

# **Ghana -Assessment of Stage 1**

## **Use of Country Procurement Systems in Bank- Supported Operations: Proposed Piloting Program**



**Draft Report**  
**(as of follow-up mission August 27, 2010)**

**Main Report**

## **CURRENCY EQUIVALENTS**

Currency Unit =	GHS
GHS 1 =	0.67946 USD
US\$ 1 =	1.47175 GHS

## **ACRONYMS AND ABBREVIATIONS**

ARIC	Audit Reports Implementation Committee
A&C Panel	Appeals and Complaints Panel
BME	Benchmarking and Evaluation
BPEMS	Budget and Public Expenditure Management System
CAS	Country Assistance Strategy
CHRAJ	Commission on Human Rights and Administrative Justice
CPAR	Country Procurement Assessment Report
DANIDA	Danish International Development Agency
ERPFM	External Review of Public Financial Management
FAA	Financial Administration Act
FM	Financial Management
GACC	Ghana Anti-Corruption Coalition
GAS	Ghana Audit Service
GDP	Gross Domestic Product
GHC	Ghana Cedis
GIMPA	Ghana Institute of Management and Public Administration
GoG	Government of Ghana
GPRS	Ghana Poverty Reduction Strategy
IAA	Internal Audit Agency
IAU	Internal Audit Unit
ICB/ICT	International Competitive Bidding/Tendering
IDA	International Development Association
KPC	Key Performance Indicators
MDAs	Ministries, Departments, and Agencies of Central Government
MDBS	Multi-Donor Budget Support
MMDAs	Metropolitan, Municipal, and District Assemblies
MOFEP	Ministry of Finance and Economic Planning
MTEF	Medium Term Expenditure Framework
MSME	Micro, Small and Medium Enterprises
NCB/NCT	National Competitive Bidding/Tendering
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
OHCS	Office of the Head of the Civil Service
PEFA	Public Expenditure and Financial Accountability
PFM	Public Financial Management
PPA	Public Procurement Act 663, 2003
PPA	Public Procurement Authority
PPME	Public Procurement Model of Excellence
PUFMARF	Public Financial Management Reform Program
UCS	Use of Country Systems

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## **Introduction**

1. Building strong national institutions that have effective systems and sound capacity is a fundamental aspect of the development process and a key element in the sustainability of the World Bank's development efforts. As part of such institutional development, strengthening country procurement systems is core to improving the development effectiveness of public expenditure.
2. Based on these fundamentals, the Bank has developed and approved a document entitled "Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program", approved by the World Bank Board of Executive Directors on April 24, 2008. The piloting program involves conducting assessments for each country proposed to as a candidate. The first stage is to evaluate a candidate country based on an assessment of the overall quality of its national procurement system with respect to: (i) the overall public financial management system in the country; (ii) review of the Bank's past assessments and knowledge of the procurement systems in the country; and (iii) a detailed assessment based on the OECD-DAC methodology for assessment of national procurement systems.
3. The Government of Ghana requested by letter dated October 24, 2008 to be considered among the candidate countries for use of country systems in Bank supported operations. In response, two World Bank missions were conducted. The first mission visited Accra from May 11 to 15, 2009 to assess the quality of the national procurement system. The mission was led by Allan Rotman (Lead Procurement Specialist/Hub Coordinator) and comprised of Abunyewa Adu-Gyamfi (Procurement Specialist), Baba Imoru Abdulai (Procurement Specialist), Robert Wallace DeGraft-Hansen (Financial Management Specialist) and Rita Roos (Procurement Consultant).
4. A follow-up mission visited Accra from March 29 to April 2, 2010 to discuss a series of institutional strengthening and reform issues and an action plan with the government to complete Stage 1 of three evaluation stages. Advancing to Stages 2 and 3 will depend on the results of the first stage. Stage 2 would determine whether the procurement policies and procedures are consistent with and equivalent to the principles of the Bank's procurement policies. Stage 3 would assess the compliance, performance, capacity and fiduciary risks of the executing agencies of the proposed pilot project for Ghana.
5. The second mission was led by Allan Rotman (Lead Procurement Specialist/Hub Coordinator), Asha Ayoung (Lead Procurement Specialist), Laurence Folliot Lalliot (Senior Council Procurement and Consultant Services, Legal Department), Ismaila B. Ceesay (Lead public Financial Management Specialist), Abunyewa Adu-Gyamfi (Procurement Specialist), Baba Imoru Abdulai (Procurement Specialist), Robert Wallace DeGraft-Hansen (Financial Management Specialist), Rita Roos (Procurement Consultant) and Lydia Sam (Procurement Assistant).
6. To reach the mission objective, the mission teams met with several government ministries, departments and agencies, and representatives of civil society including private sector representatives, NGOs, as well as development partners actively working in procurement issues in Ghana. The mission teams in particular met with representatives of MOFEP and the Public Procurement Authority. The complete list of persons met is attached in Annex 1 of the report.

