letters of credit\textsuperscript{11} are not sufficiently used for contract payments for the procurement of goods under Bank-financed contracts. Instead, payments are sometimes made on production of Bank securities. Bank staff should encourage executing agencies to adopt the mode of payment to foreign suppliers by letter of credit, in particular for the payment tranche corresponding to the delivery of the goods on shipment. According to Article 89 of Decree no. 91-056, late contract payments are subjected to compensation in the form of interest, after a 3 month grace period, at 1 percent above the lending rate published by the Central Bank of Madagascar. Contract payments from the date of the invoice by the contractor/supplier or consultant to the date of payment by the Bank in Washington take on average 10 to 12 weeks. This period is shortened to 3 to 4 weeks if the payment is done from the special account. We should coordinate with LOAAF to see how this period of 10 to 12 weeks could be reduced. Price

\textsuperscript{11} Only 9 projects out of a total 18 surveyed use letters of credit as a form of payment.
revision (Article 81) is allowed for contracts of duration of more than 18 months, such revision to be done either at the end of the contract or at the end of every six month period.

3.2.8 **Price indexing:** The *Institut National de la Statistique*, a department in the Ministry of Economy and Plan is responsible for the systematic collection, processing and publication of statistical data and price indices. The only statistics collected and processed for contract price adjustment are the consumer price index for a traditional Malagasy household or a "European type" household (see Table 2). These statistics are published monthly within a time lag of about one month. No statistics are kept for construction material price fluctuations.

3.2.9 **Settlement of contractual disputes:** Article 135 of decree No. 91-056 states that, as a first step in the resolution of contractual dispute, a Committee (*Comité de Règlement Amiable des Litiges*) presided by the Chairman of the *CCM* consisting of members of the *CCM*, a representative of the contracting agency and an expert designated by the Chamber of Commerce formulates a non binding recommendation to resolve the dispute. In the absence of an agreement, the case is referred directly to the supreme court in accordance with procedures set up under Ordinance No. 60-048 of June 22, 1960 (Article 140 of Decree No. 91-056). No provision for international arbitration for foreign bidders is indicated in the decree.

Table 2
Consumer Price Indices
(*Institut National de la Statistique*)

<table>
<thead>
<tr>
<th>Item</th>
<th>Jun 92</th>
<th>Dec 92</th>
<th>Jun 93</th>
<th>Dec 93</th>
<th>Jun 94</th>
<th>Dec 94</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional Household</td>
<td>1357</td>
<td>1512</td>
<td>1480</td>
<td>1637</td>
<td>2020</td>
<td>2639</td>
</tr>
<tr>
<td>&quot;European&quot; Household</td>
<td>1286</td>
<td>1368</td>
<td>1431</td>
<td>1476</td>
<td>1880</td>
<td>2223</td>
</tr>
</tbody>
</table>

Note: Monthly indices are published

3.2.10 **Eligibility requirements:** There is no special requirement under the regulations that foreign firms have to be registered in Madagascar. Article 6 of Decree No. 91-056 merely requires that they (i) be registered at the location of their head office, presumably in their own country, either with an institution responsible for commercial registration or one responsible for trade registration or (ii) have a valid license or pay professional dues. There is no boycott regulation in force.

3.2.11 **Local manufacturing and construction industries:** There are several hundreds of local manufacturing industries producing various products including matches, cement, agricultural machinery, metalwork, beverages, cardboard boxes, school books, school
furniture, shoes, chocolate, tyre retreading, plastic products, textile, woodwork, cooking oil, pharmaceuticals, aromatic products, semi precious stones, stone products, umbrellas, paints, leatherwork, soap etc. Although they are competitive, sub-standard product quality can sometimes be a handicap in meeting contractual obligations. In the construction industry, besides 4 major companies (with partial or full international ownership) firmly established in the local market, there are about 10 medium size local companies with capacity to execute works up to US$ 0.5 million, 30 small companies with capacity to execute works up to US$ 0.2 million and several hundreds of micro enterprises able to execute contracts up to US$ 50,000. The local construction industry is very competitive for contracts up to US$ 0.5 million. Decree No. 91-056 has a provision under Article 31, whereby local manufacturing and construction companies have certain preferences over foreign firms e.g. 10 percent in the case of "technically equivalent" bids and up to 7 percent for local companies located in the province over other domestic companies. There is no particular policy on joint ventures between foreign and local companies except that members are required to have the capabilities for their respective responsibilities and be jointly and severally liable (see Articles 120 to 127 describes the various acceptable joint ventures).

