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Papua New Guinea Country Procurement Assessment Report

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Central Operations Services Unit
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ACRONYMS & ABBREVIATIONS

ADB	Asian Development Bank
AusAID	Australian Agency for International Development
OAG	The Office of the Auditor General
CAS	Country Assistance Strategy
COI	Certificate of Inexpediency
CPAR	Country Procurement Assessment Report
CSM	Consultants Selection Manual
CPPR	Country Portfolio Performance Review
CCSTB	Central Supply and Tenders Board
DOF	Department of Finance
DOH	Department of Health
DOW	Department of Works
FIMS	Financial Information Management System
FIs	Financial Instructions
FMM	Financial Management Manual
FISD	Financial Inspection Services Division
GPM	Good Procurement Manual
ICM	Initial Concept Memorandum
MOF	Ministry of Finance
NEC	National Executive Council
NCB	National Competitive Bidding
NGO	Non-Governmental Organization
NPB	National Procurement Board
OM	Operation Manual
PEG	Procurement Engagement Group
PER	Public Expenditure Review
PERR	Public Expenditure Review and Rationalization
PERRIC	Public Expenditure Review and Rehabilitation Implementation Committee
PFMA	Public Finances Management Act
PNG	Papua New Guinea
PSRMU	Public Sector Reform Management Unit
SBDs	Standard Bidding Documents
STB	Supply and Tender Board
TA	Technical Assistance
USD	United States Dollar
WB	World Bank

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PREFACE

This Country Procurement Assessment Report (CPAR) for Papua New Guinea (PNG) is based on the draft report of a joint team of staff from the Asian Development Bank (ADB) and the World Bank (WB) who visited PNG from January 27 to February 15, 2003 and an updating of that draft in March 2006 by a small team from the WB. The CPAR Team comprised of Nurul Alam (Senior Procurement Specialist and Task Team Leader); Cyrus Talati, (Senior Economist); Harbaksh S. Sethi (Consultant – Procurement Advisor); Lawrie Carlson (Consultant – AusAID Procurement Specialist); Donna Quartley-Parker (Team Assistant) of the WB and Robert Rothery of the ADB. A draft Report was sent to the Government of PNG in late 2003 for comments. However, due to strained relationship between the Government and the WB, and internal delays within the WB, the Report was not finalized.

The follow-up missions of March and June 2006, comprised Cristiano Nunes (Procurement Specialist and Task Team Leader), David Howarth (Consultant – Procurement Advisor) and Etel Bereslawski (Senior Procurement Specialist of ADB).

Both assessments are based on the Initiating Concept Memorandum (ICM) and guidance provided on the scope and objectives at a January 16, 2003, ICR meeting.

During both missions meetings were held with staff from government agencies, non-governmental organizations (NGOs), the private sector, and donors (the list of persons met is at Annex 1). A workshop was held with key government staff during the 2003 review. The WB's standard CPAR questionnaire was completed in early 2003 and updated during the 2006 review.

The overall objectives of this report are to: (a) identify areas to improve procurement efficiency throughout the country; (b) identify an Action Plan which will address areas of procurement inefficiency and also improve the public's perception of public procurement.

Acknowledgements

The CPAR teams wish to acknowledge the extensive cooperation and assistance received from PNG agencies, organizations and institutions, and from ADB, AusAID and WB staff who provided inputs. The 2003 CPAR Team expresses its particular thanks for the cooperation, assistance and inputs to the report contributed by the Government counterpart team: Messrs. Gabriel Yer, Lawrence Ouma (Department of Finance), James Melegepa (Public Sector Reform Management Unit) and Jack Sariman (Central Supply and Tender Board). Similarly the 2006 Team expresses its appreciation to the Government team of: Bryan Kimmins (CSTB), Lawrence Ouma (DOF), James Melegepa (PSRMU), Paul Aigilo (DOW), and Joshiah Novulu (UNitech) and the inputs provided by Debbie Reschke and Yvonne Green (AusAID).

At the January 17, 2003, review meeting for the Initial Concept Memorandum, the WB County Director for PNG, Xian Zhu, offered his guidance on the scope and overall

direction of the assessment. Messrs Naseer Rana (WB-EAPCO), Hatim Hajj (WB-EASTR) Amarnath Hinduja, Head, ADB Project Administration Unit, and Mr. Robert Christie of AusAID were the Peer Reviewers for the 2003 draft report. Messrs. Enzo De Laurentiis (WB-LCSPT), Asha Ayoung (WB-AFTPC), Benson Ateng (WB-EACGF) and Robert Rothery, ADB Principal Procurement Specialist were Peer Reviewers for the 2006 draft report.

Mahesh Sharma, WB Country Manager in PNG in 2003 and Benson Ateng in 2006, offered the team advice and guidance in the country throughout the missions. Ms. Hannah Ove of the World Bank Country Office in Port Moresby, and Cybele Druma of the Public Sector Reform Management Unit (PSRMU) helped the teams in arranging all the logistics and the workshop program.

EXECUTIVE SUMMARY

Introduction

1. **Need for Procurement Reform:** For a number of years the Independent State of Papua New Guinea (the Government) and donors have recognized the need to improve the efficiency of Government procurement. Since 2001, when the Government carried out a review of procurement, some positive actions have been taken by the Government to address country-wide procurement issues. A number of important reforms to improve procurement efficiency have now been implemented but there is general agreement, by the Government and the major donors, that much more needs to be done.

2. **Basis of this Report:** This report builds on the findings and recommendations arising from a World Bank (WB) Country Procurement Assessment Report (CPAR) mission of early 2003 and a follow-up mission of March 2006. Both AusAID and the Asian Development Bank (ADB) have assisted in the formulation of this report.

3. **The Government's Initiatives:** A Department of Finance (DOF) 2001 review of procurement prompted amendments, in December 2003, to the 1995 *Public Finances (Management) Act (PFMA)* and, in 2005, to the associated Financial Instructions (FIs), which present Government's requirements for implementing the *PFMA*. Since the issuance of the 2005 FIs, a number of working documents for procurement have been prepared under AusAID financing and are in the course of being implemented including a Good Procurement Manual (GPM) and an Operations Manual (OM). Most recently, in 2006, the DOF is in the course of issuing a Financial Management Manual (FMM) which pulls together, in one document, the 1995 *PFMA* and FIs and all subsequent amendments. Actual usage of the GPM and the OM manuals has been incomplete because wide dissemination to Government staff, contractors, suppliers and consultants is limited due to the lack of a country-wide procurement training program, and because of staffing shortages in the central Government agency responsible for development of procurement capacity in the country, the Central Supply and Tenders Board (CSTB).

4. **Consistency with Procurement Strategies:** The findings and recommendations of this CPAR are consistent with the recommendations related to procurement contained in the Government's *Medium Term Development Strategy 2005 – 2010* of November 2004, the WB Interim Strategy Notes for PNG of March 18, 2005; and September 2, 2005, and Aide-Memoire for the Public Expenditure Review and Rationalization (PERR).

Summary of Critical Findings

5. **Procurement Legal Framework:** The Government, since undertaking the 2001 review of procurement, has strengthened the procurement capacity framework by building on the 1995 and 1996 amendments to the *PFMA* with the issuance of the 2003 amendment to the *PFMA* and the FIs of 2005. Specifically: (a) the institutional

arrangements for procurement have been clarified and the roles of Supply and Tender Boards (STBs) and government departments defined; (b) CSTB has been made responsible for overseeing public procurement; and (c) guidance procurement documentation, comprising the FMM, GPM and OM, has been prepared. The real bottlenecks now are in availability of standard bidding documents (SBDs) and dissemination of the new manuals and staff training in their use, so that the level of practice can start to catch up with what exists on paper. Relative to the huge needs, only limited progress has been made in these areas and in ensuring that CSTB is staffed to carry out its newly extended role.

6. **Procurement Policies and Regulations:** The December 2003 amendments to Section 39 of the *PFMA* and the 2005 revision of the FIs have improved the legal basis of public procurement. The present sections of the *PFMA* related to procurement (Sections 39 to 47) are limited in their scope and, in some areas, allow a considerable amount of discretion. In the past, the relatively loose procurement regulations, coupled with poorly drafted bidding documents, have enabled politicians to manipulate the award of contracts without fear of any consequences. The FMM and GPM are referred to in the *PFMA* and the FIs and provide guidance on the legal provisions for procurement.

7. **Organizational Structure:** Taking into account the lessons learned from the past when a more decentralized framework was tried, the CPAR team considers that the present framework for procurement may be appropriate and notes the Government's position that the present organizational structure should not be changed in favor of decentralizing procurement to the departments in the immediate future. The present structure, with a centralized and oversight role for CSTB, a reduced number of Specialized STBs, and one provincial STB for each province, appears to work better than previously, when procurement was decentralized and chaotic. Though most of the provincial STBs continue to be subject to political pressure related to the award of contracts, CSTB's review of any major contract does now provide some protection against illegal interference.

8. Dominating any strategy designed to improve the procurement performance of government agencies and devolve authority to them, is the alarming shortage of staff who understand the basics of procurement. Where there is local expertise, it must therefore be used judiciously, and this is a virtue of the current setup. Of the limited amount of procurement expertise in PNG, almost all is located in CSTB, the three specialized STBs, and one or two departments such as the Department of Works.¹

9. **Capacity Building:** The overall procurement capacity in PNG is considered very weak, with only a handful of experienced procurement specialists. In almost all Government departments, the present procurement capacity is severely constrained because of the lack of trained procurement staff and inadequate knowledge of correct

¹ An experienced procurement specialist with extensive knowledge of PNG has estimated that about 700 Government staff trained in procurement procedure would be required for decentralization and that less than 20 trained staff are currently available.

bid procedures. The large number of aid and donor-funded programs and projects, often with their own procurement arrangements and own procurement staff, has further complicated the development of local expertise. This report recommends that building local procurement capacity be addressed on an urgent basis as it is considered to be an effective approach to impacting procurement efficiency in the short term, and is a prerequisite to any subsequent improvement. But CSTB does not have the staff resources to prepare and provide country-wide procurement training. In the first stage, high priority should be given to developing, within CSTB and the other STBs, a core of national procurement professionals. The second stage (overlapping the first stage) would be focused training for all Government staff involved in any way with procurement, along with contractors, suppliers, consultants and civil society.

Other Main Findings

10. Procurement Policies and Regulations:

- The misuse of the non-competitive Certificate of Inexpediency (COI), a provision designed for use only in emergency situations, has been substantially reduced by provision in the 2005 FIs to limit the situations where they can be used in response to natural disasters and other real emergencies, but this method of procurement is still being used too often in order to avoid public tendering.
- The *FI 1/2005* includes clear reporting requirements for Specialized and Provincial STBs and government departments to submit annual reports on procurement to CSTB but the information is not being provided. This report found insufficient data to make any direct estimate of the level of procurement expenditure.
- The 2003 Amendment to *PFMA* and the FIs of 1/2005 specify the roles of CSTB, the Specialized STBs and the Provincial STBs. However there is provision for the Minister of Finance to establish new Specialized and Provincial SBDs and make rules for their operation. This provision has not been used to date but it does provide wide powers for the Minister to establish an STB whose roles and responsibilities are not covered by the *PFMA* and its FIs.

11. Institutional Performance:

- At the time of the March 2006 CPAR mission, the CSTB had been without a full time chairman for several months. Action is now being taken to appoint the Acting Chairman as the full time Chairman (temporary, but legal measures have been taken at each CSTB meeting to permit a Board member to act as part-time chairman). This action must be completed as a permanent chairman is required if the CSTB is to fulfill its legal mandate but with several vacancies CSTB is presently over-stretched. The new Chairman intends to move quickly on the recruitment of qualified staff to fill vacancies.

12. Procurement Procedural Tools:

- While the FIs require that any government agency carrying out procurement should use SBDs produced by CSTB, and the Gazelle Restoration Authority and one or two departments who have implemented major donor programs now routinely use SBDs, for many government departments inefficiency, confusion and poor accountability surround the undertaking of a procurement exercise. A significant improvement in country-wide procurement can be achieved if high priority is given to completion of all procurement documents, in particular the SBDs now under preparation, and simplified procurement implementation procedures based on the existing manuals.

13. Risk Analysis:

- The January/February 2003 CPAR mission found that the private sector considered public procurement to have severe deficiencies in the areas of lack of transparency (particularly the evaluation of bids); poor documentation; slow payment, and inadequate contract management.
- The March 2006 Bank mission was informed by experienced procurement specialists that there has been, since 2003, an improvement in the procurement efficiency of Government. Nevertheless, the Ombudsman and others state that it is not unusual for politicians to pressure senior Government staff members on procurement matters.
- Well-prepared bid documents, which clearly set out how bids will be evaluated, and that are evaluated by qualified staff, will make it much more difficult for contract awards to be manipulated. As it will be some time before this objective is achieved, the present procurement implementation risk is regarded as **very high** in PNG.

