



PROCUREMENT POLICY OFFICE  
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# E-NEWSLETTER

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## 1st Pan Commonwealth Public Procurement Network Conference

### Welcome to delegates

I have the pleasure to present this special issue of the PPO Newsletter on the occasion of the holding in Mauritius of the 1st Pan Commonwealth Public Procurement Network Conference. Mauritius is indeed honoured and privileged to be associated with this historical event.

I seize the opportunity to extend a warm welcome to the delegates and wish the Conference plenty of success.

**P. Beeharry**

**Director**

**PPO**

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**SPECIAL EDITION - CPPN Conference  
Need for Partnership in Public Procurement**



## Public Procurement Reforms in Mauritius

*The size of the national budget consumed through the procurement of goods, works and services has led countries and international agencies to give a high importance to public procurement. Thus, it is believed that a sound public procurement does not only help to obtain value for money, quicker execution of projects and delivery of services while ensuring greater accountability, transparency and fairness, but it can also be used to achieve government's economic, social and environmental goals.*

*On the international and regional levels, it is considered as an effective tool for the promotion of trade without restrictions. There is no doubt then why public procurement reforms are on the agenda of every government and there is pressure for modernization, openness and harmonization with international norms and best practices. Mauritius is therefore no exception and is headed towards further reforms in public procurement.*

### First attempt in 1994

The first attempt to reform the public procurement system in Mauritius was made in 1994, following an allegation of corruption in a major procurement exercise in a parastatal body. At that time, while procurement in parastatal bodies was not regulated, Ministries and Departments were subjected to rules contained in the Financial Management Manual, which were also quite minimal in terms of procurement methods and process. Government thus introduced the Central Tender Board Act and established the Central Tender Board with the mandate of overseeing the bidding process and approving award of major contracts.

Mauritius was among the first countries to adopt the UNCITRAL Model Law on Public

Procurement, when it proceeded with major reforms through the introduction of the Public Procurement Transparency and Equity Act in 1999. However, although it was a very good piece of legislation, it had a very short life owing to implementation constraints due to some rigid internal structures contained therein. Moreover, the sensitization programme which preceded its implementation was too short and officers concerned were not adequately prepared. Its repeal was followed by the re-enactment of the Central Tender Board Act and the appointment of a High Powered Committee to carry out a review and recommend appropriate reforms.

### The Public Procurement Act

The Public Procurement Act (PPA) was thus enacted in December 2006 and proclaimed in January 2008. The one year gap between its





enactment and proclamation was deliberate to allow sufficient time to sensitise all stakeholders on the forthcoming changes as well as the reasons motivating them. Hence lessons learnt from the failure of the first attempt were taken on board both when drafting the legislation as well as during preparations for implementation.

Deliberately, it was decided not to phase out the Central Tender Board overnight despite the fact that the UNCITRAL Model Law and the COMESA Procurement Directive prescribed a decentralized system. The main considerations were to allow time to build capacity in public bodies and to enable stakeholders to build trust in the new system. This approach proved to be effective. The prescribed thresholds for public bodies to resort to the Central Procurement Board (CPB) were reviewed twice and by 10 folds for Ministries and Departments within a year without any bidder protesting against the rise. On the other hand, the Independent Review Panel (IRP) heard several appeals from aggrieved bidders and issued many decisions in favour of applicants. Moreover, bidders and public officials/public bodies now have the comfort of having the Procurement Policy Office (PPO) where they may seek advice or clarifications whenever they feel the need. Another positive effect is the enhancement of transparency through easy access to information.

## The PPA, a hybrid product

The Public Procurement Act is a hybrid product of the combination of the UNCITRAL Model Law and World Bank Procurement Guidelines. The institutional set-up is in accordance with COMESA Procurement Directive, which has been slightly modified to include the Central Procurement Board. Moreover, it

is largely compliant with the Government Procurement Agreement of the WTO.

The legal framework for Public Procurement is composed of:

- Public Procurement Act (2006)
- Public Procurement Regulations (2008) also known as the principal regulations
- Public Procurement (Suspension and Debarment) Regulations (2009)

During the early stages of implementation, a few amendments were made to the Act and its accompanying regulations to address implementation problems. For example, the Act made mention of independent evaluators which resulted in misinterpretations and avoidance of appointment of evaluators from the public body concerned with the procurement, when in fact the correct meaning was that evaluators should have no conflict of interest. Another omission noted was that although there were provisions in the Act for sanctions for breach, provisions relating to the mechanism in place for dealing with such cases were missing.