7. The mission wishes to commend the Government of Ghana for the continuous willingness to pursue the procurement reform agenda. In particular, the mission wishes to thank the Ghana Officials, including Mr. Samuel Sallas Mensah, Mr. Eric Appiah and the rest of the management team of the Public Procurement Authority (PPA); Ms. Effie Simpson Ekuban, Ministry of Finance and Economic Planning; Mr. Emmanuel Frempong, Mr. Ransford Agyei, and Mr. Armstrong Amanor (Internal Audit Agency); Mr. Kofi Koranteng (Civil Service Commission); Ms. Bridget Katsriku (Public Service Commission); and Mr. Emile Francis Short (CHRAJ) and his team. The mission also wishes to thank Mr. Isahac Diwan, WB Country Director, Ms. Katherine Baine, WB Country Manager and the Ghana Country Office staff for their availability and support throughout this assessment process.
  
8. The present report comprises the findings of both missions conducted to complete Stage 1 of the assessment. It is structured along the following lines. Chapter 1 presents a summary analysis of the overall Public Financial Management (PFM) environment in which Ghana's public procurement system operates as based on the existing ERPFM, PEFA and other PFM reports. Chapter 2 summarizes previous assessments of status of reforms to public procurement in Ghana. This includes the country's CPAR with the status of its action plan, as well as the recommendations and actions taken based on the 2007 ERPFM Joint Assessment of the national procurement system. Chapter 3 reviews the Government's Public Procurement Reform Strategy. Chapter 4 presents the detailed findings of the country level procurement systems assessment, using the OECD-DAC Methodology for Assessment of National Procurement Systems, that consists of a system of 4 pillars and 54 sub-indicators, and a scoring system of zero (0) to three (3). Chapter 4 concludes with a Summary of Scoring comparing the scores assessed to the minimum scores required as detailed in the document "Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program", released for disclosure on June 19, 2008. Chapter 5 presents a series of institutional strengthening and reform issues (Action Plan) required to achieve the mandatory scores needed to advance to the next stages for the piloting program. The Action Plan is broken down into issues, mitigation measures (actions), entity responsible, status of Government's comments, date to complete action, and cost estimated for action.

## **Chapter 1 Review of the Public Financial Management (PFM) System**

### *Recent PFM Diagnostic Work*

9. In Ghana, a series of ERPFM (External Reviews of the Public Financial Management System) have been carried out to provide the Multi-Donor Budget Support (MDBS) partners an up to date picture of how the budget is being spent and how public financial management systems in Ghana have been evolving. In doing so, the reviews are expected to provide constructive suggestions to the Government on the further strengthening of financial management systems and the alignment of spending with economic policy goals. In 2007, a comprehensive and detailed assessment of the public procurement system was included and is summarized in Volume II of the 2007 ERPFM. The 2009 External Review of Public Financial Management (in two volumes) has been provided to the mission in a draft version (March 2009).
10. A new PEFA assessment was conducted in mid 2009 as an update to the 2006 PEFA assessment. The PEFA PFM Performance Measurement Framework is the common template for assessing the performance of country public financial management systems (PFM). The Framework incorporates a PFM performance report and a set of PFM indicators. It is part of the Strengthened Approach to supporting PFM reform, which emphasises country-led reform, harmonization and alignment by development partners around the country strategy, and a focus on monitoring of results. Periodic repetition (typically once every three years) of the PEFA assessment enables progress to be measured against a benchmark. The Draft Concept Note and the Draft Terms of Reference for this assignment was shared with the mission team.
11. Parallel to the present procurement assessment, the Assessment for Use of Country System for Project Financial Management was being carried out. The objective of this study was specifically to assess Ghana's PFM system to determine if and how it could be used in part or whole for the FM aspects of investment lending projects. The Draft UCS Report FM (May 2009) was also made accessible for review.