Recommended Action Plan

14. **Immediate Priority:** This CPAR proposes (1) that an Action Plan for implementation of the recommendations of this report be agreed with the Government and also with those donors whose programs would significantly benefit from more efficient procurement; and (2) that funds be made available to the Government from donors to assist with the implementation of the most critical activities in the Action Plan. During the June 2006 mission, the findings, recommendations and Action Plan of the CPAR were discussed with the Government counterpart team and this CPAR reflects the results of those discussions. The top three immediate priority objectives are:

First – Fill the position of Chairman of CSTB with a qualified person and fill the staff vacancies in CSTB.

Second – Identify a capacity building plan and implement the identified high priority first phase, including a training program for staff involved in procurement in the CSTB, the three Specialized SBDs and the 20 Provincial STBs. This will include undertaking a training needs assessment/institutional review, including identification of a medium/long-term institutional development strategy.

Third - Develop SBDs for work, goods and services which are in accordance with Government procurement legislation and which can be easily modified for donor-financed contracts.

15. **Medium Term to Long Term:** Based on the results of the implementation of the above capacity building plan, once substantial progress is made in building up the procurement capability of all Government staff involved in procurement, CSTB could be replaced with a National Procurement Board (NPB). To achieve this, a 'road map' needs to be prepared to take CSTB from where it is now to where the central procurement agency needs to be in a few years. The major role of CSTB is presently to be involved in day-to-day reviews of contract awards and requests for COIs. The long-term role for NPB would be to delegate almost all contract awards to line departments and focus on overseeing procurement by: (a) implementing procurement training programs so that there is an adequate number of trained procurement specialists in the country; (b) ensuring that well-prepared procurement documents are available; and (c) recommending to the MOF the changes needed in procurement legislation.

16. **Implementation Structure:** Under the guidance of the DOF, it is recommended that CSTB be made responsible for implementation of the Action Plan. The present Board of CSTB is made up of representatives of key ministries, the private sector and civil society, and meets on a regular basis. The Government's 'high level' monitoring could be made through the quarterly reports to the Public Expenditure Review and Rationalization Implementing Committee (PERRIC), with discussions taking place, from a donors' perspective, through the existing Procurement Engagement Group (PEG). It is also recommended that in order to provide the specialist assistance needed for implementation of the Action Plan (such as the identification and implementation of the capacity building plan and the training needs assessment and implementation), the Government request grant financing from ADB, AusAID, and the WB.

1. BACKGROUND

Country Economic Context

1.1 With a population of about 5.2 million, PNG has a rich natural resource base and potential for sustained economic growth and an improvement in living standards. The country has large deposits of gold, copper and other minerals, substantial oil and natural gas reserves, large areas of arable land potentially available for high value agricultural production, an abundant supply of freshwater, large tropical rainforests and extensive maritime fisheries.

1.2 The economy is highly dualistic with a small urban-based formal sector that is driven by the large enclave mineral economy and spending from a substantial public service. An estimated 80 percent of the population meanwhile relies on mixed subsistence and lives on communal land with deficient access to basic services. The incidence of poverty has increased from 25 percent of the population living on less than US\$1/day in 1996 to an estimated 39 percent in 2003. Poverty is largely a rural phenomenon with above 90 percent of those below the poverty line being rural dwellers. In the last two years the economy has stabilized and poverty has declined but high population growth and the incidence of HIV, has negated some of the improvement in the economy.

1.3 PNG faces formidable development challenges. Human resource capacity is a major constraint to develop capable institutions. The population, which speaks over 800 unique languages, is widely dispersed across the rugged topography of the country, which has limited physical infrastructure. The country is geologically prone to natural disasters, including earthquakes, volcanic eruptions and tsunamis, that frequently require Government to undertake emergency works.

Public Sector Procurement

1.4 The WB and other donors have been involved in public sector procurement reform in PNG since the mid 1980s. In 1993-1994 the WB initiated an assessment of the country's procurement system that identified a number of areas for improvement including: (i) discretionary evaluation factors leading to unfair award decisions; (ii) adjustment of prices based on actual cost increases rather than national price indexing; (iii) procedures for selection of consultants which were not competitive; (iv) complex relationships among national STBs, provincial STBs and implementing agencies; (v) a complicated domestic preference system related to the ownership structure of bidders; and (vi) discriminating role of the bid evaluation committees in the application of procurement procedures. Government initiatives, over the last ten years, have resulted in most of these issues being largely resolved. Specifically: changes in legislation have clarified the roles of the various agencies involved in procurement; the complicated domestic preference system removed from the PFMA; and, for contracts above K 100,000, CSTB's monitoring role has led to most discretionary proposals for contract awards being overturned¹. More work needs to be done in introducing standard documentation and instructions for the selection of

¹ CSTB is also responsible for the control and regulation of contracts with a value of less than K100,000.

consultants. It is doubtful whether price indexing is feasible in PNG and, in practice, the few awards made for price increases are reported to be justified.

1.5 However, other existing and potential procurement problems still exist such as: the continuing attempts to misuse the Certificate of Inexpediency to avoid competitive bidding, despite clear, written instructions and there is little or no overview of the large number of small contract awards.

WB Portfolio

1.6 The WB's portfolio in PNG presently comprises five operations, with one agricultural project on which preparation has just started. A review of the supervision reports of the status of the ongoing projects, Implementation Completion Reports (ICRs) and Procurement Post Review Supervision Mission Reports of projects shows that implementation of Bank projects has met with mixed success but that the trend is improving. In the past, major issues have often been related to a weak human resource base and shortage of counterpart funds. Lack of experienced local procurement professionals continues to be a major issue with substantial reliance on expatriate consultants in most projects. Over the last couple of years the shortage of counterpart funds has eased. The overall performance of the portfolio is rated as Satisfactory and the procurement as Moderately Satisfactory.

Table 1. Composition of World Bank Loan Portfolio (Existing and Proposed)

Loan #	Project Name	Year Signed	Year Closing	Loan Amount (US\$M)
45250	Gazelle Restoration Authority II	1999	2007	25.26
70180	Mining Sector Institutional Strengthening Technical Assistance Project	2000	2006	10.00
70190	Gas Development & Utilization Technical Assistance Project	2000	2006	7.00
71190	Road Maintenance and Rehabilitation Project	2002	2007	40.00
TF055524	Teachers' Solar Lighting Project	2005	2010	0.99
			Total	83.25
Proposed	Agriculture – Smallholders Project			20.00

WB Country Strategy

1.7 The last Country Assistance Strategy (CAS) for PNG was approved in 1999. Following issues in 2002 related to the suspension of the WB's forestry project, preparation of a new CAS was not considered appropriate. An Interim Strategy Note, dated March 18, 2005, has been prepared in lieu of the CAS and provides guidance for the Bank's operations until the next CAS is prepared, which is scheduled for early 2007. The Interim Strategy covers an 18 month timeframe with a focus on: (a) promoting development dialogue and

mitigating the decline in social indicators by deepening the relationship with Government at all levels, reaching out to stakeholders in broader society, and enhancing coordination with other development partners; and (b) building the foundations for improved governance and sustained recovery through analytical work, selective capacity building, and targeted priority investments in basic services; improving human development outcomes and protecting the poor and vulnerable. Support for these areas will primarily be through analytical and advisory activities, and capacity building, with some modest lending interventions.

1.8 Preparation of this CPAR is consistent with the WB's Interim Strategy, and the findings and recommendations of this CPAR are consistent with the recommendations related to procurement contained in the September 2, 2005, Aide-Memoire for the WB's Public Expenditure Review and Rationalization (PERR), and those in the Government's Medium Term Development Strategy 2005–2010 of November 2004.

ADB Strategy and Portfolio

1.9 ADB's strategy emphasizes improving the quality and efficiency of public sector management as well as creating an enabling environment for private sector development. To meet the social needs of the disadvantaged, ADB has focused on providing policy and financial assistance to the health sector. To address poverty reduction issues and promote sustained economic growth and equity, ADB's strategy supports investment in transportation and rural development.

1.10 In addition ADB has provided a substantial amount of grants for TA with a focus on institutional development covering a wide range of sectors. The ongoing loan portfolio comprises projects in the sectors of: agriculture and natural resources (fisheries); transport and communications; and finance. One of the major elements of ADB's current loan and TA program is public sector reform. Implementation of these projects has suffered from some delays, due to low institutional capacity and a general weakness of the public sector in PNG.

Table 2. ADB's Portfolio Implementation Status

Loan #	Project Name	Year Signed	Year Closing	Loan Amount (US\$M)
1652	Smallholder Support Services Pilot Project	1999	2006	7.6
1703	Financial Management Project	1999	2006	25.8
1706	Employment Oriented Skills Development Project	2000	2007	20.8
1709	Road Maintenance and Upgrading (Sector) Project	2000	2008	63.0
1754	Rehabilitation of the Maritime Navigation AIDS System project	2001	2006	19.8
1768	Microfinance and Employment Project	2001	2006	10.5
1889	Nucleus Agro-Enterprises TA Loan	2002	2005	6.6

1812	Provincial Towns Water Supply and Sanitation Project	2002	2007	17.2
1925	Coastal Fisheries Management and Development Project	2003	2008	6.2
2079	Community Water Transport Sector	2004	2012	18.3
			Total	195.9

2. FINDINGS

PUBLIC SECTOR

Legal and Regulatory Framework

2.1 Following the WB's 1993-94 assessment of procurement in PNG, Government replaced the legislation governing procurement that had been in use since 1986 with the *Public Finance Management Act (PFMA)* of 1995 and the Regulation of 1996. Some improvements are reported to have occurred with the enactment of the 1995 *PFMA*. However, the expected benefits of this Act did not immediately materialize because the broad provisions of the Act, concerning the institutional arrangements for procurement, were only clarified by further legislation enacted in 2003. This legislation, based on a December DOF 2001 procurement policy paper, entitled *Review of Government Arrangement - National Supply and Tenders Board*, was approved by the National Economic Council (NEC) in the same month. This review proposed a number of important institutional and procedural reforms to improve procurement efficiency, and many of these were then implemented through the 2003 and 2005 amendments of the *PFMA* and its FIs.

2.2 The 2003 amendment to the *PFMA* brought considerable improvement on the institutional front because it clarified the role and structure of the STBs and enlarged the role of the Central Supply and Tender Board (CSTB). Specifically, (a) the power of the Minister of Finance with respect to CSTB Board appointments was reduced; (b) the delegated authority for Specialized STBs was increased; (c) two STBs were abolished; (d) the role of CSTB was expanded to include the review of all contracts for Government departments above K100,000; and (e) CSTB was made responsible for the monitoring of all Government procurement and advising the Minister of Finance of any needed changes to procurement legislation.

2.3 However, on the operational front, the Financial Instructions (FIs) required to implement the 1995 *PFMA/Regulation* and its 2003 amendment were not prepared and issued until 2005. In the meantime, the previous FIs, based on the 1986 Act, continued to be used. The 2005 FIs apply to all government entities and institutions, including public corporations, and public bodies which are not explicitly exempted by an act of Parliament.

2.4 The 2005 FI calls for the preparation of a Good Procurement Manual (GPM) that provides guidance on procurement implementation. Following the issuance of the 2005 FIs, the GPM and an Operational Manual (OM) were prepared with support from AusAID. In 2006, a Financial Management Manual (FMM) has been prepared which presents the

PFMA, FIs and amendments in one document. There are three volumes of the FMM: Volume 1 is for use in financial administration of the national government; Volume 2 is for provincial and local-level governments; and Volume 3 contains forms for use of all three levels.

2.5 Over the last ten years, and in particular since the DOF 2001 review of procurement activities, the Government has taken several positive steps to address country-wide procurement issues. Most of the 2001 review's recommendations have been implemented; Annex 2 documents the progress made to date on the review's main recommendations. The main outstanding institutional recommendation concerns the creation of a single National Procurement Board; the Government believes that this would be premature at this time. There is general agreement by the Government and the major donors that much more needs to be done in three other areas: training, staffing, and preparation of easy-to-use Standard Bidding Documents (SBDs) with clear bid evaluation processes aimed at achieving efficient use of public funds.

2.6 While the new procurement manuals provide a working basis for the detailed implementation of the *PFMA* and the FIs, there is a need to prepare documents that are targeted at specific audiences such as the Board members of STBs and the training of civil society and contractors. There are also still a number of areas of the present legislation that should be improved to bring them into line with the best international practice; these are outlined below for institutional and operational areas and recapitulated in Annex 3. Overall the FIs and FMM do help greatly to clarify the parts of the *PFMA* that address procurement, but having a separate act for procurement would enable these scattered provisions to be drawn together in a coherent whole. At an appropriate time, consideration should therefore be given to enacting a separate act for procurement.