Following a review done by the COMESA in 2008 and 2009 and another review exercise carried by the World Bank in the context of the Piloting Use of Country Systems, it was found that Mauritius satisfied 14 out of 17 mandatory requirements against the OECD/DAC Assessment Methodology Tool. As a result of these assessments and implementation experience, some weaknesses were identified in the Legal Framework.

## The Legal Framework -The Weaknesses

The most important weaknesses were:

- The present institutional set-up raises the issue of ownership and accountability in





# The Reform Process

the award of major contracts, where the CPB conducts the bidding process and also approves the award of the contract. In case of challenge or application for review to the Independent Review Panel, a public body cannot properly support the evaluation carried out at the CPB. Funding agencies are also reluctant to fund projects that are not fully owned by the public body.

- The decisions of the Independent Review Panel are not binding on the Public Body. In quite some cases decisions issued by the IRP were not implemented, thus creating frustration among the bidders whose applications were successful.
- The PPO, although an independent policy making and oversight institution, is accommodated within the Ministry of Finance and Economic Development (MOFED). Such an arrangement and dependence on the MOFED dilute the perception of independence of the PPO.
- Internal organisational set-up for procurement within the public bodies is not defined in the Act.
- Omissions in the Act or regulations of important provisions regulating the bidding

process, which are however being observed through the standard bidding documents which are for mandatory use.

## A Review Committee

Government appointed a review committee to study the above recommendations and to propose changes which have to be made to the present legal framework. On the basis of recommendations made, Government has circulated a white paper to invite comments and proposals. Further reforms will thus be implemented soon.

Besides legislative reforms, actions are underway to implement the following:

- E-Procurement
- Sustainable Procurement
- Framework Arrangements
- Electronic Reverse Auctions

*In conclusion, we may say that despite delays in starting implementation of reforms for quite some years, through a collaborative approach, it has been possible for Mauritius to secure trust of stakeholders and move forward quite rapidly. With further success, it may even serve as a model.*





## Framework Arrangements in Public Procurement

### 1. Introduction

*Procurement through framework arrangements, that is Framework Agreement and Framework Contract, is a process that has been practiced under different names in some form or other for many years. In the last decade there has been substantial development in the type of framework and its adaptability to different environments, while ensuring value for money and good procurement practices. Its marked effectiveness in public procurement has made of it a process par excellence recognized by top international institutions as an undeniable tool to expedite procurement processes.*

*Works Contracts based on unit prices commonly*

*known as Rate Contract for procuring the services of one Contractor for a particular region during a defined period or Supplies Contract based on fixed prices for supplies, as and when required, are basically Framework Contracts. To stimulate competition such contracts are entered into with suppliers on an estimated volume of procurement likely to be executed during a defined period.*

*Utilities have recourse to a specific type of framework that is negotiated on the basis of pre-determined rates - the common denominator being same task same rate, irrespective of the technical capacity of the contractor.*

### 2. Why Framework Agreement?

The drawbacks of the existing type of framework contracts referred to above are:

- when applying rates that have been agreed upon it does not always yield into competitive contract price;
- contract prices being fix, the supplier may, in case of price increase in the market, compromise on quality or if the supplier has offered prices based on anticipated increases the Public body may end up paying higher than market rates; and
- relying on a single contractor for a particular region may not be cost effective in case of default on the part

of the contractor or in the event additional capacity is needed in the region

Framework arrangements today allow for public bodies to procure from:

- one or more suppliers on fix rates basis; or
- from many suppliers through mini-competition;

Public bodies may choose from different models of framework arrangements that provide the possibility for longer contract period without necessarily locking into with one or a pre-selected number of suppliers.

Framework arrangements have become an essential tool that renders public procurement more effective





whilst simplifying the administrative processes. It may relieve resource persons from conducting repetitive bidding process and assist public bodies with limited resource to conduct procurement in

compliance with procedures in force. Centralized procurement may be conducted by lead public bodies or an agency, through Framework Agreement.