### *Summary of Previous PFM Findings*

12. The PEFA assessment of 2006 concluded “the PFM system is performing at an average standard, and in some areas at an above average level.” Indicator 19, which refers to procurement, was not scored. Indicator D-Donor Practices, D3, assesses the proportion of aid that is managed by use of national procedures with D (lowest score).
13. The ERPFM 2009 draft report emphasizes that the implementation of the 2009 budget begins against the backdrop of the Government's stated objective of reducing the overall fiscal deficit to 9.4 percent of GDP, down from an estimated 14.9 percent in 2008. Achieving this objective will require the reprioritization of budgetary allocations, renewed efforts in public financial management reforms and the adoption of a strategic budgeting process based on a more effective Medium-Term Expenditure Framework. As the budget now stands, expenditure allocations are increasingly constrained. Inflation expectations have become entrenched, with the consumer price index having reached 19.9 percent in January. The report outlines a policy agenda aimed at increasing control over government expenditures and at improving efficiency of the budget process.

14. In particular, the urgency to deal with the fiscal deficit problem is stressed with the following areas requiring action: (i) getting a firmer grip on the wage bill; (ii) enforcing greater fiscal discipline in the provision of energy sector subsidies; (iii) ensuring greater oversight of tax exemptions.
15. For improving the efficiency of budgetary operations, several actions are suggested such as (i) developing a reporting system that can trace the amounts transferred within and amongst the different levels of government; (ii) strengthening the Medium Term Expenditure Framework (MTEF), aiming at making the budgeting process more strategic; and (iii) improving the screening of public investment proposals.
16. Some other proposed actions for an across-the-board-strengthening of public financial management systems directly relate to procurement. First, it is recommended to redouble the efforts to introduce modern internal and external audit functions. At present, the implementation of the 2003 Internal Audit Agency (IAA) Act is proceeding slowly, since re-orientation of the internal audit function, as outlined in the Act is hampered by the retention of traditional pre-audit functions in the BPEMS' business processes, as well as by the current budget incentives, which does little to build demand for modern control processes within government. This involves re-orientating the internal audit function from pre-payment auditing towards risk based auditing, so as to concentrate on systemic issues. Secondly, a rollout plan to recruit a substantial number of internal auditors (in the range of 1000 internal auditors) is underway, along with the creation of a special scheme of service for internal auditors. One of the issues is raised by the IAA Annual Report 2009 that states: "Salary levels in MDAs and MMDAs have constrained the engagement and retention of qualified personnel into the internal audit function. This situation is worsened by the availability of better remuneration of officers with similar qualifications working in other institutions or positions within the public sector". Thus continuing follow-up actions are needed on the above two fronts, to ensure that sufficient numbers of qualified professional staff are put in place for this function. Meanwhile, progress in strengthening the external audit functions has been positive but not without controversy. While the CAGD has submitted the public accounts report to the Auditor General within the legally established timeframe (by end-March annually), and the backlog of delayed audits has been reduced, the subsequent step (the presentation of the Auditor General's report to Parliament) was not completed in 2006 and 2007 because the Speaker of Parliament did not recognize the authority of the Auditor General. In 2009 a new Acting Auditor General was appointed, and this is allowing a greater synergy between the internal and external audit functions, with the Ghana Audit Service (GAS) to rely on the work of the IAA, whenever the standards adopted by the internal auditors are deemed sufficiently robust.
17. Second, the report emphasizes the expectation of ensuring that the provisions of the Public Procurement Act are applied. While the ERPFM team endorses the systematic monitoring of entity performance by the Public Procurement Authority (PPA), the performance monitoring reports need to be adjusted to measure open competitive procurement by value, not just by transaction. Also, budget releases by CAGD need to be made contingent on the submission by MDAs of updated public procurement plans that are consistent with the Parliament-approved budget Appropriations Act.
18. The Assessment Report for Use of Country System for Project Financial Management (Draft of May 2009) states that strengthening public financial management is a key

component of the GRPS II pillar of improving governance and accountability. PFM reforms are implemented through the Short and Medium Term Action Plan (S/MTAP: 2006-2009). The report commends that overall the Ghana PFM system is improving as a result of dedication in implementation of reforms by authorities with strong political commitment. The overall assessment shows that reliance can be placed on some parts of the PFM system for investment lending if specific improvements are undertaken to mitigate fiduciary risks as recommended in the report.