Institutional Framework

2.7 **Current Institutional Framework:** The legal responsibility for managing the State's finances in PNG, including procurement, so that a "full accounting can be made to Parliament," is the DOF. The Minister of Finance has the authority, by notice in the *National Gazette*, to establish Specialized National STBs and to make rules consistent with the *PFMA* and the FIs for their operation. For goods, works and related services, the DOF, on behalf of the Minister, manages the overall legislative framework by recommending and formulating revisions to the *PFMA*, its Regulations and FIs. The Government has also established the PERR Implementation Committee (para. 1.7), which oversees the country's major public financial management improvement actions. To strengthen financial management across Government, the Committee is monitoring nine targeted programs of which qualitative efficiency targets have been established for CSTB.

2.8 The CPAR has the following comments on the existing legal basis for the current institutional framework for procurement:

- The unlimited nature of Minister of Finance's power to create and dismiss Specialized STBs means that a minister who wanted to avoid the requirements of the *PFMA* could create a new Specialized STP with extraordinary powers; although this authority has never been exercised, it should be removed.

- Likewise, the Minister has not exercised the authority given to him under the *PFMA* to create rules that specify the “method of dealing” with bids. It would be an improvement to amend the *PFMA* so that this authority is vested in the NEC.
- To ensure impartiality, it would be preferable for CSTB to be financed independently, as compared to the present arrangement which is through the DOF budget.

2.9 Procurement of goods, works and services is the responsibility of government departments at national, provincial and local levels. Departments are responsible for the preparation of bidding documents including technical specifications and the evaluation of bids through Technical Evaluation Committees (TECs). If the value of a contract is less than K100,000, the concerned department is totally responsible for the procurement process although the FIs require CSTB to “control and regulate” minor procurement, i.e. less than K100,000 (in practice, CSTB has not been involved in any aspect of minor procurement). The invitation to bid and award of contract for goods, works and services above K100,000 is carried out by CSTB with the departments providing the necessary technical expertise, or by the Specialized and Provincial STBs up to specified Kina thresholds (see Table 3). If the value of the contract is more than K10,000,000, i.e. higher than CSTB’s approval threshold, CSTB issues the invitation to bid and refers the recommendation for approval by NEC before the contract is awarded by the Governor General.

Table 3: Tender Boards and Financial Ceiling

Name of Board	Financial Ceiling (Kina)
Central Supply and Tender Board (CSTB)	10,000,000
Pharmaceutical Supply and Tender Board	1,000,000
Bougainville Infrastructure Supply and Tender Board	1,000,000
Gazelle Restoration Supply and Tender Board	1,000,000
Provincial STBs (19)	3,000,000
All Government Departments and Agencies	100,000

2.10 In the Provincial STBs, the capacity for managing procurement is poor, particularly in the smaller provinces. Small provinces have little procurement expertise and the level of approval authority for these provinces of K3,000,000 is of concern. However, in practice there are few large contracts awarded by the provinces because the majority of a provincial government’s budget is spent on recurrent costs such as salaries and allowances. Of all provinces, the annual development budget for nine is less than K 3,000,000 and the budget of the remainder is of an average of K 13,500,000 per province. In the last four years, only one province in 2005, has submitted to CSTB a recommendation for a contract award with a value greater than K 3,000,000. Of greater concern is the practice of reducing contracts in size so that they can be handled below the specified threshold. The CPAR considers that

improving the procurement efficiency of the Provincial STBs is important and should be achieved, initially through procurement training of one or two key staff. At the same time CSTB must monitor (as required in the FIs) Provincial STB performance by insisting that the specified regular reports are received from each province. At present there is a lack of information on procurement activities in the provinces and this should be rectified through a detailed analysis.

2.11 Improving Institutional Performance: At the time of the increase in CSTB's mandate in 2002/2003 a full-time chairman was appointed at an executive grade. The appointment was for three years. Following completion of his three-year term in October 2005, the chairman's term was not extended and the post has been filled by a part-time chairman who is on the Board of CSTB representing the Chamber of Commerce. Under *PFMA* a full-time chairman is specified. If CSTB is to fulfill its mandated role, considerable leadership needs to be given by a chairman on a day-to-day basis to CSTB's operations. The June 2006 CPAR Team was informed that action is being taken to appoint the present part-time Chairman to the full time post. This Review recommends that this action be completed urgently and be given the highest priority as a well-regarded, experienced administrator as Chairman of CSTB is critical if a program to strengthen procurement on a country-wide basis is to be implemented efficiently.

2.12 At present the CSTB appears to have sufficient staffing to review, and assist in the processing of, contracts that come to it for review. However, CSTB does not have the staff resources to fulfill its mandate in such areas as the "control and regulation" of procurement of less than K100,000. Of the 16 approved positions there are four vacancies and the key position of Secretary to the Board is presently being filled by one of the two positions of Senior Contracts Coordinators. However, no analysis has been made to date of matching the CSTB's staffing to its scope of work, nor has a staff development plan been made. The CPAR recommends that this analysis and staff development plan together with the procurement training program be given high priority.

2.13 Moving to a National Procurement Board. Global experience indicates that the most efficient and transparent arrangement for procurement is to have all government departments carry out their own procurement with only very large or complex contracts subject to a review outside the department. Indeed the DOF's November 2001 review included as two key objectives:

- (i) the decentralization of the procurement process under the full responsibility of the department who will benefit from the procurement and who has the capability to carry out procurement in accordance with PNG's public procurement policies and procedures; and
- (ii) the establishment of a public procurement agency that, as an umbrella agency, would be responsible for the development of procurement regulations; monitoring of compliance by implementing entities; providing guidance, assistance, and training to implementing agencies; and disseminating procurement information.

However, the DOF review concluded that in PNG, at that time, decentralization of all procurement to Specialized and Provincial STBs and departments with oversight only by a

National Procurement Board (NPB) was too risky. DOF also concluded that there was a lack of qualified government procurement staff. To be assured of an effective contract review mechanism, DOF recommended an increased centralization of the procurement under an expanded CSTB.

2.14 Taking into account the lessons learned from the past when a more decentralized framework was tried, and given the continuing shortage of staff who understand the basics of procurement, the CPAR team considers that the present framework for procurement is appropriate, and agrees with Government's position that the present organizational structure should not be changed in favor of decentralizing procurement to the departments in the immediate future. The present structure, with a centralized and oversight role for CSTB, a reduced number of specialized STBs, and one provincial STB for each province, works better than previously, when procurement was decentralized and chaotic. Though most of the provincial STBs continue to be subject to political pressure related to the award of contracts, CSTB's review of any major contract does now provide some protection against illegal interference.

2.15 Dominating any strategy designed to improve the procurement performance of government agencies and devolve authority to them, is the alarming shortage of trained staff. While an experienced procurement specialist with knowledge of PNG has estimated that about 700 trained procurement staff would be needed for a fully decentralized model, only 20 or so are presently available. Of the limited amount of procurement expertise in PNG, almost all is located in CSTB, the three specialized STBs, and one or two departments such as the Ministry of Works. Where there is local expertise, it must therefore be used judiciously, and this is a major virtue of the current institutional setup.

2.16 The CPAR recommends that no more STBs be created but that the medium/long term goal be to increase the thresholds of departments by improving the procurement capability of their staff. This should enable CSTB to gradually diminish its involvement in the day-to-day review of contract award recommendations. At an appropriate time, a central NPB would be established to take over the functions of CSTB, and CSTB would then be abolished. It is important that a strategy be developed for the institutional capacity development of CSTB.

2.17 As stated above, CSTB is expected to have dual areas of responsibility covering both: (i) procurement policy and oversight functions on a permanent basis (to be transferred to NPB); and (ii) procurement operational functions on an interim basis. There is an obvious conflict of interest between these functions and the institutional capacity development should specifically review and recommend an appropriate structure, with the objective of mitigating any perceived conflict of interest.

2.18 Therefore, in the medium term, CSTB shall continue to maintain the operational procurement activities of CSTB and its relationship with implementing agencies at national and provincial levels. In the long-term, a more decentralized procurement system should evolve as and when the national and provincial implementing agencies establish the capability to undertake procurement in a competent manner. At that stage, CSTB (NPB) would have only the central policy and oversight functions. This may take several years.

Policies and Procedures

2.19 **Legal and Regulatory Basis:** The relevant sections of the *PFMA* and FIs for procurement policies and procedures are contained in:

- *PFMA of 1995:* Part VII Sections 40 to 47. These sections establish the applicability of *PFMA* for procurement of goods, works and services by Government agencies, establish preferences for national bidders for contracts with a value less than K 1,000,000; enable international aid agencies to procure outside of the Government processes where specifically provided for in an aid agreement; and provides instructions on what should be considered, in broad terms, when evaluating a bid;
- *FIs of 1/2005:* Sections 10 to 14. These sections establish the key institutional responsibilities for procurement including how bids should be opened and analyzed; when the COI may be used; procedures to be followed when a conflict of interest arises; and how contracts should be implemented, including how to deal with complaints, variations and termination.

2.20 Annex 4 summarizes these provisions. More recently, the GPM and OM procurement manuals have provide detailed instructions for government staff in how to carry out procurement in accordance with the Act and FIs.

2.21 **Procedural Gaps in the *PFMA* and FIs.** The CPAR recommends a number of changes in the *PFMA* and the FIs to make the PNG procurement process more open and efficient and bring it in line with best international practice standards.

2.22 Procurement Methods: The *PFMA* and FIs specify that bids shall be publicly invited. They do not cover single source contracts nor such aspects as the minimum number of bidders. At present, there is no Consultant Services Manual (CSM) and recruitment of consultants has been particularly chaotic, with a range of contract documents being in use, including the WB's procedures. The GPM and the OM have now specified that the WB's Consultant Services Manual be used, but the law needs to require separate provisions for the hiring of consultants as compared to contracts for goods and works. Nor is there an appropriate framework of procedures for the procurement of small goods, works and services, as the legal provisions do not differentiate between large or small contracts.

2.23 Preparation of Bids Under K100,000: A major area of procurement that needs further review, including standardization of procedures and documents, is for contracts with a value of less than K 100,000. This is particularly important given the fact that Provincial STBs and Government departments are reported to split tenders into inefficient, small units to avoid CSTB's review or to dissuade large contractors¹ from tendering. The CPAR found that government departments generally understood that a minimum of three bids should be obtained for bids valued at less than K100,000, but how the three bidders are selected varies from agency to agency.

¹ The term "contractors" is used in this report to cover "contractors, suppliers and consultants."

2.24 Bid Submission and Opening of Bids: No time period is specified for submission of a bid. Often, the bid documents prescribe less than 30 days for preparation and submission. Contractors complain that there is not sufficient bid preparation time particularly when there is a need to get clarifications on badly prepared bid documents. In practice, bids are opened immediately after the closing of submissions and in the presence of bidders' representatives that elect to attend. The FIs and the GPM do not specify that such opening should be promptly after the bid closing time, only that the opening should be on the bid closing day. An important improvement would be to make bid opening promptly after the bid closing time.

2.25 Bid Evaluation and Contract Award: The FIs require that a contract represent value for money and that the procurement "adheres to the principle of transparency, effective competition, fair and ethical dealing and efficient and effective operation." Procedures for the evaluation of bids in accordance with sound practice have now been established with the issuance of the GPM. Specifically the GPM provides guidance on how to establish the Lowest Total Cost (LTC, the same as the WB's lowest evaluated cost). However, the *PFMA*/FIs do not specifically mandate that bids should be packaged on the basis of obtaining the lowest cost, or that the award of a contract be to the bidder with the LTC, and they should. In any case, bid evaluation would be made much simpler and less subject to external pressure if SBDs would be used that clearly specify the bid evaluation criteria.

2.26 Award of Contracts: The *PFMA* allows that in a case of two or more satisfactory bids, a STB may accept one or more bids if there is no advantage to the State in preferring one particular bid over the others. This discretion is unreasonable and the bid award should be to the LTC bidder. Although this provision has never been used it should be deleted from the *PFMA*.

2.27 Negotiation of Contracts: In the *PFMA*/FIs, there is an absence of prohibition on negotiations with bidders following the submission of bids but the GPM and the OM specifically prohibit any negotiation to change unit rates or lump sums in the bid amount and limit negotiations to the scope of the contract.

2.28 Appeal and Complaints Mechanisms: The *PFMA* is silent on how complaints related to procurement should be handled. The FIs require that all STBs have written complaint handling procedures and provide guidance how a complaint, which cannot be resolved by a STB, should be referred to the Ombudsman Commission. The GPM has a separate chapter on the handling of complaints. This specifies that CSTB is responsible for overseeing all complaint handling procedures but that dealing with a complaint rests, initially, with the concerned STB (CSTB is responsible for handling all complaints, related to procurement, made against Government departments). If, following the intervention of the CSTB, the complaint cannot be resolved, the GPM requires that the matter be referred to the Integrity Panel¹. Given its importance, the CPAR recommends that an independent

¹ The Integrity Panel is an independent review panel consisting of a representative from an enforcement agency, central agency and non-government organisation. The role of this panel is to review complaints against STBs which cannot be resolved internally and recommendations for blacklisting referred to it by the CSTB. If the panel confirms that a breach or illegal activity has occurred, then the matter can be referred to the relevant Government agency for correction and/or disciplinary action.

effective bid protest/dispute review mechanism should be properly included in the regulation rather than a manual.