### 3. Planning for Framework Arrangements

The Procurement Policy Office, with the assistance of Dr. Paul R. Schapper, a World Bank Consultant, is in the process of implementing Framework Agreement for pilot projects. Dr. Schapper is the co-author for "Introduction to Framework" issued through the World Bank. This document, the EU Guidelines and the UK Office of Government of Commerce (OGC) procedures for framework are referred to in this article and also in the implementation of the pilot projects. Considerations are presently being given to implement Framework Agreement for procurement of:

- (a) desktop PCs and Laptops;
- (b) papers for office use;
- (c) medical supplies; and
- (d) procurement of foodstuffs for catering services.

For procurement of medical supplies it would be a Framework Agreement put in place and managed by the Ministry of Health and Quality of Life for its sole use. In the case of the IT equipment it is believed that the Central Informatics Bureau falling under the Ministry of Information Technology and Communications would be most appropriate to operate as a lead public body to implement and manage the framework arrangements. Government Printing would be another lead public body for procurement of papers on behalf of the other public bodies whilst anyone amongst the Ministry of Health and Quality of Life, the Police

department and the Prison department who are the major buyers of foodstuffs could be the lead public body for framework arrangements in this sector.

The public sector does not at present have any centralized procurement body but proposals have been made in the White Paper issued for modernizing the Public Procurement Framework to revisit the functions of the Central Procurement Board so as to entrust to this institution the role of a centralized procuring body. It would *inter alia* identify opportunities for Framework Agreements, implement and manage those Agreements.

#### (a) Assessing the need for Framework Agreement

There may be a scope for framework arrangement where:

- (a) there is repetitive bidding process at the level of different public bodies for procurement of common use items;
- (b) there is scope for aggregation so as to optimize on economies of scale and/or to standardizing products with a view to facilitating procurement of items requiring complex technical specifications;
- (c) there is need to conduct procurement at short notice for varying volumes and unpredicted deliveries;





- (d) there is repetitive bidding for goods with same specifications and performance parameters; and
- (e) where the need for additional suppliers is desirable as back-up capacity.

To determine whether it would be beneficial to shift over to a framework arrangement in respect of a type of procurement, it is advisable for the lead public body to conduct a brainstorming session among the parties concerned in procuring that specific service, goods or works so as to:

- (a) establish whether a Framework Agreement is appropriate for the procurement under reference, and if so;
- (b) formulate or customize the type of framework that will be most appropriate for that purpose.

The views of suppliers in finalizing the type of framework arrangement will no doubt contribute in securing their participation in the procurement process.

The choice for framework arrangements should not be a means to avoid open competition. The process should in fact avoid locking into a monopolistic situation and be opened to a range of suppliers of different categories.

### **(b) Benefits of Framework Arrangements**

- enhancement of budget and procurement planning;
- reducing procurement cost and assisting public bodies with limited procurement capacities;

- strengthening buyers-suppliers relationship;
- simplifying procurement processes; and
- avoiding delays due to Challenge and Appeal on the part of aggrieved bidders.

### **(c) Objectives of Framework Agreement**

Once the need for Framework Agreement is established, the public body conducting the process for Framework Agreement has to establish the objectives set for the implementation of the Framework Agreement which may also include non-priced benefits.

The objectives will also be the basis of monitoring the functioning of the framework arrangements, initiating measures for improvement, and attending to unforeseen market situations.

### **(d) Resources required for implementation of Framework**

A small team of professionals well conversant with the procurement cycle for the procurement under reference and experienced in the potential of the market as well as the expectation of end-users is desirable for the setting up of a particular framework. They may wish to conduct preliminary surveys to understand the requirements of other stakeholders so as to propose a workable framework for implementation.

### **(e) Procurement Process in the execution of Framework**

In line with procurement legislations in force, the procurement process would start with an open Invitation of Proposals for the selection of potential suppliers to subsequently





enter into either a **Framework Contract** or a **Framework Agreement** for the supply of goods, services or works for a defined period of time.

The first stage of the procurement process leading to a Framework Agreement will constitute part of the contract to be entered into with the supplier subject to a mini competition for the commercial aspect based on terms and criteria already defined at the first stage.