19. The draft report Assessment of UCS for FM (May 2009) specifically addresses internal and external audits and controls. It is highlighted that the Internal Audit Agency (IAA) structure and the Audit Reports Implementation Committees (ARIC) provide the required independence for internal audit. At the same time it is outlined that more suitably qualified internal auditors would be required for projects. Weak records management limits the scope of work of audit work. Physical records keeping needs improvement to support in-built audit trails in BPEMS. The approach to internal audit needs to shift from pre-payment audit to Risk Based Auditing.
20. With respect to external audits and oversight, the UCS FM report states, that donor funds are audited by private audits firms that are selected after receiving clearance from the Auditor General. Going forward the report suggests that, staff from the Ghana Audit Service should start conducting joint audits with the private audit firms to build their capacity. To deal with financial misconduct, fraud and corruption, constituting and making operational the Financial Tribunal according to Part VIII of the Financial Administration Act (FAA), 2003, could further strengthen the sanctions mechanism.

## **Chapter 2 Review of Procurement Diagnostic Work**

### *Recent Procurement Diagnostic Work*

21. In 2003, a Country Procurement Assessment Report (CPAR) was conducted. The CPAR recommended actions to improve the public procurement system focused on all aspects of the system including the legal and institutional framework, procurement procedures, proficiency, oversight mechanisms and anti-corruption measures.
22. In 2007, a comprehensive Assessment of the National Procurement System was carried out in the context of the 2007 ERPFM. The assessment focused on: (i) reviewing progress in implementing the recommendations of the World Bank 2004 Country Procurement Assessment Report (CPAR); (ii) conducting an independent review of the Government's 2006 self-assessment of public procurement performance; (iii) preparing, jointly with the Government, an assessment of the formal and functional features of the national procurement system using the above mentioned OECD/DAC methodology; and (iv) identifying actions that would contribute to further improve the quality and performance of Ghana's public procurement system.

### *Summary of Recent Procurement Findings*

23. The 2007 Public Procurement Assessment Report emphasizes that a strong link ties the efficiency of the national procurement system to the achievement of development goals stated in the GPRS II. For 2007 the magnitude of resources involved in public procurement in Ghana is estimated at over 17 percent of GDP and around 80 percent of tax revenue. It is stressed, that transparent and efficient public procurement system offers numerous benefits including better value for money, encouraging investment, innovation, and reduction of corruption. In addition to reducing costs and ensuring cost-effective delivery of services, infrastructure, and public goods, good management of public resources through an effective procurement system also increases the public's confidence in governance.
24. In reviewing progress in implementing the CPAR recommendations, the 2007 Procurement Assessment Report concludes that substantial progress had been achieved since 2003 in strengthening public procurement. Highlights include: (i) enactment of the Public Procurement Act (Act 663 given assent on December 31, 2003); (ii) establishment of the Public Procurement Authority (PPA); (iii) development of standard bidding documents and request for proposals; (iv) establishment of an appeals and complaints panel; (v) development of a software package for procurement planning; (vi) development of core short-term training modules for public officials, the private sector and national oversight bodies; and (vii) development of the PPME (Public Procurement Model of Excellence) tool to collect and assess data on compliance and performance.
25. The review of the Government's 2006 self-assessment of public procurement performance found that PPME is an innovative and valuable tool to monitor public procurement performance and practices at the entity level. The report stated that further improvement of the model would require refining the Key Performance Criteria (KPC) and disclosing the average rating of each KPC publicly, better sampling of procurement entities and contracts, modification of some formulae, and enhanced quality control. It was strongly suggested to focus on evaluating the performance of big spenders and high volume contracts to ensure value for money and to take into account the risk mitigation perspective.

26. The 2007 Public Procurement Assessment concluded that the Ghana public procurement system is above average (taking average as 1.5, i.e. the mid-point of the OECD/DAC scale). The report outlines that Ghana has laid secure foundations for its public procurement reforms. In spite of progress, challenges remain. At the indicator level, to meet the OECD/DAC standards, improvements are required in the areas of supplementing the procurement legal framework, further linking procurement with public financial management, enhancing the institutional development capacity, improving the efficiency of procurement operations and operational practices, addressing procurement-related issues in control and audit systems and making operational the appeals mechanisms.