2.29 **Dispute Resolution:** There are no specific provisions in the *PFMA* or the FIs related to resolving disputes on a contract between the Government and a contractor. Inclusion of such a clause in SBDs that is fair to both the Government and contractor is important as both parties will then know, prior to submitting or accepting a bid, how disputes will be resolved. It is recommended that existing SBDs and those now under preparation should include an independent, effective bid protest/dispute review mechanism.

2.30 **Donor Harmonization:** To reduce uncertainty of Government staff and contractors with the different forms of contract documents, there is an urgent need to provide as much consistency as possible between donors in procurement procedures. In this respect the establishment of the PEG in 2004 has helped to bring some consistency to how procurement is carried out by the various donors. With CSTB as the Secretariat, the Group, AusAID, ADB and the WB meet every few months with CSTB to address procurement issues. This arrangement, supported by the already proposed actions for institutional strengthening, is considered to be the appropriate one to pursue the harmonization objectives.

Procurement Planning

2.31 The budget presented to Parliament by the Minister of Finance and the Minister for National Planning and Monitoring identifies major projects of development expenditure and budgetary provision is made, if necessary, over several years for these projects. The Government's budget system does require each government department and agency to plan ahead with respect to recurrent costs and development projects, with a timeframe of several years for major projects. As these projects have traditionally been donor financed, procurement planning is usually a requirement of the donor. But, with the recent improvement in the financial status of PNG, some relatively large capital expenditures are now being self-financed and there is a need to upgrade procurement planning, particularly in line agencies that have major development budgets, such as the Department of Works.

Procurement Implementation

2.32 **Potential Cost Savings:** There are three areas of procurement implementation where significant short-term savings could be realized by Government: by tightening up on the use of COIs, by annual bulk purchase of commonly used items, and fully disseminating SBDs.

2.33 **Certificates of Inexpediency:** In a country such as PNG which is subject to numerous natural disasters, there is a need to have a system which allows contracts, in response to the emergency, to be awarded quickly. For remedial works, or goods, related to a natural disaster, or where expediency is required, the *PFMA* therefore provides for the MOF&T to authorize contracts up to K500,000 to be awarded without a public bidding under Certificates of Inexpediency (COIs). Also the FIs provided for STBs to certify works or goods under a COI up to their thresholds.

2.34 Because COIs were grossly abused in the past, when any need for expediency was used as a justification, the FIs of 1/2005 now restrict their use to specified emergencies and require CSTB review. In addition the GPM stipulates that simply stating that procurement is urgent is not acceptable to justify a COI. Though CSTB reports that, due to lack of resources, it is not able to provide the needed in-depth review of all requests, nevertheless in 2004, of the 70 requests for COI only 47 were approved by CSTB. The percentage of major procurement reviewed by CSTB involving COI has dropped from 42 percent of the total amount in 2001 to less than 12 percent in 2004. On the other hand, the amounts involved are a concern: the 47 requests approved in 2004 totaled K26.9 million, considerably higher than the K15.0 million in 2003. In order to further tighten the use of COIs, there is an urgent need to put in place the contract management systems specified in the GPM and the OM and train procurement staff in their use. If the review procedure specified in the FIs for COIs was implemented rigorously, this would significantly reduce the number of contracts that are not awarded on a competitive basis and Government would save money.

2.35 It should also be of concern to Government that half of all the COIs approved by CSTB are related to variation orders. The FIs require the Contract Managers (who are defined in the FIs) to act impartially in making determinations that affect both the Government and the contractor in regard to variations, latent conditions, and liquidated damages, but provide only overall, but non-specific guidance on contract administration and contract variations.

2.36 Bulk Purchase of Items: One area of Government procurement where there is potential to save Government funds is in the purchasing of consumables such as office supplies and fuel, and more durable goods such as vehicles and furniture. At present, the procurement of most such items is in one-off lots, usually at retail prices instead of benefiting from lower costs from bulk purchase. Care needs to be taken in weighing up the costs and benefits of bulk purchase of items and procurement planning is essential.

2.37 Standard Bidding Documents: The FIs require the CSTB to provide the STBs and Government departments with "template bid documents", i.e. standard bid documents (SBDs). At present some SBDs are under preparation by the Department of Works but CSTB does not have a set of these documents to give out for use. All other Government departments have developed their own bid documents usually in an ad-hoc manner. Often poorly drafted, these documents have led to a number of problems during contract implementation, and for many government departments, inefficiency, confusion and poor accountability surround the undertaking of a procurement exercise. A major issue has been that the qualification requirements for a bidder have often been badly defined in the bid documents and this has led to rejection of qualified bidders, or the acceptance of unqualified bidders. The GPM does require that if standard Conditions of Contract are not used then the approval of the State Solicitor is required. A significant improvement in country-wide procurement can be achieved if high priority is given to completion of all procurement documents, in particular the SBDs now under preparation, and simplified procurement implementation procedures based on the existing manuals. The CPAR recommends that high priority be given to assisting CSTB and DOW to complete the preparation of SBDs and identify and implement a program, including training, that will lead to all Government departments using SBDs for all bids.

Procurement Data & Information

2.38 **Procurement Records:** The FIs require that the Contract Manager for a project maintain documentation which will enable the contract to be implemented efficiently and that the financial records be clearly documented. The OM specifies that all STBs are required to have a comprehensive procurement record system. The CSTB has a spreadsheet procurement monitoring system which is kept up-to-date electronically and that records all important data such as bid closing date and date of award of contract. In addition CSTB keeps copies on file of bidding documents, bids, evaluation reports plus related correspondence. Specialized STBs and Government departments who are implementing donor-financed projects keep good procurement records. An important part of future procurement training for all government staff will be how to keep the records necessary for efficient contract management.

2.39 **Level of Procurement Expenditure:** There is no firm data on public procurement expenditure as the CSTB central data-gathering system does not yet include procurement for contracts less than K100,000 or for STB contracts which are less than the thresholds for review by CSTB. It is therefore difficult to obtain direct estimates of the annual amount spent under public funds for goods, works and services (in the future CSTB should be able to exercise its legal right under the FIs to require all departments and provinces to report on their annual expenditure on procurement). Table 4 below provides a partial, indirect estimate of the level of development expenditures for the period 2001 to 2006.

Table 4: Level of Development and Recurrent Expenditure

(million Kinas)

	2001	2002	2003	2004	2005	2006(Est.)
<u>Development Expenditure</u> (including funds from donors)	1821.8	1914.3	n.a.	1327.4	1821.8	1687.2
Percentage of Total (indirect estimate of procurement expenditure)	45.0	43.6	n.a.	32.0	35.3	34.9
<u>Recurrent Expenditures</u>	2236.6	2476.7	n.a.	2820.4	3328.9	3142.1
Total Govt. Expenditures	4045.4	4391.0	n.a.	4147.8	5,150.7	4829.3

Source: DOF Budget reports.

2.40 The estimate is partial, because development expenditures presented above do not represent the totality of public spending on development, as they omit expenditures made by Provincial Governments and paid for by internally generated funds and independent statutory public bodies, which are off budget. Also development expenditures include some items of expenditure, such as Government allowances, which are not subject to contracting. Recurrent expenditures include some items, such as consumables used on a day-to-day basis by Government departments, which could be procured in bulk with considerable savings – see para. 2.34.

2.41 With procurement data widely dispersed, it is difficult to give an overall assessment of public procurement performance. However, this Report's overall conclusion is that

while public procurement performance is improving, it is still inefficient and action needs to be taken to improve performance if the Government is going to get 'value for money' for its expenditure on procurement. A useful exercise would be an analysis of all Government expenditure to identify the location and amounts spent on goods, works and services.

2.42 Dissemination of Procurement Information: The *PFMA/FIs* stipulate that a public advertisement is needed for the tendering of all goods, works and services above K100,000. All such tender notices are required to be published in the *National Gazette* in PNG and in the media in other countries for international bidding. The GPM contains details of the information to be included in the advertisement and guidance on the pre-qualification and post-qualification requirements in the bid documents. The responsibility for advertisement rests with the Specialized and Provincial STBs and with the CSTB on behalf of all Government departments when the amount is above the specified thresholds. The Chairman of the STB concerned is also required to send notification to all bidders of the result and to publish the award in the *National Gazette*. In practice, the notification of award is often not sent to bidders or published.

2.43 Electronic Government Procurement (e-GP): e-GP offers substantial benefits in terms of improved efficiency, faster processing of procurement, reduced administration costs and enhanced corruption-proofing of the procurement process. CSTB has recently created a website (www.cstb.gov.pg) where users may download invitations to bid, the *PFMA* and the *FIs*, the WB's CSM, the GPM and OM. Also, CSTB does track electronically the various stages of implementation of all contracts for which it has responsibility and intends, in the future, to use the website to publish information on the award of contracts. Also, the Government has recently started the implementation of the county-wide Integrated Financial Management System (IFMS) under ADB financing. This Report recommends that an e-GP Readiness Assessment should be conducted in PNG in the near future. This is particularly important considering the need for integration of data generated by different departments, such as actual procurement performance against that planned in the budget.

Capacity Assessment and Development

2.44 Capacity Assessment: Large investments in the construction and maintenance of roads and bridges have resulted in the Department of Works (DOW) implementing major projects and building up expertise in procurement planning. In addition there are other implementing agencies such as the Gazelle Restoration Authority who carry out procurement efficiently. However, overall procurement capacity in PNG is considered very weak at all levels – CSTB, Specialized and Provincial STBs, and departments, together with the procurement units in some of the implementing agencies for donor-financed projects. Even CSTB, as the Government agency most responsible for overseeing procurement activities throughout the country, has a limited number of qualified staff and several vacancies.

2.45 For the implementation of major projects financed by donors usually PIUs have been created. Included in these PIUs are procurement units. Staffed by both local and external staff these units have usually functioned satisfactorily and the external staff, who have been qualified procurement specialists, have provided some training to the local staff.

However the training has not been conducted on a systematic basis and the number of local staff trained has been small in comparison with the overall needs. The DOW, who has led in the training of procurement staff, has lost several staff through leakage to the private sector, as has CSTB.

2.46 Contracts are awarded based on a bid evaluation carried out in departments by Technical Evaluation Committees (TECs). CSTB, Specialized and Provincial STBs review and award contracts on the basis of the TECs' recommendations. The quality of the TECs recommendations varies considerably but CSTB reports that it often has to refer a recommendation back to a TEC.

2.47 The oversight agencies of the Government for procurement have capacity constraints to carry out their mandate to investigate allegations of misappropriation and misuse of funds, fraud, and corruption. Also, the lines of responsibility and allocation of which agency is to do what are muddled, particularly in the area of enforcement. As procurement expertise is built up this will become a critical constraint to improving procurement performance and will need a comprehensive analysis and recommendations to strengthen enforcement.

2.48 **Improving Capacity:** A capacity building plan for procurement activities in PNG does not exist. Such a plan should include all aspects of procurement including structure of the various agencies involved in procurement, existing and proposed staffing and training. CSTB and DOF are carrying out some procurement training (CSTB has trained the staff involved in procurement in nine Provincial STBs). Aside from these, there are, at present, no training courses in PNG on procurement although the Institute of Engineers of PNG has expressed its willingness to hold short courses for its members on procurement, and the GPM and OM could be used as background documentation for procurement training courses. Any such capacity building plan would include a training needs assessment for building procurement capacity. Preparation of a capacity building plan should be given high priority.

2.49 This CPAR recommends that, subject to a training needs assessment, the initial procurement training by CSTB be focused on a relatively few professionals who have some procurement experience. These staff are currently located: (a) in the departmental TECs, especially those departments who have carried out a number of major procurements each year; (b) existing and replacement staff at CSTB; (c) at the Specialized and Provincial STBs; and (d) procurement staff from any PIU implementing a major project. The objective would be to have, following relatively intensive training, these staff in key positions throughout Government where they can have an impact on procurement efficiency. Until procurement skills are developed in local staff, there will be need for external expertise that, together with the proposed procurement training program, will provide on-the-job training and skills transfer.

2.50 For the long term, it is recommended, again based on a training needs assessment, that a training program be identified and implemented under donor financing to provide a steady stream of professional staff who have an appropriate level of knowledge for their procurement responsibilities.

2.51 In addition to the above, all Government staff who are involved in procurement activities would benefit from the provision of adequate tools to conduct procurement, such as SBDs, procurement manuals, technical specifications, and monitoring and reporting systems. There is a need for comprehensive dissemination of these procurement materials together with training in their use.

2.52 **Training Facilities:** Besides its universities, PNG has an Institute for Public Administration with facilities in Port Moresby, including classrooms, computer labs and infrastructure, and regional training centers.