The Request for Proposals may be in the form of a bidding document for selection of a qualified supplier on a price or rate basis complete with a proposed contract to be entered into with the selected supplier where the intention is to enter into a Framework Contract. The bidding document will clearly spell out the mechanism that will be in place for other public bodies to enter into contract as appropriate. The scope of the cover of supplies and the rights of the public bodies to procure the same goods, services or works outside the framework shall be expressly inserted in the contract document. A similar procurement exercise has been executed by the Ministry of Public Infrastructure, National Development Unit, Land Transport and Shipping for the procurement of petroleum products for government vehicles from a single supplier.

For the purpose of mounting a Framework Agreement, the Request for Proposals shall be mainly for selecting a reasonable number of suppliers capable to execute procurement contracts of the nature and sizes likely to be allocated subject to mini competitions. Care should be exercised in defining selection

criteria so as not to exclude SMEs or to privilege major economic operators in the selection process.

The preparation of specifications, qualifications and experience criteria shall take into account the expectation and past experience of end users, the likely engagement of suppliers and market behaviour for the specific procurement.

## (f) Communication with Public Bodies

The Lead Public Body or Central Procurement Body shall establish clear instructions for other public bodies on the procedures to be followed to enter into contract with suppliers under a Framework Agreement and on the mechanism in place for conducting mini competition at their level. They should generally make good use of the framework arrangements except for such cases where the Framework Agreement would not be appropriate.

The performance of suppliers shall be systematically assessed and reported to the lead public body given that the suppliers have obligations under the Framework Agreement to fulfill their duty.

## (g) Standard Bidding Documents

Standard Bidding Documents to serve as templates for Framework Agreement and Framework Contract will be issued, after testing a first set of newly drafted documents for the pilot projects.





## 4. Changes in legislations

In the course of preliminary interactions with public bodies for the pilot projects, certain proposals have been received in respect of changes that are to be brought under the Public Procurement Act to allow for implementation of Framework Agreement. They include:

- Authority for the lead Public Body to seek relevant information from public bodies when monitoring the effectiveness of Framework Agreement;
- Duty of Public Bodies to supply information related to framework arrangements as requested by the lead public body;
- Selection of suppliers for the purpose of conducting mini-competition in a closed arrangement;
- Obligation on the part of public bodies to make use of framework arrangements, where applicable; and
- Use of electronic mode to conduct mini competition pending the coming into operation of e-procurement.

## 5. Conclusion

Consultation is still on-going for the framework arrangements of the pilot projects to become operational as from the beginning of the next financial year. A survey is being conducted to obtain data from public bodies in respect of purchase of IT equipment and papers so as to estimate the requirements and to standardize on the specifications for the pilot projects. The first sessions of brainstorming with the respective public bodies have been quite fruitful. As from beginning of October 2011 resource persons at the level of the lead public bodies are likely to

be nominated for the preparation of relevant documents.

PPO will be accompanying the lead public bodies in the preparation of the pilot projects so as to fine tune the procedures and documents required for the implementation of framework arrangements. Once a central procuring body is in place, it is expected that some 40 to 50 percent of public procurement processes would be undertaken under framework arrangements within a three-year period.



## Analysis of Independent Review Panel (IRP) decisions

### Introduction

The successful implementation of public procurement reforms largely depends on the level of trust the stakeholders have on the procurement system and the institutions. In Mauritius, this has been achieved through the establishment of the Procurement Policy Office, as policy making and oversight institution, the Central Procurement Board is responsible for the approval of the award of major contracts by public bodies, and the Independent Review Panel to deal with complaints from bidders.

The decisions of the review panel, besides addressing the grievances of bidders, are eye openers on weaknesses, both in the system as well as in capacity. They can therefore be very useful for learning and to avoid similar mistakes as well as indicators prompting appropriate remedial action. An in-depth analysis of the decisions issued by the IRP since its creation revealed interesting information which is summarized below.

### Findings

#### Cases Reviewed

In 2008 and 2009, the IRP reviewed 21 and 30 cases respectively. The number has dropped to only 9 in 2011 (as at August end), which is indicative of a drastic fall in dissatisfaction among bidders. Although significant progress was noted on the part of public bodies, the results of 2011 give an altogether different picture. However, a closer look reveals that the cases concerned refer to three specific public bodies and that bidders are more knowledgeable and henceforth challenge awards with more certainty. Overall, it is observed that public bodies have improved their performance since 2010, which results from capacity building initiatives taken by the PPO and caution exercised by public bodies by seeking advice from the PPO whenever they were in doubt about procedures to follow.