### **Chapter 3 Government Public Procurement Reform Strategy**

27. The Government of Ghana plans to further strengthen the public procurement system are outlined in both the PPA's annually revised three year strategic plan, and also as components of the MOFEP's Short Term and Medium Term Action Plan for PFM. The thrust of both these programs is to mainstream the new processes across the whole of the public sector, consolidate the oversight and appeals mechanisms, build capacity and strengthen information systems.
28. The PPA Draft Strategic Plan 2009 – 2011 encompasses the following goals: 1) A well-positioned PPA to administer the public procurement system; 2) Maintain a world class, efficient, and effective public procurement system; 3) Ensure compliance with the requirements of Act 663; and 4) The public procurement system should enjoy the confidence of local businesses. The Draft Strategic Plan is broken down into Strategies, Desired Outcomes, Outputs, Activities Targets and Action by. In total, 101 activities are listed. As appropriate, reference will be made to the strategies and intended activities within the scope of the detailed assessment (Chapter 4).

## **Chapter 4 Country Level Procurement Assessment**

### **4.1 Methodology of Assessment**

29. The national procurement system of Ghana was assessed in May 2009 based on the OECD-DAC/World Bank Round Table methodology and indicators as defined in the “Methodology for the Assessment of National Procurement Systems”<sup>1</sup>. The use of this tool provided a harmonized approach to assess the quality and effectiveness of the national procurement system.
30. The assessment considered 4 key areas called “pillars” which are composed of 12 indicators and 54 sub-indicators. Each sub-indicator is assessed with a scoring system ranging from 3 to 0. The score of 3 indicates full achievement of the stated standard. A score of 2 is given when the system exhibits less than full achievement and needs some improvements in the area being assessed and a score of 1 is for those areas where substantive work is needed for the system to meet the standard. A score of 0 indicates a failure to meet the proposed standard.
31. The Bank’s methodology for “Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program” defines benchmark scores for each of the 54 sub-indicators. These benchmark scores require a “3” for 17 sub-indicators, a “2” with an action plan for 10 sub-indicators (shown as a 2+) and a “2” for 25 sub-indicators. Two of the sub-indicators (4(d) and 10(e)) are scored on a pass/fail (3 or 0) basis.
32. In conforming to the four pillar approach of the OECD-DAC methodology, the initial assessment report (draft) highlighted the progress already achieved by the Government in the implementation of its public procurement reforms and those areas where further actions are required in order to bring public procurement in the country to levels consistent with the benchmarks.
33. During the follow-up mission of March/April 2010, peer reviewers from the World Bank as part of the quality assurance procedures set out in the methodology reviewed the initial assessment findings. Possible mitigation measures were developed and presented to the Ghana authorities (Draft proposed Action Plan).
34. In August 2010 (?), the Government submitted an update of the Draft Action Plan including responsibilities and dates to complete actions and comprising cost estimates. This update is attached in Annex 2 of this report.

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<sup>1</sup> [http://www.oecd.org/document/40/0,2340,en\\_2649\\_19101395\\_37130152\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/40/0,2340,en_2649_19101395_37130152_1_1_1_1,00.html)

## **4.2 Findings of the Assessment**

The findings of the assessment are presented below, starting with Pillar I – Legislative and Regulatory Framework.

### **Pillar I. Legislative and Regulatory Framework – Summary of Findings**

Pillar I covers the legal and regulatory instruments from the highest level (national law, act, regulation, decree, etc.) down to detailed regulations, procedures and bidding documents formally in use.

#### **Progress achieved:**

In Ghana, the Public Procurement Act, 2003 (Act 663) provides the legal framework for public procurement. Supplementing regulations exist as a draft. Proposed amendments to the Act are currently being discussed.

The public procurement law of Ghana to some extent ensures that public procurement is carried out in accordance with the principles of economy, efficiency, and transparency. This is demonstrated by its wide applicability and accessibility, existence of procurement oversight, requirement for procurement planning and procurement methods and procedures, which are applied largely according to international standards.