2.53 **Capacity Building Approach:** Consistent with keeping risk to an acceptable level, the objective in building capacity is to replace the external expertise with locals. Considerable cost savings are achievable if public procurement is handled by qualified local professionals but there is a shortage of such staff. Capacity building will need to address how best to quickly develop local professional capabilities and skills in different areas of procurement. At the same time there is a need to build awareness, and understanding, of procurement basics by a broad audience comprising civil society and contractors. In broad terms, the following actions would meet these objectives:

- Preparation, and implementation, of a capacity building plan including all institutional aspects such as institutional structure and training;
- Complete development of SBDs and other commonly used procurement documents in a package for use throughout Government;
- Develop and implement intensive courses for existing staff of STBs and TECs; and
- Develop and implement awareness building courses for Government staff generally, civil society and the private sector.

These actions would need to be accompanied by legal, organizational and procedural actions that demonstrate the Government's commitment, including the appointment of a full-time chairman to CSTB, filling vacancies at CSTB, and ensuring that qualified persons are appointed to procurement positions.

Audit & Anti-Corruption

2.54 **Oversight and Audit:** The 2003 Amendment to the *PFMA* specifies for CSTB a "control and regulate" power for all Government procurement with the exception of procurement carried out by Specialized STBs. CSTB is also required to produce an annual report for the FY which covers all procurement including that of the Specialized and Provincial STBs and departments. The first CSTB annual report was for 2003 and the report for 2004 has recently been published.

2.55 The Public Accounts Committee has an overarching responsibility for all public expenditures. External to the DOF, there are several Government departments who are responsible for ensuring that procurement is carried out in accordance with the *PFMA* and the FIs. These include the Financial Inspection Services Division (FISD); Office of the Auditor General (OAG), and the Fraud Squad. At the request of CSTB, the OAG has been involved in a review of the procurement activities of CSTB and AGO's report dated December 20, 2005, is currently tabled with the NEC. The Fraud Squad is involved in the

investigation of criminal matters but fewer than 15 per cent of cases referred to it proceed to being prosecuted; this contributes to the perception that Government staff are not held accountable.

2.56 Perception of Corruption: The perception in PNG is that corruption is widespread. Recent Corruption Perception Index data on PNG by Transparency International reinforces this view with PNG receiving a low rating. The private sector considers that corruption is usually opportunistic rather than systematic except that 'rewards' have often been expected particularly when there is a traditional close relationship. In this respect, it is particularly important that all parties involved in the award of contracts strictly understand and observe the law governing procurement (i.e. the *PFMA* and its FIs) and the terms and conditions of the bidding documents and the legal penalties for illegal acts. The cost of the present distortions to the award and implementation of contracts is difficult to estimate (one procurement specialist, knowledgeable of PNG, has estimated the cost at more than K100 million per year).

2.57 The *PFMA* and the FIs include the following provisions which could result in restrictive participation and the discretionary award of a contract: (i) The Minister of Finance can make Rules related to how bids are invited and dealt with (although the Minister has not done so); (ii) the Chairmen of STBs can waive competitive procurement through issuance of a COI; (iii) procurement under a contract value below K1,000,000 may be reserved for national bidders; and (iv) award of a contract can be made to more than one bidder. In practice, these restrictive provisions (except for COIs) do not appear to be used and there have been no complaints from the private sector. To prevent future abuse, and to ensure as competitive as possible market-place, the Government should, at an opportune time, revise the *PFMA* and the FIs to remove these restrictions.

2.58 Anti-Corruption Measures: In recent years the Government has put in place the following anti-corruption measures: (i) amendments to the *PFMA* in 2003 and the FIs in 2005 to clarify institutional responsibilities; (ii) revival of the Public Accounts Committee following the national elections of 2002; and (iii) an institutional strengthening program for the Office of the Auditor General.

2.59 Where an official is a senior public servant, or member of Parliament, is suspected of being involved in a corrupt activity under the Leadership Code of the PNG Constitution, the case can be reported to the Ombudsman. Such persons often resign and escape prosecution because the Code only applies to persons in office. For all other cases, possible corrupt activities can be reported to the Fraud and Anti-Corruption Unit of the Royal PNG Constabulary, which can prosecute, generally in conjunction with the Public Prosecutor.

2.60 A significant constraint to identifying corrupt practices is a general lack of understanding by society about the causes and effects of corruption. According to research by the Institute of National Affairs, only 35 percent of people in urban areas (and fewer in rural areas) understand what corruption is and its negative impacts. In 2002, the Ombudsman's office undertook a campaign, called the External Relations Program, to heighten public awareness about the effects of corruption and the avenues to register complaints. The lively and free press in PNG is helping to educate society as it highlights corruption scandals and features articles on the problems of corruption.

2.61 Non-Governmental Organizations (NGOs) such as Transparency International, the Media Council, and the Community Coalition Against Corruption have had some success in exposing corruption. There is some evidence that the traditional 'big man' mentality¹ is dying, albeit slowly, as PNG society is becoming more aware of the costs and effects of corruption. However, there is still a need for further education of the public and CSTB needs to have a strategy on how to promote public awareness of how corruption can distort procurement.

2.62 A 2001 initiative to fight corruption in Government was the signing by major department heads of a Statement of Alliance, which paved the way for the establishment of a system of investigating corruption in PNG, although the envisaged anti-corruption agency has not yet been formed. Instead, an informal entity, the National Anti-corruption Alliance, was established comprising the departments whose heads had signed the Alliance.² The Alliance has no legislative powers but has been considered to be effective in the coordination of resources and instrumental in exposing some corruption cases. The CPAR recommends that Government develop a formal anti-corruption strategy for procurement for its oversight and enforcement agencies.

PRIVATE SECTOR

2.63 PNG's economy is dominated by the private sector. The formal private sector has two parts – large, foreign-owned natural resource firms that operate on an enclave basis in the mining, petroleum, and forestry sectors, and a non-mineral private sector consisting mainly of small and medium-size enterprises. Many of the small and medium-size enterprises are engaged in manufacturing, construction, and trade in urban areas and they do bid on Government contracts.

2.64 More than 80 percent of private sector jobs are in rural areas, mainly in non-wage agricultural activities. About 35 percent of these jobs involve subsistence, non-cash farming and fishing activities and, to a much lesser extent, trading activities. Wage employment accounts for just 12-13 percent of total employment. Of this, the private sector accounts for about 64 percent. Within the private sector more than 50 percent of wage employment is in agriculture, while construction, trading, and manufacturing each account for about 14 percent. Most wage employment is in small enterprises.

2.65 In construction there are a number of large foreign-owned companies. Medium sized construction companies are a mix of local and foreign-owned firms while small firms (often sub-contractors to larger firms) are all locally owned.

Performance on Public Contracts

2.66 In the past, the private sector has had a good performance record for implementing contracts but recent performance has fluctuated in line with the economy, largely due to non-payment of counterpart funds on Government contracts when the economy was

¹ In the past, leaders, politicians and senior civil servants have been seen by most of PNG society as being above the law.

² Police, Finance, Treasury, Provincial and Local Government, Personnel Management, Attorney General, Ombudsman and the Public Prosecutor.

performing poorly. Other external factors, such as law and order problems, lack of a skilled workforce and the effects of natural disasters have a significant effect on the performance of the private sector.

2.67 Medium and large private companies who have been established for several years generally have the management skills to submit well prepared bids and to successfully implement contracts. These companies, while generally having sufficient resources to raise securities, have in the past suffered from delays in payment on Government contracts. The Government has recently overhauled the system for payments.

2.68 Small businesses generally compete for small contracts having values of less than K100,000. These companies do not have the management skills to undertake complex contracts. Also, these companies rarely enter contracts where securities are required because of their limited financial resources. It is reported that Government departments sometimes package tenders in small lots to suit these local contractors and suppliers, and also to keep the value of the contract below K 100,000 therefore avoiding submission to CSTB. These practices do not permit the economies of scale of bidding larger quantities.

2.69 Contractors generally have a good working relationship with Government departments. Companies that have claims or complaints during contract implementation generally resolve these problems through negotiations with the concerned department although there has also been an increase in disputes requiring arbitration in recent years.

Commercial Practices

2.70 Some 700 firms (mostly small and medium sized) have registered with the Ministry of Trade and Industry as a normal part of doing business, but there is no formal legislation requiring local and resident firms to be registered to bid for Government contracts. However, foreign firms are required to register under the Investment Promotion Authority Act in order to undertake business in PNG. The *PFMA* also requires foreign firms to be a PNG certified business if they wish to submit a bid, although this registration is never verified.

2.71 PNG has mainly adopted Australian Standards for works and goods, although some British and American Standards are also used. Based on Australian Standards, PNG has also created some of its own Standards, mainly for building construction, but adapted to local conditions. A number of subcommittees under the National Standard Committee recommend development of national standards with adherence to the framework of International Standards Organization (ISO).

2.72 Provisions in Government contracts generally do not provide for settlement of disputes through international arbitration. The normal practice is that minor disputes on civil works contracts are settled between the contractor and the engineer. If any dispute cannot be so settled then the provisions of the Arbitration Act of 1995 can be used.

2.73 Relative to an unsatisfactory situation with the Office of Customs several years ago, goods entering PNG appear to be processed without undue delay through customs and other inspections services, which are based on the Australian customs laws. In a 2002 survey of

the business environment in PNG cited in the 2003 draft CPAR, the customs service was rated better than most government services, with some variability within responding sectors of the business community. This finding was confirmed in interviews conducted by the 2006 CPAR team.

2.74 There is a healthy commercial banking sector in PNG, consisting of five major banks. The banks provide competitive interest rates. Large and medium-sized companies can obtain securities, but small companies generally have difficulties. Contract payment provisions do vary and payments are either made entirely in Kina or a mix of Kina and a nominated foreign currency; wide use of SBDs should reduce these variations in payment terms. The Kina is a freely convertible currency and for Kina payments, the exchange rate used would be Kina to US\$ or AU\$. Any contractor seeking a price adjustment due to unexpected cost increases must prove his case to the departmental TEC of a department with documentary proof; there is no official price index, nor any official organization responsible for publishing one. The TEC would then submit its recommendation to CSTB for review.

Perspective of the Private Sector

2.75 In discussions, the private sector noted the following problems with the Government procurement system and that these problems result in an increase in their costs and put up the cost of their bids:

- **Lack of Transparency:** The private sector considers a lack of transparency as the most significant problem in their interface with the Government procurement system and one which results in widespread suspicion of corruption. The following practices contribute to this suspicion: (i) abuse of COIs; (ii) splitting of contracts to favor small firms; (iii) lack of standardized documentation and evaluation; (iv) lack of public disclosure of the award of contracts; and (v) discretionary powers used during negotiation and award of contracts.
- **Poor Quality of Documentation:** The lack of standardized bid, contract and conformed documents is a significant problem to contractors preparing bids. Departments and provincial administrations have produced their own bid and contract documents, which are generally hybrids of a variety of other documents and are inconsistent and confusing. As bid documents usually do not spell out in detail a bidder's qualification requirements, disputes often arise during bid evaluation as to whether a bidder is qualified or not.
- **Poor Contract Management:** The recent GPM and the OM documents provide, for the first time, standardized contract administration procedures to ensure quality control, compliance reporting, verification of quantities and measurement. As these manuals also include how payments, variations, claims and complaints are handled they should greatly assist Government staff to implement a contract in line with good procurement practice.
- **Procurement Delays:** In the last two years the economy has improved and contractors, who are used to getting paid late, up to 120 days, are now getting paid

in less than the usual 60 to 90 days. Even so, some companies are not willing to bid on Government contracts or if they do participate, bid higher on account of the cost of the delay in payment.

PERFORMANCE ON WB-FINANCED PROJECTS

Procurement Design and Performance

2.76 Recognition of the limited domestic procurement capacity has proven to a major factor in the design of the procurement arrangements in WB financed projects. Of the two infrastructure projects under implementation, the Gazelle Restoration Project and the Roads Maintenance and Rehabilitation Project, the design included for Project Implementation Units (PIUs), to be especially established for each project. These PIUs are responsible for day to day procurement. Line agencies provide their staff to the PIUs, which have supporting external advisors in selected areas of project implementation, including procurement. Under the Second Gazelle Restoration Project, approved in 2000, procurement management continues to be the responsibility of a Specialized STB that was established in 1995. For the later Road Maintenance and Rehabilitation Project, approved in 2002, the CSTB oversees the procurement activities of the implementing agency, the DOW, for contracts above K100,000.

2.77 The ongoing project operations have all been given a procurement rating of Moderately Satisfactory. A review of these and other WB procurement post-review supervision mission reports and WB implementation completion reports identified two procurement-related factors that have an impact on procurement performance. They are: (i) prior to the last two years, inadequate local currency counterpart payments resulting in contractors going slow until paid; and (ii) lack of adequate local procurement skills. In addition, there are non-procurement related factors that impact negatively on the performance of most projects in PNG. Major ones are: (i) the wide dispersion of a small population in a very large country with difficult topography; (ii) the critical law-and-order situation; and (iii) lack of availability of infrastructure facilities in rural areas.