#### Nature of Faults Committed

An analysis of the nature of faults committed reveals that in almost all cases they relate to wrong evaluation. This indicates inadequate capacity. But capacity alone is not the problem. There is also an indication of legal and institutional problems, as illustrated below as decisions issued were not implemented. Although such was revealed in only a few cases, they are quite significant. These are detailed in the following table.





Categories of Weaknesses found					
Shortcomings	Category	Number of Cases			
		2008	2009	2010	2011
Wrong Evaluation	Capacity	10	11	10	5
Vitiated Process	Capacity	3	2	0	1
Decision not implemented	Legal	4	3	1	
Decision not implemented	Institutional	2	3	1	

It is also relevant to note in which type of contracts, the appointed evaluators often go wrong. This is illustrated by the following table.

Type of contract	Total	Overall %
Consultancy	3	8%
Works	6	16%
Services	9	24%
Goods	19	51%
<b>Total</b>	<b>37</b>	<b>100%</b>

It will be seen that the cases mostly relate to procurement of goods.

## Analysis of the types of fault

- **Use of Evaluation Criteria not spelt out in Bidding Documents or non application of full award criteria**

As shown above, the evaluators went wrong in all the cases where the IRP ruled in favour of the applicants.

- **Award to non-responsive bidder**

In a number of cases award of contracts was approved in favour of bidders who have not submitted substantially responsive bids. In the case of Estee Ltd. v/s the Ministry of Health and Quality of Life, a non responsive bidder was selected for award of a contract for the supply of files and prongs. In the case of Metex Ltd. v/s the Central Water Authority, the BEC ignored the fact that the selected bidder was not eligible according to the qualifications criteria. The award of this contract, which was for the supply of water meters, was maintained despite the fact that the IRP ruled that the selected bidder was not responsive.

In the case of Luxconsult (Mauritius) Ltd. v/s the Road Development Authority, the IRP recommended the payment of compensation to the applicant as the contract had wrongly been awarded to a non responsive bidder who had already started implementation.





- **Vitiated Process**

In three cases the IRP found that the process was vitiated. This was so in the case of Bospavy Ltd. v/s the Pamplemousses/ Riviere du Rempart District Council, where clarifications were sought from a bidder whose bid was not responsive on ground of major deviation. In the case of Maxiclean Co. Ltd v/s Municipal Council of Curepipe, it was found that the Municipal Council had proceeded with the award of a contract for cleaning and scavenging services which was not in full compliance with the approval conveyed by the CPB and the specifications in the Bidding Documents. The IRP concluded that the process was vitiated. The other case was Versailles Ltd v/s the Police Department.

## Legal and Institutional Weaknesses

The analysis of the cases also disclosed some important legal and institutional problems. The IRP is an institution established under the Act with specific responsibilities and tasks. The non binding nature of its recommendations allowed public bodies to ignore the recommendations of the IRP. In 5 cases the initial decisions were maintained despite the fact that the IRP had found merit in the applications for review. In 8 cases the public bodies concerned chose not implement the recommendations of the IRP and proceeded with re-bid exercises.

Two of the cases where the initial decisions were maintained have been quoted above. The other three relate to Crisil Risk & Infrastructure Solutions Ltd v/s Road Development Authority, Veolia Eau Compagnie General des Eaux v/s Ministry of Renewable Energy and Total (Mtius) Ltd, v/s Ministry of Public Infrastructure, Land Transport and Shipping.

In the case Crisil Risk & Infrastructure Solutions Ltd v/s Road Development Authority, it was found that the selected bidder had been allowed to modify its financial proposal during negotiations by seeking clarifications as to whether it was inclusive of Value Added Tax (VAT), when it was clearly stated in the bid that the bidder was zero rated for its services in South Africa and its Mauritian sub contractors would raise VAT in Mauritius. It concerned the procurement of the services of a transaction adviser for a Public Private Partnership (PPP) project.

In the case of Veolia Eau, Compagnie Generale des Eaux v/s Ministry of Renewable Energy and Public Utilities, two different measures were alternately applied to assess financial soundness despite the professional advice given by the expert, hired to advise the Bid Evaluation Committee, that the application of the measures were giving different results.