#### **Opportunities for improvements:**

The law does include limitations to its applicability that go against the aforementioned principles and some provisions do not fully comply with international standards. The proposed amendment to the Act and the related proposed regulations currently under consideration should consider the comments made in this report and should cover the mitigation measures (actions) presented in detail in Annex 2 (Draft Action Plan) such as:

- Procurement methods defined and thresholds included in Schedule 3 of the Act are not clearly linked to the Act and operational practices; consequently the implementation mechanisms need to be clarified in the proposed amendment to the Act and in its proposed regulations.
- The power vested in the Minister of Finance under section 14 (3) of the Act to direct the use of a different procurement procedure where the Minister determines that it is in the “national interest” to do so does not guarantee that the procedure will be in line with principles of economy, efficiency, and transparency. This provision provides an avenue, which can be used to introduce procedures that go against good public procurement practices and should be deleted.
- Advertising rules and time limits are unclear. Publication of all advertisements should be mandatory on the PPA website and in a newspaper of adequate circulation.
- Tender evaluation and award criteria, defining on how to determine the lowest evaluated bidder include considerations that are considered vague and of limited relevance to a procurement decision, e.g. the effect the acceptance of the tender will have on balance of payment positions or national security considerations (Section 59, sub-sections 4 (c) and (d); Section 69, sub-section 2 (c) and (d)).

- Several exceptions specified in the Act weaken the right of suppliers and contractors to complain under the complaints and appeal process (Section 78, sub-section 2). Interested or actual bidders should be allowed to appeal at any time of the procurement process.
- Procedures for debarment do not exist and should be established.

**Pillar I. Legislative and Regulatory Framework – Detailed Findings**

The fourteen sub-indicators of Pillar I have been assessed applying the “Methodology for the Assessment of National Procurement Systems”. The scores achieved compare to the Benchmark UCS Mandatory Score defined in the Bank’s methodology for “Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program” as follows:

**Table 1:** Pillar I. Legislative and Regulatory Framework – Assessment scores

<b>Pillar I. Legislative and Regulatory Framework</b>	<b>Current Assessment 2010</b>	<b>Benchmark UCS Mandatory Score</b>
<b>1) The Public procurement legislative and regulatory framework</b>		
a) - Scope of application and coverage of the regulatory framework and public access to legislation.	2	3
b) - Procurement methods.	3	2+
c) - Advertising rules and time limits.	1	3
d) - Rules on participation and qualitative selection	2	3
e) - Tender documentation and technical specifications.	3	3
f) - Tender evaluation and award criteria	1	3
g) – Submission, receipt and opening of tenders	3	3
h) – Complaints system structure and sequence	2	3
<b>2) Implementing Regulations and Documentation</b>		
a) – Implementing regulation that provides defined processes and procedures.	0	2
b) – Model tender documents for goods, works, and services.	3	2
c) – Procedures for pre-qualification.	3	2+
d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion.	3	2+
e) – User’s guide or manual for contracting entities.	3	2
f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts.	3	3

**Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.**

**Sub-indicator 1(a) - Scope of application and coverage of the legislative and regulatory framework. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) The legislative and regulatory body of norms is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures,) and precedence is clearly established.**

The Public Procurement Act, 2003 (Act 663) provides the legal framework for public procurement in Ghana. The Public Procurement Act, 2003 (Act 663) is supplemented by standard bidding documents and by a procurement manual developed for training purposes. There are no regulations that complement the Law. The regulations are still in draft. The hierarchy of the legislative instruments is expected to be defined in the preamble of the upcoming regulations.

An amendment of the Public Procurement Act, 2003 (Act 663) was proposed by the Minister of Finance and Economic Planning to the cabinet on May 27, 2008. This proposed amendment is still under discussion. The PPA did not see the lack of regulations as being important for implementing the Act. Since Act 663 refers to the regulations as the basis for calculating the margin of preference, it is important for the draft regulations to be formalized. The mission insisted on the necessity to finalize and publish the regulations in order to avoid future overlaps and contradictions and have information such as thresholds that require frequent updates.

**(b) All laws and regulations are published and easily accessible to the public at no cost.**

The Act, regulations (draft) and the manual are published on the PPA website which is accessible to the public at no cost. Administrative rulings and directions under the Act are to be made accessible to the public as per section 95 of Act 663.