Measures Required to Improve Performance

2.78 The following specific measures should be taken to strengthen procurement in WB-financed projects in PNG.

(i) Improve procurement capacity of local staff: A focused training program for local procurement staff assigned to a specific project, together with targeted provision of procurement TA from external specialists, would enhance the performance of most projects (such a program would need to be aligned with the procurement training program for public sector staff, contractors, and civil society recommended in this CPAR). Past WB-financed projects in the education, mining, and forestry sectors and the two ongoing projects have all benefited from specialist consultant services in procurement and all have performed better in comparison to projects which did not have such support.

(ii) Use of Procurement Monitoring Tools: During the course of project implementation, the procurement plan, prepared at the appraisal stage of a WB project, should be regularly

updated. The positive contribution such updating makes to speeding up procurement has been demonstrated during implementation of the completed mining project and is working well for the ongoing Gazelle Restoration and Road Maintenance projects.

(iii) Preparation of Project Procurement Manual: Lack of project procurement manuals at the start of a project seriously undermines a PIU's ability to 'jump start' procurement. Almost all WB projects in PNG suffer from time overruns. Preparation of a model Project Procurement Manual, that should be harmonized (where possible) with the GPM and OM, and updated on a regular basis during project implementation, can help to keep procurement on track.

(iv) Annual Procurement Workshop: Because of the small size of the portfolio, and also due to the wide geographical dispersion of projects, establishing consistency on procurement actions across the WB portfolio has proved difficult. Holding an annual procurement workshop for PIU staff who are implementing WB-financed projects (even now with a limited number of on-going projects) would enhance sharing of good practices and help to resolve generic issues.

(v) Use of SBDs through Harmonization: The use of national SBDs that are harmonized with the Government and other donors, would result in contractors submitting higher quality bids at lower prices as one set of procurement documents would enable both Government staff and contractors to build up their knowledge of contract conditions. The CPAR recommends that the Government, and specifically CSTB, give high priority to completion of the SBDs which are presently under preparation. Furthermore, the documents once completed must be given wide dissemination within, and outside of Government and be backed by a comprehensive training program.

(vi) Coordination of Procurement through a Central Unit: This Report has recommended that the timing of a move to establish a NPB to replace CSTB should depend on when government departments have a trained cadre of procurement specialists to efficiently carry out procurement so that CSTB is not involved in the day-to-day review of a large number of contracts. In the meantime, CSTB could continue its legal mandate as the central unit coordinating public procurement in the country. To be really effective, CSTB's staffing needs to be strengthened. In line with this objective it is important in future WB operations that procurement capability be built up across a department and not only in a PIU. At present the MOW and the DOH are perhaps the nearest to having this capability.

(vii) Close Supervision of Procurement Activities: The weak state of procurement expertise within Government necessitates close follow-up by the WB of procurement activities handled by PIUs. Hence, in the near future, it is essential to set low thresholds for WB's prior review, consistent with the WB's fiduciary responsibility. As sound procurement capability is built across Government under the training program recommended in this CPAR, the thresholds can be progressively raised for those Government departments who have demonstrated a good track record for sound procurement. An important part of the Action Plan is to monitor specific actions which have been identified to strengthen procurement efficiency (see para. 3.3)

Recommended Supervision Approach and Thresholds

2.79 Given the rating of PNG as a very high-risk country from a procurement perspective, a donor's supervision strategy for the projects it finances needs to be cautious. This report recommends the following actions to strengthen the performance of WB-financed projects in PNG:

- (a) Involve the beneficiary agency of the Government in formulation of procurement arrangements, especially the procurement plan before approval of a project, to foster a sense of ownership;
- (b) Include procurement TA support in the project design and costing;
- (c) Build up procurement capacity of a PIU from the start, prior to implementation, through preparation of a Project Procurement Manual and conduct a Procurement Workshop;
- (d) Ensure consistency and efficiency by utilizing the Procurement Specialist assigned to the Country Department Hub to carry out supervision of procurement.
- (e) Conduct procurement supervision in the field at least twice a year for any project, during which the project's procurement plan should be updated, post reviews of procurement carried out (audit at least one in every five contracts), and separate procurement supervision reports are prepared.
- (f) To ensure accountability of agreed NCB procedures, appropriate documents should be annexed to project Legal Agreements. These documents should be summarized in the Project Procurement Manual and discussed in project procurement workshops.

2.80 For WB-financed contracts, the following thresholds are recommended for different procurement methods.

Table 5: Recommended Procurement Thresholds

<i>Procurement Methods</i>	<i>Maximum Thresholds</i>
Goods	
Shopping	<USD50,000
National Competitive Bidding	≥USD50,000 - <USD200,000
International Competitive Bidding	≥USD200,000
Works	
Shopping	<USD50,000
National Competitive Bidding	>USD50,000 - ≤USD500,000
International Competitive Bidding	>USD500,000

Unacceptable Practices on WB-financed Projects

2.81 Annex 5 provides a comparison of national competitive bidding (NCB) procedures and practices with WB's policies and procedures. There are a number of aspects of procurement that do not conform to WB's policy with regard to NCB. These are: (i) below a specific financial threshold, or a lesser amount as the Minister of Finance may direct, a STB may restrict the bidding to national bidders; (ii) *PFMA*/FIs do not specify the minimum days for submission of tenders and in practice it is generally less than 30 days; (iii) bids may be rejected using discretionary powers; and (iv) criteria other than price that are not specified in bid documents can be used for bid evaluation.

2.82 The CPAR recommends that, for WB-financed projects, a set of mandatory provisions for NCB be included as an Annex to the Procurement Schedule of the Legal Agreements to ensure compliance with the WB's Procurement Guidelines. These mandatory provisions are included in Annex 6.

RISK ASSESSMENT

2.83 A risk assessment of the procurement environment determines the extent to which the legislative framework is effective, fair and transparent; the effectiveness of the regulatory and organizational structure, availability of infrastructure support in the form of procedural tools, efficiency of implementation, capacity of entities and human resources, and strength of the enforcement regime.

2.84 The legal organizational framework for procurement in PNG is structurally complex with differences between the responsibilities of CSTB, Specialized STBs and Provincial STBs and departments. Considerable discretionary powers are provided to the Minister of Finance related to the functions of STBs. Human resource capacity is very limited with few experienced procurement staff. This situation is exacerbated by a lack of training with most staff learning procurement on the job and, up to recently, little or no guidelines or complete sets of SBDs for consistency of procurement procedures.

2.85 The Government has moved to address some of these issues through changes to the *PFMA* and the FIs and the preparation of manuals (GPM, OM, and FMM) to provide guidance to staff on procurement procedures. However, until Government programs are put in place to rectify some of the major issues, such as lack of trained staffing and having procurement documents readily available to all government staff, civil society and the private sector, the procurement risk is perceived to be **very high**.

2.86 Since the procurement risks are considered to be very high, the following prior review thresholds are recommended for WB-financed projects:

<i>Procurement Methods</i>	<i>Prior Review Thresholds</i>
Goods	
Shopping	First three contracts
National Competitive Bidding	≥USD100,000
International Competitive Bidding	≥USD200,000

Works	
Shopping	First three contracts
National Competitive Bidding	≥USD 100,000
International Competitive Bidding	≥USD500,000
Consultants	
Individuals	None, unless exceptional reasons
Firms	≥USD100,000

3. RECOMMENDED ACTION PLAN

3.1 At the end of the January/February 2003 CPAR mission a series of preliminary recommendations were developed to address weaknesses in PNG's public procurement system. These recommendations were reviewed by officials from the DOF, PSRMU, CSTB and other non-Governmental agencies in a workshop and subsequently agreed to in principle with senior officials of the DOF. On this basis, a draft Action Plan was prepared. Since then the Government has made progress to address major areas of weakness related to procurement efficiency. But in some areas, such as capacity building, including training, not much has been done. This Report builds on the earlier CPAR work and makes recommendations which take into account the present status of procurement efficiency in the country and the Government initiatives underway.

Strategic Approach and Plan

3.2 The main recommended actions are listed in a rough order of priority but, to the extent feasible, several of the identified actions should be implemented in parallel.

3.3 **Benchmarking, Monitoring and Evaluation:** A successful procurement reform process requires the development of a methodology that would allow the Government to compare their processes, practices and performance. The Baseline Indication System (BIS) is an internationally recognized procurement assessment tool. It has been designed to enable users to determine the extent to which a public procurement system contains the features of a well-performing system. The information generated by the BIS would provide a clear, rational basis for designing capacity development programs and pinpointing mainstreaming weaknesses to be addressed. This Report recommends that a schedule be agreed with CSTB for implementation of the BIS.

3.4 **Institutional Capability of CSTB:** Development of procurement capacity in PNG will be largely the responsibility of CSTB. At present CSTB is understaffed with unfilled vacancies, and although action is under way to appoint the part-time chairman to a full-time position, these deficiencies need to be rectified as soon as possible.

3.5 **Professional/Capacity Building Framework:** At present there is no capacity building plan for procurement. Such a plan is needed to identify weak areas including training and the use of SBDs. In PNG there is a critical lack of qualified local procurement specialists. Also Government staff who are involved in any way with procurement, together with civil society and contractors, need to understand the basic fundamentals of

sound procurement practices. It is recommended that a training needs assessment, which addresses all of these needs, be implemented as soon as possible. Based on the results of the assessment, it is further recommended that a comprehensive training program to be delivered which will: (a) immediately intensively train a critical number of procurement specialists from CSTB and STBs; and (b) deliver basic procurement training, over several years, to a large number of persons from all sections of Government, civil society and contractors.

3.6 Procurement Procedures: Following the changes in 2003 to the *PFMA* and the issuance of the 2005 FIs the Government has prepared the GPM, OM, and FMM to provide general guidance to Government staff on procurement procedures. Making sure these detailed and comprehensive documents are published in the quantities required and widely distributed will take some time. In the meantime, it is recommended that a range of SBDs can be quickly prepared which are easy to use and cover all possible types of procurement of goods, works and services (recruitment of consultants is, at present, particularly chaotic with a range of contract documents being in use including the WB's procedures). The completion of the SBDs now under preparation should be awarded high priority and they should also be included in the recommended training programs.

3.7 National Procurement Board: The Government has recognized the need for a NPB as a central agency with clearly defined oversight responsibilities for procurement but which does not supervise day-to-day contract awards. The Government has, since 2001, adopted a staged approach to a NPB, implementing in 2003 and 2005 changes to the *PFMA* and the FIs that clarified the organization of procurement, strengthened the oversight responsibilities of CSTB, and reduced the number of Specialized STBs. The role of CSTB has been expanded to include oversight responsibility for procurement activities and review of large contracts and requests for COIs. These revisions to the organizational structure for procurement appear to be a pragmatic step towards an efficient procurement structure where, eventually, Government departments and provincial governments will be completely responsible for their own procurement. It is envisaged that as the procurement capability of Government departments leads to increasing delegation of procurement authority, the role of CSTB will evolve into a NPB whose main role is oversight of procurement activities throughout the country.

3.8 Procurement Legislation: The basic legislation for procurement is the *PFMA* and the FIs. The FIs refer to the GPM and FMM and CSTB considers that the provisions in both are legally enforceable. There is a need for a review of the *PFMA*, FIs, FMM, GPM, OM and SBDs (when finalized) to ensure consistency among the documents.

Priorities and Timetable

3.9 Table 6 summarizes this Report's recommendations to improve public procurement efficiency in PNG and provides guidance on prioritization as well as a timetable for implementation. As presented in the Action Plan the intention is move ahead as quickly as possible with actions that will have an immediate impact on procurement efficiency. Some of these, such as the recruitment of staff for CSTB and completing the appointment of a full-time Chairman of CSTB, are in the hands of Government and could be implemented urgently. Others, such as preparation, and implementation, of the various aspects of a

capacity building plan are dependant on obtaining funds for the consultant services required.

3.10 The timing of specific steps is indicated in the Action Plan. A detailed timetable can not be identified until the availability to funds from donors to finance the necessary TA is known and at that time the Action Plan may need to be revised.

Table 6: Action Plan

Action	Priority	Responsibility	Tentative Schedule	Tentative TA Need (US\$)
Legislative Framework				
Comprehensive review to ensure consistency between procurement provisions in the PFMA, FIs, FMM, GPM and OM.	Medium	CSTB	January 07	TA already in place AusAID
Institutional Capacity Development				
Appoint full-time Chairman of CSTB	Highest	MOF/DPM	Immediate	-
Fill procurement staff vacancies within CSTB	Highest	MOF/DPM	January 07	-
Institutional and training specialist to prepare capacity building plan including institutional structure, staffing and training needs analysis (TNA)	High	CSTB	November 06	TA already in place AusAID
Implementation of actions proposed by capacity building plan and TNA, which may include: <ul style="list-style-type: none"> • establish procurement training program in local training facility. • in-depth training of selected Government staff; • basic procurement training of Government staff, civil society and the private sector. 	High	CSTB	February 07	350,000 ADB and other donors
Procurement Procedural Tools				
Develop Harmonized Standard Bidding Documents (Works, Goods and Services)	High	CSTB	January 07	70,000 ADB
Simplify procurement documentation comprising, GPM and OM	Medium	CSTB	January 08	TA already in place AusAID
Procurement Data & Information				
Within the IFMS, identify the procurement requirements.	High	CSTB	October 06	-
Supporting Framework				
Preparation of BIS	High	CSTB	January 07	50,000 WB
Development of a procurement strategy, based on BIS, for GoPNG	High	CSTB	April 07	-
GoPNG to request financial assistance from donors to implement action plan	High	DOF	August 06	-

Action	Priority	Responsibility	Tentative Schedule	Tentative TA Need (US\$)
Undertake reporting requirements on Action Plan.	High	CSTB	Every 3 months	-

Immediate Needs for Financing TA

3.11 Based on the results of the June 5 to 9, 2006 meetings with the Government of PNG, AusAID and ADB, to discuss this Report, the CPAR recommends that the following actions be taken with respect for funds to implement the Action Plan:

- The respective donors, AusAID, ADB and WB to determine the possibility of grant funds for the TA identified in Table 6 above.