In the case of Total (Mtius) Ltd v/s the Ministry of Public Infrastructure, Land Transport and Shipping, the Bid Evaluation Committee had ignored the cost that would be incurred by vehicles to refuel at the stations of the selected bidder as it had limited number of stations scattered over the island.





## SWOT Analysis


### SWOT Analysis of Suppliers

	(Positive)	(Negative)
	Strengths	Weaknesses
<b>Internal</b>	<ul style="list-style-type: none"> <li>Have fairly adapted to the new procurement system</li> <li>Aware of their rights to challenge procurement proceedings</li> <li>Cases won at the IRP indicate their understanding of the whole procurement process and award criteria</li> </ul>	<ul style="list-style-type: none"> <li>Rising number of cases lost</li> <li>Bidders still misunderstand award criteria</li> <li>Unnecessarily spend time and cost in filing applications for wrong cases</li> </ul>
<b>External</b>	Opportunities	Threats
	<ul style="list-style-type: none"> <li>Enhanced capacity to submit fully responsive bids</li> <li>Enhanced transparency and fairness</li> </ul>	<ul style="list-style-type: none"> <li>Risk of not being awarded contract despite favourable decision of the IRP</li> <li>Restrictive award criteria may limit participation of capable bidders</li> </ul>

The facts that only a very small percentage of the total value of contract awards were subject to applications for review and that the number of applications have drastically fallen in 2011 indicate that both bidders and public officials have fairly adapted to the new system within a relatively short time of three and a half years. Bidders demonstrate trust in the system through the exercise of their rights to challenge with the expectation of winning. Those cases where applicants won indicate the strength of bidders capacity in understanding the process and the award criteria, although conversely they indicate some lack of capacity of public officials, mainly evaluators.

The weak point is that in a number of cases determined in favour of applicants the recommendations of IRP were ignored. This aspect, although related only to a few cases, weakens the trust acquired and therefore represents a threat as well as being a weakness. One case had revealed restrictive award criteria and the threat of recurrence exists, which can further jeopardize bidders' trust. However, opportunities for enhanced capacity and enhanced transparency and fairness exist

### SWOT Analysis of Public Officials

	(Positive)	(Negative)
	Strengths	Weaknesses
<b>Internal</b>	<ul style="list-style-type: none"> <li>Have fairly adapted to the new procurement system</li> <li>Enhanced Capacity</li> <li>Decrease in cases lost</li> <li>Continuous capacity building</li> </ul>	<ul style="list-style-type: none"> <li>Weakness in evaluation of qualifications and technical criteria</li> <li>Lessons not learnt from past cases</li> </ul> 



## SWOT Analysis of Public Officials

	Opportunities	Threats
External	<ul style="list-style-type: none"> <li>• Further enhancement of capacity</li> <li>• Further empowerment to handle higher value contracts</li> <li>• Increased trust of bidders</li> </ul>	<ul style="list-style-type: none"> <li>• Answerable for faults in respect of contracts awards not approved by the public body</li> <li>• Risk of not being sponsored for appropriate training</li> </ul>

Overall, the decreasing trend in the number of cases referred to the IRP is indicative of enhanced capacity of public officials as a result of continuous capacity building, either through formal training or the availability of on request advice from public officials at the PPO. There are opportunities for further empowerment of public bodies and increased of bidders' trust as public bodies have shown signs of remarkable improvements in handling higher value contracts.

The major weaknesses relate to lack of capacity in evaluating according to the qualification and award criteria. As evaluation of bids for major contracts are done at the CPB, the resulting threats are that public bodies may continue to be answerable for awards not made by them, which raises the problem of accountability. There is also the risk that some officers who deserve to be trained further may not be sponsored.

## SWOT Analysis of Legal and Institutional Framework

	(Positive)	(Negative)
	Strengths	Weaknesses
Internal	<ul style="list-style-type: none"> <li>• Strong legal framework based on the UNCITRAL Model</li> <li>• Have a Procurement Policy Office with well defined policy making and oversight role, functions and responsibilities</li> <li>• Have an Independent Review Panel to deal with applications for review from unsatisfied bidders</li> <li>• Strong government commitment to review the system through the appointment of a Reform Review Committee</li> </ul>	<ul style="list-style-type: none"> <li>• Flaws in the PPA allow avoidance of implementation of the decisions of the Independent Review Panel</li> <li>• In view of limited resources IRP is unable to give a decision within the statutory period of 30 days in a few cases</li> <li>• Initial decisions are maintained after review despite decision to the contrary by the IRP</li> <li>• Lack of ownership in award process of major contracts</li> <li>• The Procurement Policy Office is attached to the Ministry of Finance and Economic Development, which weakens its being perceived as an independent body</li> </ul>