3.2.12 Parastatals: The only known enterprises still owned by Government are the Laboratoire National des Travaux Publics et Batiments (LNTPB) which carries out road testing services and the FTM, which is the cartographic institution. Both institutions have executed Bank financed contracts. It appears that they are not financially autonomous and therefore should not be allowed to participate in bidding for Bank-financed contracts. A construction company is still owned by the Government: SINTP; it is however gradually going into bankruptcy and has not been active in the past few years.

Thresholds Related to Procurement Methods /

3.2.13 Examples of Past Procurement Method Thresholds used on on-going projects are shown in Table 3 below for each sector and for different procurement types and methods. According to our experience, these thresholds still seem to be appropriate and need not be revised except in the case of NCB and ICB for works. For the energy sector, direct contracts have been procured in the past under the Energy and Petroleum Projects for purchase of proprietary spare parts and rehabilitation of the refinery and under the Second Irrigation Project for cyclone rehabilitation works. No other direct contracting has been accepted by the Bank.

Procurement Prior Review Thresholds

3.2.14 Examples of past Prior Review Thresholds used on on-going projects are shown for each sector and for different procurement types in Table 4 below. The threshold for works in the infrastructure sector could be raised. For goods and consultant services, they could be made consistent across the sectors.
Table 3
Procurement Method Thresholds

<table>
<thead>
<tr>
<th>Sector</th>
<th>Proc. Type</th>
<th>Proc. Method</th>
<th>Thrds($1,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure</td>
<td>Works</td>
<td>ICB</td>
<td>&gt;500</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&lt;500</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>ICB</td>
<td>&gt;100</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&lt;100</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>Shopping</td>
<td>&lt;50</td>
</tr>
<tr>
<td>P.H. Resources</td>
<td>Works</td>
<td>ICB</td>
<td>&gt;200</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&lt;200</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>ICB</td>
<td>&gt;200</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&lt;200</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>Shopping</td>
<td>&lt;50</td>
</tr>
<tr>
<td>Agriculture</td>
<td>Works</td>
<td>ICB</td>
<td>&gt;200</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&lt;200</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>ICB</td>
<td>&gt;100</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&lt;100</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>Shopping</td>
<td>&lt;50</td>
</tr>
<tr>
<td>Ind. &amp; Energy</td>
<td>Works</td>
<td>ICB</td>
<td>Not Avail.</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&quot;</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>ICB</td>
<td>Not Avail.</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>NCB</td>
<td>&quot;</td>
</tr>
<tr>
<td>&quot;</td>
<td>&quot;</td>
<td>Shopping</td>
<td>&lt;100</td>
</tr>
<tr>
<td>Adjustment Operations</td>
<td>ICB</td>
<td></td>
<td>&gt;2000</td>
</tr>
</tbody>
</table>
Table 4
Prior Review Thresholds

<table>
<thead>
<tr>
<th>Sector</th>
<th>Proc. Type</th>
<th>Thrsd($1,000) Actual</th>
<th>Thrsd($1,000) Recommended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure</td>
<td>Works</td>
<td>200-300</td>
<td>500</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Firm</td>
<td>75-100</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Ind.</td>
<td>30-50</td>
<td>50</td>
</tr>
<tr>
<td>P.H. Resources</td>
<td>Works</td>
<td>40-200</td>
<td>200</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>40-100</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Firm</td>
<td>40</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Ind.</td>
<td>40</td>
<td>50</td>
</tr>
<tr>
<td>Agriculture</td>
<td>Works</td>
<td>100-250</td>
<td>200</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Firm</td>
<td>50-100</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Ind.</td>
<td>50-100</td>
<td>50</td>
</tr>
<tr>
<td>Ind. &amp; Energy</td>
<td>Works</td>
<td>150</td>
<td>200</td>
</tr>
<tr>
<td>&quot;</td>
<td>Goods</td>
<td>50-200</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Firm</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>&quot;</td>
<td>Cons. Ind.</td>
<td>0</td>
<td>50</td>
</tr>
</tbody>
</table>

Note: For comparison, the RPA recommended in October 1994 Prior Review Thresholds of $100,000 for Goods, $200,000 for works and $50,000 for Consultants.