**(c) The legislative and regulatory body of norms covers goods, works, and services (including consulting services) for all procurement using national budget funds.**

According to the section 14 (1) (a), the Act “*applies to the procurement of goods, works and services, financed in whole or in part from public funds except where the Minister decides that it is in the national interest to use a different procedure.*” Subsection (2) states, that without limiting subsection (1), it “*applies to (a) central management agencies; (b) government ministries, departments and agencies; (c) subvented agencies; (d) governance institutions; (e) state owned enterprises to the extent that they utilise public funds; (f) public universities, public schools, colleges and hospitals; (g) the Bank of Ghana and specified financial institutions such as public trusts, pension funds, insurance companies and building societies which are wholly owned by the State or in which the State has majority interest; (h) institutions established by Government for the general welfare of the public or community.*”

In consequence, the public procurement law demonstrates a wide and general applicability. However, the singular discretionary power over procurement transactions vested at the Minister level is not considered in line with the principles of economy, efficiency and transparency. Where the Minister decides under subsection (1) (a) that it is in the national interest to use a different procedure, the Minister shall define and publish in the *Gazette* the method of procurement to be followed in order to serve the interest of economy

(Section 14 (3)).<sup>2</sup> In spite the fact that an alternative procurement procedure will be published in the gazette, this provision provides an avenue, which can be used to introduce procedures that go against good public procurement practices.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The legislative and regulatory body of norms complies with all the following conditions: (a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures,) and precedence is clearly established. (b) All laws and regulations are published and easily accessible to the public at no cost. (c) It covers goods, works, and services (including consulting services) for all procurement using national budget funds.	<b>3</b>
The legislative and regulatory body of norms complies with (a) plus one of the above conditions.	<b>2</b>
The legislative and regulatory body of norms complies with (a) of the above conditions.	<b>1</b>
The system does not substantially comply with any of the above conditions. .	<b>0</b>

**Conditions Met:**

a substantially met, c met, b not met.

**Comment/Proposed Mitigation Measure:**

While the legislative and regulatory framework broadly meets the requirements of this sub-indicator, there are specific areas that need further considerations:

The proposed amendment to the Act and the proposed regulations currently under consideration should take the following issues into account:

- The hierarchy of the legislative instruments should be clearly stated.
- The regulations should be finalized and published.
- **Singular discretionary power over procurement transactions at the Minister level should be removed, for example:**  
**With reference to the scope of application, the present provision in section 14 (1) (a) that the Minister can decide that it is in the national interest to use a different procedure is considered discretionary and should be removed.**
- With reference to section 15 – Procurement entity (2), the second part of the sentence “that may be issued by the Minister acting in consultation with the Board” shall be removed.

**Sub-indicator 1(b) — Procurement Methods. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2+**

<sup>2</sup> There are no written Gazette procedures. It was explained as a notification process initiated by the notifying institution. The Gazette notice is submitted by the institution concerned to the Attorney General’s department, which facilitates publication by government printers and entry into the Gazette – a collection of various government notices.

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.**

*Methods of Procurement*

Part IV – Methods of Procurement, section 35 (1) states “a procurement entity shall procure goods, services and works by competitive tendering except as provided in this Part”. The following procurement methods and procedures are defined in Part IV:

- Two stage tendering (section 36)
- Restricted tendering (section 38)
- Single-source procurement (section 40), and
- Request for quotations (sections 42).

The Act does not explicitly define “Request for Proposal” as a procurement method but the term is used and section 35 (2) defines that the quality and cost-based method of selection as the preferred procedure when selecting consultants. Methods and procedures to procure consultants are elaborated in more detail in Part VI-Methods and Procedures to Procure Consultants (see below).

*Procedures for selecting two-stage tendering, restricted tendering, single-source procurement, and request for quotation*

The procedures and conditions for selecting two-stage tendering, restricted tendering, and single-source procurement are explained in sections 36, 39, 41 and 43 and are generally considered to follow good practice in procurement. The use of any method of procurement other than competitive tendering has to be justified and included in the record. The selection of restricted tendering or single-source procurement is subject to approval by PPA.

*Tendering procedures (NCB, ICB)*

Part VI – Tendering Procedures elaborates on the use of National Competitive Tendering (section 44) and International Competitive Tendering (section 45): In procurement proceedings “in which the procurement entity decides that only domestic suppliers or contractors may submit tenders, the procurement entity shall employ national competitive tendering procedures.” International competitive tendering shall be used whenever open competitive tendering is used and effective competition cannot be obtained unless foreign firms are invited to tender.”