Measures to be Taken by Government

3.12 The Government will formally request funds from the AusAID, ADB and the WB for the implementation of the Action Plan. To oversee the implementation of the Action Plan, the CPAR recommends that this be CSTB's responsibility and a Steering Committee be formed by CSTB. The existing six members of CSTB, plus Chairman, is already broadly representative, i.e. comprising a representative from DOF, DOW, Trade & Industry, State Solicitor, universities and private sector. However, in view of the existing complex institutional arrangements and the need to move, over-time, to a simpler structure, due consideration should be given to broadening the Steering Committee further by including a representative from one of the Specialized STBs and one of the Provincial STBs. The proposed Steering Committee is expected to play an important role in planning and monitoring the agreed recommendations in the Action Plan. Regular reporting requirements will form part of the agreements for TA between the Government and the donors. In this respect the Steering Committee could produce three monthly reports on progress in implementing the Action Plan which could be included in the reports submitted by the PERRIC (para. 16). Guidance and support to the Action Plan implementation from a donor's perspective could be by achieved by ensuring that the existing PEG (para. 2.28) meets on a regular basis.

Measures to be Taken by Other Donors and World Bank

3.13 The other donors (principally ADB and AusAID) and the WB may provide support to the Action Plan's recommendations through the following action:

- Discuss the CPAR, and specifically the Action Plan, with the Government and agree on what steps will be taken, and when, on the implementation of the Action Plan.

ANNEXES

Annex 1 - List of Persons Met during CPAR Preparation

The following is a list of persons met during the January/February 2003 CPAR mission and the March 2006 follow-up mission:

* Person met during the March 2006 mission.

** Person met during both missions

Organization	Name	Title
1. Department of Prime Minister and National Executive Council	Mr. Joshua Kalino	Chief Secretary
2. Department of Finance	Mr. Thaddeus Kambanei	Secretary
	Mr. Gabriel Yer**	Deputy Secretary
	Mr. Lawrence Ouma	Advisor
	Mr. Cain Wosae	Economic Advisor
	Mr. Solastine	FAS Public Accounts
3. Public Sector Reform Management Unit	Dr. Michael Heaven	Deputy Program Manager, FMIP
	Mr. James Melegepa**	Chairman
4. Department of Treasury	Mr. Nick Poletti	ASF Consultant
	Mr. Bill Kua	Director General
	Mr. Koiari Tarata, ISO	Secretary
	Mr. George Tallent	Budget Team Leader
	Ms. Nino Saruva	First Assistant Secretary, Budgets
5. Department of National Planning and Rural Development	Mr. Matatia Saroa	Chief Inspector, Financial Inspections Division
	Mr. Valentine Kambori	Secretary
6. Central Supply and Tenders Board	Mr. Kingsley Lore	ADB/World Bank Officer
	Mr. Philip Stagg	Chairman
	Mr. Jack Sariman	Secretary
	Mr. Ian Gormlie	ASF Consultant
	Mr. Bryan Kimmins*	Acting Chairman
	Mr. Babaga Naime*	Acting Secretary
	Mr. John Kawara*	Snr. Contract Coordinator
	Mr. Reuben Thapola	Contracts Officer
7. The Office of the Auditor General	Ms. Erue Jack*	Training Officer
	Mr. Pona Kawa**	Deputy Auditor General
	Mr. Ashok Ghosh	As. Deputy Auditor General
	Mr. Craig Deane*	ECP Advisor
8. Legislative Council	Mr. S. Rajadurai	Assistant Auditor General
	Mr. Joe Kudada	First Legislative Council
9. Department of Personnel Management	Mr. John Kali	
10. Department of Works	Mr. Barnabas Neausemale	First Assistant Secretary
	Mr. Alphonse J. Niggins*	Secretary
	Mr. Selvarajah Sellathurai*	Consultant – Cardno Willing

Organization	Name	Title
11. Department of Health	Ms. Elva Lionel Dr. Nicholas Mann**	Project Director
12. Department of Trade and Industry	Mr. James Ninau	Assistant Director
13. Royal PNG Constabulary - Anti-Corruption Unit	Senior Inspector Damaru	Officer-in-charge
14. Solicitor General's Office	Mr. Daniel Rolpagarea	Deputy State Solicitor
15. Ombudsman Commission	Mr. Ila Geno** Mr. Stephen Mokis	Chief Ombudsman Secretary
16. Investment Promotion Authority	Mr. Ian Pomelio	Managing Director
17. Institute of Public Administration	Mr. Ngen Isana Mr. Anaeli Nnko Mr. Haraka Gaudi	Acting Director A/Deputy Director A/Program Officer
18. Chamber of Commerce and Industry	Mr. Michael Mayberry**	Chairman
19. Port Moresby Business College	Mr. John August	Principal
20. Deloitte, Touche, Tohmatsu	Mr. Colin Hall	Partner
21. Transparency International	Ms. Annie McPherson Mr. Bill Johnson Emily George Taule*	Manager Project Coordinator Executive Director
22. Media Council	Mr. John Rei	Manager
23. Australian Agency for International Development	Dr. Robert Christie Ms. Kim Pendreich Ms. Margaret Thomas* Mr. Lawrie Carlson*	Second Secretary Minister Counsellor Consultant
24. Japanese International Corporation Agency	Mr. Katsuro Saito Mr. Masato Koinuma Mr. Tony Ombo	Resident Representative Assistant Resident Representative Development Officer
25. United Nations Development Program	Mr. Harumi Sakaguchi	Resident Representative
26. Asian Development Bank	Mr. Steven H. van der Tak*	Country Director

Annex 2 - Status of Implementation of the November 2001 Ministry of Finance Review of Procurement

Action	Responsibility	Process	Proposed Start Date	Actual Completion Date	Specialist Skills Required	Comment and Status in 2006
Changes to Procurement Legislation						
I. a.	<i>Rapid Changes through promulgation of new Financial Instructions:</i> Consolidate the FIs for procurement into one section. The new FIs to clearly outline the role and functions of key participants in the procurement process. Replace the current "National Tenderer" FIs of 1986. Replace the 1986 "COF" FIs.	A small Steering Committee was established to oversee the needed legislative changes. The new legislation and financial instructions to be completed jointly by a Procurement Adviser and a Legal Adviser.	14 Jan. 02	2005	Up-to-date knowledge of modern procurement with limited input from a legislative drafting practitioner.	It was envisaged that interim changes be made to the FIs to remove the worst aspects of the 1986 FIs without (initially) legislative change. Expected promulgation was July/August 04. This was to be followed up by a comprehensive redraft of the procurement sections of the PFMA and FIs. This redraft was expected to start mid-2005.
I. b.	<i>Permanent changes through amendment of the Public Finances (Management) Act(PFMA):</i> Consolidate the sections of the PFMA which relate to procurement into one section. Require Supply and Tender Boards to produce an Annual Report for Parliament. Specify the specific circumstances in which COIs can be issued (i.e. remove discretionary powers) Specify the preference arrangements for National Tenderers (i.e. remove discretionary powers)	As for I. a.	14 Jan 02	2005	Knowledge of Legislative drafting, and modern Procurement practice	The proposed Actions have been addressed in the FIs of 2005

	Organizational Arrangements for Procurement						
2. a.	Create one National Procurement Board.	Minister of Finance on advice from the Secretary of Finance	Minister of Finance revokes the powers of all Specialized and Provincial Supply and Tender Boards (on the advice of the Sec of Finance), other than those of the Central Supply and Tender Board. Minister of Finance renames the Central Supply and Tender Board, the National Procurement Board.	29 Nov 01	To be decided.	Legal and Administrative	The Government decided that the creation of one procurement board at this time was too big a step considering the weakness of CSTB.
2.b.	Development of procurement infrastructure including definitions of "Conflict of Interest", "Complaint Handling" Policies and Annual Reporting process	Proposal was NPB, now CSTB	To be included in new FIs	20 Jan 02	2005 and 2006.	Knowledge of Procurement and Organization Development	New FIs, GPM and OM were implemented in 2005. FMM has been submitted for approval. SBDs under preparation.
2. c.	Training for Board members on Board powers, and procurement issues.	Proposal was NPB, now CSTB	Proposal was for AusAID's advisor to work with Chairman of NPB to develop a training course for members of the NPB	20 Jan 02	2008	Training needs specialist	Training needs to be comprehensive i.e. not only confined to STB members but to all Government staff involved in procurement, contractors and private society.
3.	Management Control Processes						
3. a.	"NPB" i.e. CSTB to prepare Annual Report for the 2001 fiscal year.	Minister of Finance on advice of Secretary of Finance	FIs require NPB to produce a 2001 FY Annual Report.	1 Jul 02	2003 and 2004 Reports prepared		Annual Reports for 2003 and 2004 have been prepared (albeit late).

3. b.	Require Financial Inspections Division to audit the NPB – now CSTB.	FAS – Financial Inspections	Secretary of Finance instructs FAS – Financial Inspections to develop and implement a plan for audit of the new “National Supply and Tenders Board”	1 Jul 02	Ongoing		The Auditor General’s Office has recently completed, and submitted, an audit of the procurement activities of CSTB, the Pharmaceutical STB, a Provincial STB and the Ministry of Works.
3. c.	Develop service standards for NPB i.e. CSTB	Chairman, National Supply and Tenders Board	NPB i.e. CSTB Tender realistic service level standards in consultation with Government departments and Provincial STBs.	1 Jan 02	2005	In-depth Knowledge Procurement Processes	CSTB has service standards and is making a good effort to keep to them but is constrained by vacancies. At present there are no complaints of delays by CSTB in processing requests for review of proposed contract awards.
4.	Improvement in Commercial Practices to Establish ‘Value for Money’ Contracts						
4. a.	Develop a process for establishment of procurement strategies for all procurements more than K1,000,000.	Chairman, NPC i.e. CSTB	CSTB to develop a procurement strategy for all major contracts.	1 Jul 02	30 Sep 02	Knowledge of Procurement Strategies, Development of procedures	The GPM provides much of the information required to prepare a procurement strategy for a major contract but there is a need for a template document to be prepared.
4. b.	Establishment of clear evaluation processes aimed at achieving “Value for Money” and promulgation of these within the Financial Instructions.	Chairman, NPC i.e. CSTB.	CSTB to develop evaluation processes aimed at achieving “Value for Money” with assistance from the AusAID advisor.	1 Jul 02	Done in 2005 and 2006 – more work needs to be done on SBDs	Knowledge of Procurement evaluation techniques.	The FIs and the GPM provide guidance on how the evaluation of tenders should be carried out. There is a need to ensure that all SBDs clearly specify how tenders will be evaluated.
4. c.	Establish a training unit within CSTB to educate Government staff on procurement processes.	Chairman, NPB i.e. CSTB	CSTB to develop a training unit within CSTB. Assistance to be provided by AusAID advisor.	1 Oct 02	Partially completed	Knowledge of Procurement and Methods of Instruction	A training officer has been employed in CSTB since April 2004 and some limited training implemented. A comprehensive training program is required covering Government staff, civil society and contractors.

Annex 3 - Recommended Improvements to the *PFMA* and FIs

The changes in 2003 to the *1995 Public Finances (Management) Act (PFMA)* and related Regulations in 2003 and the associated Financial Instructions (FIs) in 2005 have considerably strengthened the legal base for procurement in PNG. Issuance of the Financial Management Manual (FMM) in 2006 by the Department of Finance (DOF) is enabling several legal instruments related to public procurement to be drawn together in one guidance manual. In addition the provisions in the Good Procurement Manual (GPM) and Operation Manual (OM) also bring needed consistency to the procurement process.