Import Duties, Restrictions, and Preferences

3.2.15 General range of duties for imported goods: The respective custom duties are applicable on CIF prices - 10 percent on inputs (intrants) used in the production of goods, 20 percent on common goods and 30 percent on luxury goods in compliance with the Cross Border Initiative for Regional Integration. (source - Tarif des droits et taxes perçu par la Douane - Annexe au Projet de Loi de Finances pour 1995.)

3.2.16 Duties applicable on construction equipment: Duties applicable to construction equipment and materials are in the range of 20 percent. There is no discrimination in the level of duties applied to foreign or local contractors.

3.2.17 Import Restrictions: There are no import restrictions other than the usual items such as firearms etc.
3.2.18 **Domestic Preference**: The domestic preference provision is always included in bidding documents for goods and works. It is seldom applicable for goods but often applicable for works under Bank-financed projects in Madagascar.

**Import Trade Verification**

3.2.19 **Efficiency of Custom Services**: Private sector importers unanimously were satisfied with the time taken (not more than 48 hours) to clear their goods out of customs. They also have every interest in getting their goods out as apparently pilfering is an ever-present risk. The only complaint they had was with the uneven application of import duties. The customs may review and modify the duties assessed by the pre-shipment inspection company VERITAS (see para 3.2.20 below). The customs are not computerized and differences between duties assessed by the pre-shipment company and those by the custom services cannot be dealt with on-line. Although there were complaints from Project staff about delays in clearing goods, those delays are attributable not to the customs but more to the need to obtain from the Ministry of Finance the necessary duty exemption certificate and the inherent lethargy of civil servants.

3.2.20 **Preshipment Inspection**: Preshipment inspection is carried out by Company VERITAS which charges 1 percent commission on imports. All imports above US$ 3,500 are subjected to quality, quantity and price verification. VERITAS also assesses import duties on behalf of the Government. There have been several cases of under invoicing reported. Once VERITAS has made the assessment, it is up to the customs services to claim payment of the assessed duties. During this operation, customs may review and modify the applicable custom duties. As stated above, importers have complained about the uneven application of duties for the same type of goods. Discrepancies between assessments made by VERITAS and the customs services are known to VERITAS with a time lag of as much as 6 months since customs operations are not computerized. A computer system would have allowed immediate on-line exchanges/explanations of variances and could increase customs receipts.

3.2.21 **Main features of the program**: Preshipment inspection exists since 1982. Company SGS operated between 1982 and 1991. For nine months between January and September 1991, the two companies VERITAS and SGS were in competition, with importers having the choice to select either one. This system did not work as the outcome was less revenue for the Government since more work for the companies could only be derived if the assessment made by them was in favor of the importers. From September 1991, VERITAS has been the only preshipment inspection company with a contract valid until December 1996. It appears that the quality of the service is reasonably good but it would improve should a computer system be installed and more transparency exercised in the custom duties collection.
3.3 Employment of Consultants: The existing regulations in general are compatible with Bank Guidelines. Quality is the main criterion in consultant selection which can be either through a shortlist or a sole source agreement. Open consultation which is not acceptable under the Bank Guidelines is also possible under the Code. Details of the regulations applicable to consultants are described under Articles 128 to 134.

3.3.1 Selection: In general, recruitment of consultants is done through proposal invitation based on a shortlist. Sole source recruitment is allowed but under exceptional circumstances. The selection procedures follow the same ones as for goods and works, which means that the CAO and the CCM intervene as allowed under the Code. There is no particular problem with Bank procedures.

3.3.2 Procedures for inviting, opening, reviewing, and evaluating proposals: There is no real issue since executing agencies have been encouraged to use the Bank's Model Letter of Invitation (LOI) except that there might be a tendency at times to continue using price as an evaluation criterion even when carrying out sectoral, institutional and other complex studies. Bank staff should ensure that this is avoided when reviewing LOI.