## SWOT Analysis of Legal and Institutional Framework

	Opportunities	Threats
External	<ul style="list-style-type: none"> <li>• Ongoing review of the legal and institutional framework with the collaboration of the World Bank and the COMESA which will result in further improvements through amendments to the PPA on recommendations made on completion of works by the Reform Review Committee</li> <li>• Enhanced Bidders' trust in the procurement system</li> </ul>	<ul style="list-style-type: none"> <li>• Risk of bidders' mistrust in the system if PPA is not amended to review legal and institutional framework, which can further result into:             <ul style="list-style-type: none"> <li>○ Further non implementation of decisions in favour of applicants</li> <li>○ De-motivation of officers having to defend award decisions they were not involved in</li> </ul> </li> </ul>

The above SWOT analysis of the Legal and Institutional framework reveals very interesting facts. The remarkable success achieved in the implementation of the PPA within a short period of three and half years results mainly from a strong legal and institutional framework. Stakeholders' trust in the system was almost easily acquired through the functioning of the system with the established framework. However, parallel to its strengths, the weaknesses are worth taking care of. Any delay in the determination of an appeal may delay the implementation of projects while causing dissatisfaction to stakeholders. Further, the non-implementation of the decisions of the IRP frustrates bidders and jeopardizes their trust in the system.

Great opportunities exist to further enhance the system. The recommendations of the World Bank following the current review exercise it has undertaken and previous recommendations made by the COMESA, if implemented, will further enhance the system. However, if the system is not reviewed and remedial action not undertaken, then the risks exists that stakeholders will lose trust in the system and public officials will be de-motivated. These may have very disastrous consequences.

### Recommendations

The main weaknesses revealed were in the terms of capacity of evaluators, bidders and to some extent to the capacity of public officials in general. Moreover, besides deficiencies in capacity, the findings also indicated weaknesses in the legal and institutional framework. The threats mainly relate to risks of applicants not being awarded contracts despite decisions in their favour, capacity of public officials and the risk of mistrust in the legal system and institutions. The recommendations are therefore related to these specific findings.

### Capacity

Although the PPO is conducting the Certification Programme in Public Procurement (CPPP), which aims at equipping procurement officials with the basic knowledge and skills to be able to discharge their duties





properly, this has proved to be insufficient. As most of the cases determined in favour of applicants result from errors in bid evaluation, it is recommended that an intensive workshop be organized to train evaluators and procurement officers, including those involved in approval of award of contracts, and on Bid Evaluation. The workshop should also cater for the development of appropriate evaluation criteria to achieve the main objective of a sound public procurement system, which is value for money, while applying the principles of competition, fairness, equity, accountability, non discrimination and transparency. The success of such a workshop will depend on the proper development of the syllabus per category of officers, the selection of the right participants and the selection of a high calibre resource person having a proven track record of past experience. Such a resource person should be well versed in World Bank bidding documents given that the Standard Bidding Documents issued by the PPO are based on the World Bank model.

The Diploma and Degree Courses run with the collaboration of the University of Technology, Mauritius (UTM), should be further enhanced to cater for actual needs and students should be exposed to other models of public procurement such the EU and World Bank which will further allow them to look more critically at the system in Mauritius and contribute towards its continuous improvement.

## Legal and Institutional

The weaknesses found mainly relate to the following:

- Non binding nature of the IRP decisions
- Resistance to accept and implement IRP decisions
- Absence of ownership of public bodies in the award process of major contracts
- Observance of the statutory period of 30 days for the determination of appeal cases and possibility of reducing the delay so as to decrease the overall procurement lead time
- Negative perception concerning the independence of the PPO as it is under the administration of the Ministry of Finance and Economic Development

The recommendations to address the above weaknesses are:

- Amendments to the PPA to enable the following:
  - The decisions of the IRP should become binding
  - The whole bidding process should be conducted by public bodies themselves, with the requirement that award of major contracts should be subject to prior review by the CPB at pre-determined stages
  - The IRP should be further strengthened with a view to enable the determination of cases within a shorter period,
  - The PPO should be detached from the Ministry of Finance and Economic Development and given an autonomous and independent status of a regulatory authority

The results of the implementation of the above recommendations should be measured by the PPO and corrective actions taken, whenever required.