There are some areas in the procurement provisions for *PFMA* or FIs which can be improved or areas which a specific aspect of procurement is not covered. These are:

- I. The Minister of Finance's power to create and dismiss Specialized State Tender Boards (STBs) is unlimited, except for the Central State Tender Board (CSTB) and Provincial STBs. In practice this authority has not been used but a Minister who wanted to avoid some, or all, of the requirements of the *PFMA*, could create a new Specialized STB with extra-ordinary powers;
- II. To ensure impartiality it would be preferable for CSTB to be financed independently as compared to the present arrangement which is through the Department of Finance (DOF) budget;
- III. Procurement is addressed in a number of parts of the *PFMA*. The FIs do help greatly to clarify the broad provisions of the *PFMA* but having a separate act for procurement would enable the scattered provisions to be drawn together;
- IV. In such areas as the evaluation of a bid, the power of a STB is not confined to the qualification requirements specified in the bid documents;
- V. There should be a provision that bids should be packaged on the basis of obtaining the lowest cost. It is reported that Provincial STBs and Government departments split tenders into inefficient, small units to avoid CSTB's revue or to dissuade large contractors from tendering.

Annex 4 - Summary of Procurement Provisions in the *PFMA 1995* and the FI of 1/2005

The procurement related aspects are provided in Part VII, "State Tenders and Contracts" in the Act of which the following is a summary of the main features:

- 1. Applicability of Act:** The Act is applicable to all contracts under public finances relating to national, provincial and local-level Governments as well as public bodies including the subsidiaries where a public body holds more than 50 percent of share capital or voting power.
- 2. Supply and Tender Boards (STBs):** The Minister of Finance and Treasury (MOF&T) may establish (abolish) such number of STBs (Specialized and Provincial) as deemed necessary for supply of works and services. Sections 39, 39A and 39B specify the authority, policy and responsibilities, which the Minister may accord to STBs. In addition, the Minister may issue directives to the Specialized STBs on preference to national bidders and local manufacturers.
- 3. Scope of Coverage:** The *PFMA* is applicable to procurement of goods, works and services with an estimated contract value of over K100,000 (current threshold) for which tenders shall be publicly invited. *PFMA* is also applicable to turnkey and BOT contracts. For contracts below K100,000, the provisions in the FIs shall be applicable. However, the *PFMA* does not apply to procurements from public bodies at national, provincial and local levels as well as overseas agencies approved by the Government. Also, procurements financed under international organizations are exempted from *PFMA*. Also, the Minister may waive procurements below K500,000 and those having Certificates of Inexpediency (COI) approved by an STB may be exempted from the Act.
- 4. Domestic Preference:** Contracts below K1,000,000 or a lesser amount as the TMOF&T directs may be restricted to participation by national bidders.
- 5. Evaluation of Tenders:** The *PFMA* requires STBs to consider bids in light of conditions including specifications on basis of which bids were invited and shall apply criteria supplied by the MOF&T. The STBs are expected to examine capacity, experience, integrity, financial status, past performance and other criteria, as deemed necessary. STBs may accept a bid, which does not exceed the upper limit of authority of the STB. In the case of a bid above the upper limit of an STB, it makes a recommendation to the Minister who in turn submits it to the NEC for decision.
- 6. Amendment of Tenders:** Any representation by a bidder to amend his bid after the closing time shall be immediately reported to the STB.
- 7. Notification of Award:** After acceptance of its bid by a successful bidder, the Chairman of the STB is required to send notification to all bidders and to publish the award in the *National Gazette*.

- 8. Confidentiality:** The *PFMA* contains a Secrecy provision that does not allow discussions or divulgence of contents of a bid by persons involved in the evaluation of tenders.

- 9. Execution of Contracts:** Execution of contracts above the upper limit of STBs but below K10,000,000 is referred to the CSTB. However, for contracts above K10,000,000 the Minister submits the contracts to the NEC. In the case of public bodies, contracts above a range of K100,000 – 500,000 shall require to be approved by the Minister.

Annex 5 - Checklist National Competitive Bidding and World Bank/ADB Policy

Checklist	Yes	No	Comments	World Bank/ADB Policy
1. Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?	√		Below a financial threshold, only domestic bidders may be allowed to participate.	Not allowed, except for eligibility restrictions related to membership.
2. Are there primary boycotts that are established by law?		√	No such boycott.	Only primary boycotts are acceptable. Boycotts are not acceptable to ADB
3. Are bidding opportunities advertised in the local press?	√		Advertised	Required
4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?		√	PFMA/FIs do not specify minimum days for submission of bids. In practice, less than 30 days are allowed.	Required
5. Are contractors/suppliers prequalified for large/specialized contracts?	√		For large/specialized contracts prequalification takes place..	Required
6. Are minimum experience, technical and financial requirements (for pre- or post-qualification) explicitly stated in the documents?		√	Not specifically included. SBDs badly needed.	Required
7. Is there a registration process for civil works contracts?	√		Registration of contractors is based on experience, technical and financial information. Non-registered contractors can bid.	Registration should not be used as a substitute for advertisement when open competition is required. However, when advertising for civil works, borrowers could indicate the required minimum category of contractor specified in the registrations system.
8. Is an invitation to prequalify advertised for each procurement involving large or complex potential contracts?	√		FIs do not cover adequately prequalification procedures. Expressions of interest for civil works may be conducted..	Required
9. Are joint ventures with local firms required for foreign firms' eligibility?		√	Joint ventures are not required.	Not allowed

Checklist	Yes	No	Comments	World Bank/ADB Policy
10. Are joint venture partners jointly and severally liable?	√		They are jointly liable	Required
11. Are there set limitations to the number of firms who can bid for a contract?		√	There are no such restrictions	Not allowed
12. Are parastatals allowed to bid?	√		Procurement from parastatals is not subject to a bidding process, and is directly awarded. In practice parastatals do not bid on public tenders.	Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law, and (iii) are independent from borrower and its purchasing/contracting authority.
13. Are bidders required to register with a local or federal authority as a prior condition for bidding?	√		Act for registration with Construction Industry Unit of Department of Trade and Industry is in draft since 1999 but not enacted. Currently it is not applied.	Should be discouraged. Acceptable only if registration criteria, process and cost reasonable/efficient and qualified foreign firms are not precluded from competing.
14. Are extensions to bid validity allowed?	√		In some cases extensions are made.	Acceptable only if justified by exceptional circumstances.
15. Are there restrictions on the means of delivery of bids?		√	No such restrictions.	Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.
16. Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?		√	No preference given although there is provision in the <i>PFMA</i> for domestic preference to be given to National Bidders.	Not allowed
17. Are there restrictions on sources of labor and material?		√	No restrictions on sources of labor or materials.	Not allowed, except for unskilled labor, if available locally.

Checklist	Yes	No	Comments	World Bank/ADB Policy
18. Is public bid opening required? Does it occur immediately or closely following the bid submission deadline? [see comment in cover note]	√		Public bid opening is required.	Required
19. Is a "two envelope" bid opening procedure permitted for procurement of goods or works? ¹	√		A two envelope system is not excluded from procurement of goods and works.	Should be discouraged. Allowed by World Bank only if (i) domestic law precludes use of one envelope and (ii) provided adequate safeguards against retaining second envelope unopened are incorporated in the two envelope procedures and effective bid protest mechanisms are already in place for the due processing of bid complaints. Permitted by ADB.
20. Is automatic rebidding required if too few bids are received?		√	There is a discretionary power to do this.	Acceptable to World Bank, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result. Acceptable to ADB when there is lack of competition.
21. Is "bracketing" used in bid evaluations? ²	√		Bracketing is not routinely used although it may occur in isolated cases.	Not allowed
22. Are bid evaluation criteria other than price allowed?	√		Criteria, other than price may be considered for award of contract, which, however, are not specified in bidding documents.	Only if included in bid documents and quantified in monetary terms
23. Is award made to lowest evaluated qualified and responsive bidder?		√	Not always, although the GPM requires award to the lowest evaluated and responsive bidder. As the GPM's evaluation process is defined in the 1/2005 FI and the FMM, this is a legal requirement, unless the Minister of Finance applies his discretionary powers.	Required

¹ All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round.

² Rejection of bids outside a range or "bracket" of bid values.

Checklist	Yes	No	Comments	World Bank/ADB Policy
24. Are price negotiations conducted with "winning" bidders prior to contract signature?	√		In some cases, negotiations are carried out to bring price in line with cost estimate.	Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price.
25. Are price adjustment provisions generally used?		√	No mechanism for price adjustment is used. Price adjustment, if any, is subject to discretion of STBs.	Not required, but recommended for works contracts of one year or more in duration when domestic inflation rate is high.
26. Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?		√	The terms and conditions across different contracts vary considerably. There is an urgent need for well prepared bid documents.	Required (to be acceptable they should be balanced, reasonable, and clearly address the most important issues that lead to problems during performance, e.g. risk allocation, payment, inspection, completion/acceptance, insurance, warranties, changes, contract remedies, force majeure, governing law, termination, etc.)
27. Are contract scope/conditions modified during implementation?	√		Modifications of contract during implementation are often undertaken without approval process.	Acceptable, but prior approval from the World Bank and ADB is required for changes in those contracts that were subject to prior review under the Loan Agreement.

Annex 6 - National Competitive Bidding: Mandatory Provisions
(for Bank/IDA financed contracts)

1. In order to ensure economy, efficiency, transparency, and broad consistency with the provisions included in Section III of the Guidelines (as required by paragraph 3.3 of the Guidelines), goods and works should be procured in accordance with the following paragraphs.

Participation in Bidding

2. Government-owned enterprises in Papua New Guinea should be eligible to bid only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Borrower.

3. Foreign bidders should be eligible to participate in bidding under the same conditions as national bidders. In particular, no domestic preference over foreign bidders should be granted to national bidders in bid evaluation.

Advertising; time for bid preparation

4. Invitations to bid should be advertised in at least one newspaper of national circulation, allowing a minimum of 30 days for the preparation and submission of bids, such 30 days to begin with the availability of the bid documents or the advertisement, whichever is later.

Standard bidding documents

5. Until national standard bidding documents approved by the Bank/Association are available, bidding documents approved by the Bank/Association should be used.

Bid security

6. All bidders should provide bid security if indicated in the bidding documents. A bidder's bid security shall apply only to a specific bid.

Classification of contractors; qualification; post-qualification

7. Bidding shall not be restricted to any particular class of contractors, and non-classified or contractors shall also be eligible to bid. Qualification criteria (in case prequalification was not carried out) shall be stated in the bidding documents, and before contract award the bidder having submitted the lowest evaluated responsive bid shall be subject to post-qualification.

Registration

8. If a registration process is required, a foreign firm determined to be the lowest evaluated responsive bidder shall be given reasonable opportunity of registering, without any let or hindrance.

Evaluation criteria

9. Evaluation criteria shall be clearly specified in bidding documents, and evaluation criteria other than price shall be quantified in monetary terms.

Bid Opening and Bid Evaluation

10. Bidders may deliver bids, at their option, either in person or by courier service or by mail.

11. Bids shall be opened in public, immediately after the deadline for submission of bids. No bid shall be rejected during bid opening. The name of the bidder, the total amount of each bid, and any discounts shall be read aloud and recorded in the minutes of the public bid opening.

12. Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the qualified bidder having submitted the lowest evaluated substantially responsive bid.

13. No bidder shall be rejected merely on the basis of a comparison with the owner's estimate and budget ceiling without the Bank's/Association's prior concurrence.

14. The Government shall publish the following information on contract award on a free and open access website when it becomes operational or on another means of publication acceptable to the Bank: (i) name of each bidder who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated price of each bid that was evaluated; (iv) names of bidders whose bids were rejected and the reasons for the rejection; and (v) name of the winning bidder, price it offered as well as the duration and summary scope of the contract awarded. This publication will be updated at least quarterly.

Rejection of Bids

15. Rebidding shall not be carried out without the Bank's/Association's prior concurrence.

Extension of the validity of bids

16. In exceptional circumstances, the procuring entity may, before the expiration of bid validity, request all bidders in writing to extend the validity of their bids. In such a case, bidders shall not be requested nor permitted to amend the price or any other condition of their bid. Bidders shall have the right to refuse to grant such an extension without forfeiting

their bid security, but bidders granting such an extension shall be required to provide a corresponding extension of their bid security.

No negotiations

17. There shall be no negotiations, even with the lowest evaluated bidder, without the Bank/Association's prior concurrence. A bidder shall not be required, as a condition of award, to undertake obligations not specified in the bidding documents, or otherwise to modify the bid as originally submitted.

Inspection and Auditing

18. Each contract financed from the proceeds of a Loan/Credit/Grant shall provide that the contractors shall permit the Bank/Association, at its request, to inspect their accounts and records relating to the performance of the contract and to have said accounts and records audited by auditors appointed by the Bank/Association.

Conflict of Interest

19. Contractors that have a business or family relationship with a senior member of the project implementing agency's staff may not be awarded a contract, unless the conflict of interest stemming from this relationship has been resolved in a manner satisfactory to the Bank/Association throughout the process of evaluation of the bids and the execution of the contract.

Bid Protest Mechanism

20. The Government shall establish an effective bid protest mechanism related to the procurement process and contract award, acceptable to the Bank/Association, that allows for bidder protests and the timely handling of such protests. The procedures to receive and handle complaints shall be disclosed in the bidding documents.