3.3.3 Process for negotiation and contracting of services: Bank procedures are usually followed and there is no particular issue.

3.3.4 Policy regarding the use and eligibility of foreign consulting firms: Foreign firms are not discriminated against. In fact, there have been some complaints from the President of the Association of Malagasy Consulting firms (ACMA)\(^{12}\). In order to get experience, they set up joint ventures with foreign firms. The joint venture proposals are usually more expensive and therefore less competitive than other Malagasy firms who choose to make proposals on their own. Unfortunately, not much can be done when proposals are subject to a combined technical and financial evaluation.

3.3.5 Government owned Consulting firms: With the Government policy of disengagement, the majority of Government owned consulting firms have been privatized. Only LNTPB (see para 3.2.12 above), RINDRA an audit firm and CFC, a firm specialized in training of Government staff in management are either partly or wholly Government owned.

3.3.6 Payment policies: There is no particular problem except some delay in payment. Bid and performance guarantees or retention monies are not requested.

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\(^{12}\) The Association des Consultants Malgaches (ACMA) is an association regrouping about 20 consulting firms. These are mostly accounting, auditing and management firms.
4. PRIVATE SECTOR PROCUREMENT.

4.1 Established Commercial Practices.

4.1.1 National Restrictions and Preferences: There are no national restrictions nor preferences on imports from anyone one country. Importers are also free to transport their goods by any maritime company or airline they choose. There is no restriction on insurance either.

4.1.2 Established Commercial Practices: Commercial practices are normally based on competitive practices common to market economies. There is a large number of importers of goods such as vehicles, computers and construction materials, goods which are commonly acquired under Bank financed operations and competition is consistent with normal practices. Procurement is either done by local agents through offshor principals, by single-source suppliers of spare parts or solicitation of bids from different overseas supplier, price, quality and delivery period being the main factors of evaluation. On the other hand, for commodities, there is at least one Government owned company (FIBASOM) which may present unfair competition to private importers. It will be necessary to investigate further this company in order to conclude whether it indeed has an unfair advantage.

4.2 Institutional Capability.

4.2.1 The Ministry of Finance was responsible for the implementation of the Structural Adjustment Credit which was completed in 1991. While the ministry has experience in handling and coordinating import programs, an audit would be necessary. It appears that under the Credit, there were major irregularities whereby those responsible had been introducing some fictitious invoices to justify disbursement. The Government was slow in taking action and we understand that those responsible are being prosecuted. It will therefore be necessary to put in place adequate auditing and inspection/verification arrangements under import financing operations.
5. PROCUREMENT-RELATED TECHNICAL ASSISTANCE.

5.1 Previous and Ongoing Assistance. The only major procurement technical assistance provided was under the Accounting and Management Training Project (Credit No. 1661-MAG). This assistance provided by Canadian consultant Maheu-Noisieux consisted of: (i) establishment of a procurement unit within the Ministry of Finance responsible for public contracts; (ii) training of trainers and staff; (iii) setting up a documentation library and data collection, and (iv) review of the procurement regulations. As a result of this assistance, the Procurement Code was updated and senior government officers attended a 4 week Bank sponsored procurement seminar at the International Labor Organization (ILO) in Turin, Italy in September/October 1991 and some 500 project staff followed procurement workshops organized by the Canadian consultant in Madagascar. This training was financed under Credits 1661-MAG, 1905-MAG and 2117-MAG.

Five day workshops on procurement of goods and works and consultancy services (and disbursement) were organized by the Bank for project staff in Madagascar in November 1993 and December 1994. These workshops were given by Bank staff and proved very beneficial. Responses to the questionnaires sent to executing agencies within the framework of this CPAR indicate a very good understanding of Bank procurement policies and procedures.

5.2 Assistance Needed.

5.2.1 Regulations. The Bank should assist the Government in bringing some specific changes, in particular, to stop using the double envelope system in bid opening and the point system in bid evaluation for works, and to introduce bid security provisions.