## Conclusion

Besides revealing weaknesses, the findings also indicate strengths and opportunities for further improvements as well as threats, which can well be mitigated through planned actions and measurement of their effect. Two important tasks which need to be given top priority are the capacity building of evaluators and amendments to the Public Procurement Act to make IRP decisions binding.

The 2011  
Pan-Commonwealth Public Procurement  
Network  
Conference and General Meeting  
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## Measuring corruption as a first step to mitigate its prevalence

**C**orruption is part and parcel in every society. Corruption takes different forms: bribery, embezzlement, nepotism and patronage. Corruption brings with it various ill effects. To cure its ill effects, measurement can be used. Though some argue that corrupt transactions are impossible to measure directly as these transactions operate in clandestine and therefore cannot be recorded, research shows that this is not always true. Corruption can be measured. Indeed, corruption indicators can be obtained at micro level, national level and international level. However, these indicators are mostly subjective and are based on perception of corruption.

In addition, corruption measure should include determination of the specific measures required to mitigate the identified corruption problems. For example, empirical surveys can provide the information needed to develop an anti-corruption agenda (World Bank, 1998)

### Measurement Methodologies

1. Forensic investigations and audits for obtaining hard data

Procurement Prices can be used as a means of determining corruption. (DiTella and Savedoff 2001). In addition, by comparing project outcomes with the actual results (Urta 2007), corruption can be identified. Another way is to compare the spending on public works in different regions of Italy

with similar private sector procurements (Golden and Picci). Corruption in construction of a road in a local community in Indonesia can be assessed by comparing corruption perception by local individuals and real corruption.

2. Surveys of the direct experiences of certain groups of people.

By interviewing certain groups of people, data can be collected and used for investigation in suspected cases of corruption.

3. Surveys of the perceptions of corruption held by sufficient number of stakeholders (business, public officials, individuals etc).

Various indicators can be used. The most popular being the Corruption Perception Index which is available for about 178 countries (2010 figure). It is published by the Transparency International annually. Others indicators include Business Environment and Enterprises Survey (BEEPS) and the World Governance Indicators developed by the World Bank.

Indicators based on single data source can also be used.

4. Proxy indicators
5. By assessing a country's institutional profiles.

Corruption can be measured 'by tracking countries' institutional profiles such as their procurement





practices, the administrative framework and the budget management (Francisco – Javier Urra 2007). In addition, improper organizational structure can lead to situations of conflicts of interest.

#### 6. **Corruption can also result due to low qualified staff.**

### **Measures to combat corruption**

#### 1. **Sanctioning of suppliers**

Debarment is an excellent strategy for discouraging suppliers involved in corrupt practices. However, debarment should be designed with greatest care.

#### 2. **The Concept of self-cleaning or rehabilitation**

This concept is adopted by a few States (Arrowsmith et al). It aims at mitigating the inherent limitations of debarment such as the social impacts on those firms that rely significantly on Government Contracts. However, its effectiveness is yet to be determined.

#### 3. **The development of the Integrity Pact (IP)**

Transparency International through its annual surveys identified one of the causes of bribery in procurement is due to the fact that suppliers are convinced that without bribing public officials, they will never win a Government contract. This led to the development of the Integrity Pact (IP) which is a tool that gives confidence to the economic operators

of the system. Indeed, this tool helps in convincing the suppliers that the contracting body does not take bribes and in so doing, the suppliers will be able to operate honestly.

#### 4. **Penalties**

Research shows that the above measures might not be as effective as giving penalties to contractors. However, penalties should not be that severe since it might have a drastic consequence. Indeed, if too severe penalty is applied, the economic operators might lose confidence in the system and might stop participating in Government Contracts. As a result, a proportionate penalty should be applied to prevent the eventual loss of the best economic contractors, which, in turn, will lead to high contract prices.

#### 5. **Professionalism**

To cater to this problem, a professional development programme can be implemented. Indeed, Professionalism promotes best practices and reduces malpractices. However, training should be supported by other measures.

### **PPO Newsletter**

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