5.2.2 Institutional. It will be necessary to assist the Government in finding a reasonable solution to the ever-present problem of delays in contract signing. The number of steps for approval, review, control and signatures has to be kept to a minimum. Procurement programming will have to be systematically introduced in every single Bank-financed operation to monitor procurement processing and accelerate project implementation. Delays also encountered in project start-up must be reduced through advanced procurement actions.

5.2.3 Training. The Bank-sponsored procurement seminars have proved to be very productive and should be repeated to maintain an adequate level of understanding of Bank procurement procedures and also to reach as many staff of the Borrower as possible. In addition, it would be good to work with INSCAE, the National Institute for Accounting and Management, to introduce some procurement training courses carried out by Malagasy Nationals with the help of the Bank. This possibility was discussed with INSCAE and the Malagasy Authorities who fully support the idea.
### Summary Checklist of Acceptability of the Borrower's Procurement Procedures for Competitive Bidding

<table>
<thead>
<tr>
<th>Common Issues in Procurement Procedures</th>
<th>International Competitive Bidding: Acceptability/Comment</th>
<th>National Competitive Bidding: Acceptability/Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Eligibility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Exclusion of participants.</td>
<td>Acceptable; Open to all Bank member countries.</td>
<td>Acceptable. Foreign bidders allowed to bid.</td>
</tr>
<tr>
<td>1.2 Boycotts.</td>
<td>No boycotts.</td>
<td>No boycotts.</td>
</tr>
<tr>
<td>2. Advertising</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Insertion in Development Business</td>
<td>Acceptable; General notice published.</td>
<td>Not required.</td>
</tr>
<tr>
<td>2.2 Local press.</td>
<td>Acceptable; Publication in two dailies, Midi Madagascar and Madagascar Tribune.</td>
<td>May sometimes use registered list instead of advertising as required by local regulations. Must insist on advertising in local press.</td>
</tr>
<tr>
<td>2.3 Notification of IBRD members' embassies and trade representatives.</td>
<td>Done.</td>
<td>Not required.</td>
</tr>
<tr>
<td>2.4 Specialized technical journals.</td>
<td>Not done but should be encouraged for complex projects.</td>
<td>Not required.</td>
</tr>
<tr>
<td>2.5 Language of advertisement.</td>
<td>French.</td>
<td>French.</td>
</tr>
</tbody>
</table>
2.6 Time period for bid submission from invitation or appearance of advertisement. Acceptable; Usually 45 days and longer for complex projects. Acceptable; Usually 30 days.

3. Pre- and postqualification

3.1 Use of prequalification procedure. Done when required by Credit Agreement. Used in Agetipa Project through registered list of qualified contractors.

3.2 Basis of evaluation. Although regulations are not specific, minimum technical and financial capabilities are specified through use of Bank standard PQ document. Bank staff should watch out as certain executing agencies may use point system. As for ICB.

3.3 Method of prequalification. Acceptable; Individual advertisement done through dailies. As for 3.1 above.

3.4 Joint ventures between foreign and local firms. Acceptable; Voluntary. Acceptable; Voluntary.

3.5 Number to be accepted. No limit for maximum but minimum 3 required. As for ICB.

3.6 Eligibility of parastatals. Except for Companies SINTP, LNPTB and FTM, there are no other companies which could present an issue. As for ICB.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Mandatory prior registration of bidders with local authorities.</td>
<td>No issue; For foreign bidders, registration required in their own country. For local bidders, local registration required. As for ICB.</td>
</tr>
<tr>
<td>4.2</td>
<td>Local Agent /intermediary required.</td>
<td>No issue. As for ICB.</td>
</tr>
<tr>
<td>4.3</td>
<td>Document in local language</td>
<td>Acceptable. French is used. As for ICB.</td>
</tr>
<tr>
<td>4.4</td>
<td>Bid security, if specified, only through local Bank.</td>
<td>Although there is no provision for bid security in the regulations, there is no problem in requesting it in bidding documents. However, executing agencies may ask that it is provided by a financial institution sanctioned (agrée) by the Ministry of Finance instead of a reputable institution. As for ICB.</td>
</tr>
<tr>
<td>4.5</td>
<td>Restrictions on means of delivering bids.</td>
<td>None. None.</td>
</tr>
<tr>
<td>4.6</td>
<td>Bid validity extension.</td>
<td>Sometimes abused; Bank staff should monitor. As for ICB.</td>
</tr>
<tr>
<td>4.7</td>
<td>Currency of bid.</td>
<td>Acceptable; Local expenditures paid in local currency. No restrictions on foreign currency in denomination or %. Acceptable; Local currency used.</td>
</tr>
<tr>
<td>4.8</td>
<td>Currency of payment.</td>
<td>As above. As above.</td>
</tr>
<tr>
<td>4.9</td>
<td>Domestic Preferences.</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Acceptance</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>4.9.1</td>
<td>Bank: Goods</td>
<td>Acceptable; Follows provisions of Credit Agreement</td>
</tr>
<tr>
<td>4.9.2</td>
<td>Bank: Works</td>
<td>Acceptable; Follows provisions of Credit Agreement</td>
</tr>
<tr>
<td>4.9.3</td>
<td>Other borrower preferences</td>
<td>Acceptable; There are special preferences for use of local labor, materials but the Code specifies that they apply as long as they do not violate international agreements</td>
</tr>
<tr>
<td>4.10</td>
<td>Restrictions on sources of transportation and insurance</td>
<td>None</td>
</tr>
<tr>
<td>4.11</td>
<td>Restrictions on sources of labor and materials</td>
<td>As for 4.9.3 above.</td>
</tr>
<tr>
<td>4.12</td>
<td>Public bid opening</td>
<td>Done</td>
</tr>
<tr>
<td>4.13</td>
<td>Double envelope system</td>
<td>Provision in the Code is not acceptable. In practice, under Bank's projects, they open both envelopes at the same time</td>
</tr>
<tr>
<td>4.14</td>
<td>Two step procedure</td>
<td>Has not been used in Madagascar</td>
</tr>
<tr>
<td>4.15</td>
<td>Automatic rebidding if less than prescribed minimum number of responses</td>
<td>No issue; Allowed only if no bids or no responsive bid received or lowest bid exceeds the budget or economic condition justifies it</td>
</tr>
</tbody>
</table>
4.17 Award to lowest evaluated responsive bidder.  | Done.  | Done.  

5. **Contract implementation.**  

5.1 Performance security for goods contracts restricted to bank guarantees issued by local banks.  | Not acceptable; Issuing bank must be sanctioned (agrée) by the Ministry of Finance instead of having a good reputation.  | As for ICB.  
5.2 Performance security on works contracts in form of bank guarantees only.  | Although acceptability of bonds is not covered in regulations, no cases of it being offered or refused is known.  | AS for ICB.  
5.3 Price adjustment provisions for long duration contracts.  | Acceptable; The Code specifies that contracts of duration of more than 18 months must have adjustment provisions.  | As for ICB.  
5.4 Settlement of disputes by local courts or local arbitration procedures.  | Acceptable, but international arbitration recommended (normally provided in bidding documents although the Code does not specify it for international financing).  | Acceptable.  

| 5.5 | Material modifications of contract scope and condition during implementation. | Acceptable; Follows provision of Credit Agreement normally, i.e. prior review. | As for ICB. |
LIST OF APPLICABLE LAWS AND REGULATIONS


4. Arrêté No 0892-92 of March 6, 1992 introducing the use of standard bidding documents.

5. Arrêté No 1006-Fin of March 6, 1970 constitutes the general conditions of contract for the procurement of goods (Cahier des Clauses Administratives Générales des marchés publics de fournitures).

6. Arrêté No 1007-Fin of March 6, 1970 on standard bidding documents for the procurement of goods (Cahiers des charges-type pour appels d'offres de fournitures).

7. Arrêté No 1008-Fin of March 6, 1970 constitutes the general conditions of contract for the procurement of works (Cahier des Clauses Administratives Générales des marchés publics de travaux).

8. Arrêté No 1009-Fin of March 6, 1970 on standard bidding documents for the procurement of works (Cahiers des charges-type pour appels d'offres de travaux).
LIST OF REFERENCE MATERIALS


5. Responses to Questionnaires from the following projects:
   1. Credit 2117 - Antananarivo Plain Development Project (Tana Plain).
   2. Credit 2591 - Antananarivo Urban Works Project (AGETIPA).
   3. Credit 2625 - Cyclone Emergency Rehabilitation Works Project.
   5. PPF 787 - Transport Sector Project.
   6. PPF 758 - Water Supply Sector Project.
   7. Credit 2625 - Cyclone Emergency Rehabilitation Works Project.
   10. Credit 2243 - Livestock Sector Project (Elevage).
   12. Credit 2538 - Petroleum Sector Reform Project.
   13. PPF 788 - Telecommunications Project.
   14. Credit 2094 - Education Sector Reform Project (CRESED).
   15. Credit 2251 - Health Sector Improvement Project (CRESAN).
   16. Credit 2382 - Manpower Training Project (PREFTEC).
   17. Credit 2474 - Food Security and Nutrition Project (Secaline).

LIST OF PERSONS MET

Mr. Faharoudine, Secretary General, Ministry of Finance and Budget.

Ms Arlette Rakotondrazafy, Comité de Suivi, Ministry of Economy and Plan.

Central Tender Board: Mr. H. Ranaivo (Chairman), Mr. A. Raharimanana, Mr. F. Razafindrakoto, Mr. M. Ramahanjelina, Mr. J. Razafindrabenja, Mr. R.F Ramanitrera, Mr. M. A. Randrianasolo (members).

Mr. Vola. Razafindramiandra, Director of Customs.

National Institute for Accounting and Management (INSCAE): Ms. J.J Raharisoa, Ms M. Raharozatovo, Mr. M. Razafinfranto.

Agriculture Projects: Ms A. Rajaonarimanana, Mr. M. Andrianirina, Mr. A. Ramarozatovo, Mr. E. Andriamparany, Mr. Rakotonirina, Ms Noelle. Mr. Labokoson (Env), Mr. F. Rasolo, Mr. G, Andrianirina (Fofifa), Mr. J. Ratovoniala (DEF), Ms Rahelarijaona, Mr. Rasorisoa, Mr. Ralijaona (MEADR), Mr. J. Rabemanantsoa (PPVA), Mr. O. Rajonson (Rural Finance), Mr. C. Rasendratsirofo, Mr. Maminjatovoniaina (PPEA).

Infrastructure Projects: Mr. W. Rakotondravelo (Road), Ms L. Rajaonah, Mr. J.G Rabary, Mr. M. Razafimanantsoa (BPPA), Mr. Z. Ramandimbiarison (AGETIPA).

Education and Health Projects: Mr. A. Razafindraibe, Ms M. Ratsaralafy, Mr. G.S Ranaivoson (CRESED), Mr. V. Harison (Japanese Grant), Mr. P. Erika (CRESAN), Ms P. Ramahandrison, Mr. I. Miadalalao (CNFTP), Mr. B. Andriamparany (SECALINE), Mr. H. Ramahandrisoa (FID), Mr. P. Ratsimbazafy, Ms N. Randrianarivelo (PASAGE).

Industry and Energy Projects: Mr. R. Robinarina (MEM), Mr. M. Andriamboavonjy, Mr. E. Rakotondrainibe, Mr. B. Rakotodrafara (JIRAMA), Mr. J. Rafalimanana, Mr. A. Ranaivoson (MEM), M. M. Ratsimiala (SOLIMA).

Adjustment Projects: Mr. Robiarivony.

Ms Dane, VERITAS.

Private sector importers: Mr. Goulam (EDELEC), Mr. Rajaonary (SCIM), Mr. Y. Rabetokotany (SICAM), Mr. D. Randriamaromanana (SOCIMEX), Mr. O. Rasamindisa (TOYOTA RASSETA), Mr. de Jaeger (FRAISE), Ms J. Andriamamonjarisoa (STEDIC), M. H. Andriajohary (LANDIS), Mr. L. Ramasaona (COROI), Mr. de
Villeneuve (Sucre de Bourbon), Mr. E. Rakoto (FIBASOM), Mr. J. Andrianavalona (DARRIEUX), Mr. N. Razamakoto, Mr. M. Andrianjaka (SOMACODIS).

Malagasy Association of Consultants (A.C.M.A): Ms O. Randrianonimandimby (President).

Union of Construction Companies: Mr. Labruyère, President.