Although there is no clear link to the provisions in Part IV – Methods in procurement, the following thresholds are currently defined in Schedule 3 of Act 663:

**Table 2:** Current Procurement Methods and Thresholds

Procurement Method	Act 663, section	Value threshold GHC <sup>3</sup> according to Act 663, Schedule 3		
		Goods	Works	Technical Services
Competitive tendering	35			
- International competitive tend.	45	Above 1,500,000	Above 2,000,000	Above 200,000
- National competitive tendering	44	Above 20,000	Above 50,000	Above 20,000
Two-stage tendering	36	No thresholds		
Restricted tendering	38	Subject to approval by PPA		
Single-source procurement	40	Subject to approval by PPA		
Request for quotation	42	Up to 20,000	Up to 50,000	Up to 20,000

The proposed amendment to Act 663 would, if ratified and effective, considerably increase the thresholds for national and international competitive tendering, as shown in the following table:

**Table 3:** Proposed Procurement Methods and Thresholds

Procurement Method	Act 663, section	Value threshold GHC according to proposed amendment		
		Goods	Works	Technical Services
Competitive tendering	35			
- International competitive tend.	45	Above 3,000,000	Above 5,000,000	Above 2,000,000
- National competitive tendering	44	Above 25,000	Above 50,000	Above 25,000

*Procedures for the Selection of Consultants*

Part VI – Methods and Procedures to Procure Consultants contains the following stipulations:

Invitation of expressions of interest and preparation of shortlists

For the procurement of consultancy services above the threshold defined in Schedule 3 (currently GHC 70,000, approximately USD 50,000), the procurement entity shall invite consulting services by publishing a notice seeking expression of interest in submitting a proposal. According to section 66 (1), this notice is to be published in the Public Procurement Bulletin, whereas according to Schedule 3, it is to be published in local newspapers.

Subsection (3) provides for direct invitations by procurement entities if necessary for economic and efficiency reasons and if approved by PPA, where

- (a) *“the services to be procured are available only from a limited number of consultants, if it invites expressions of interest from all these consultants;*
- (b) *the time and cost required to examine and evaluate a large number of expressions of interest would be disproportionate to the value of the services to be performed, if it invites proposals from enough consultants to ensure effective competition, or*

<sup>3</sup> 1 GHC is equivalent to approximately USD 0.7053

(c) *direct invitation is the only means to ensure confidentiality or is required for effective competition.*”

#### Shortlisted candidates

The procurement entity is responsible for the preparation of the shortlist, which may comprise only national consultants but shall comprise at least three and not more than six consultants (section 67). The consultants to participate in the selection process shall be selected on the basis of quality.

#### Choice of selection procedure

As mentioned above, section 35 (2) defines the quality and cost-based method of selection as the preferred procedure when selecting consultants.

According to section 72, the procurement entity may select consultants by quality-based selection in case of complex or highly specialized assignments<sup>4</sup>; assignments that have a high downstream impact where the objective is to have the best experts; and assignments that can be carried out in substantially different ways where proposals will not be comparable.

The least-cost selection procedure may be used for small value standard assignments up to a threshold defined in Schedule 3 (currently GHC 70,000) or based on consultants’ qualifications (currently GHC 35,000).

The procurement entity may – subject to approval of PPA - select consultants by inviting proposals from a single consultant where there is “(a) *only one eligible consultant*; (b) *an emergency as specified in section 40 (1) (b) and (c)*<sup>5</sup>; or (c) *a follow-up assignment*.” (Section 72 (5)).

Part VI does not provide any specifics on when to solicit international competition for consultancy services. It is therefore assumed that the general stipulations as per sections 44 and 45 apply accordingly.

### **(b) Competitive procurement is the default method of public procurement.**

Competitive Tendering is defined as the default method of public procurement as section 35 (3) states, “*if the procurement entity uses the method of procurement other than competitive tendering, it shall include in the record required a statement of the grounds and circumstances on which it relied to justify the use of that method.*” According to sections 38 and 40, restricted tendering and single-source procurement are subject to approval by PPA.<sup>6</sup>

### **(c) Fractioning of contracts to limit competition is prohibited.**

Fractioning of contracts to limit competition is prohibited. Section 21 (5) stipulates, “*A procuring entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement of this Act.*”

### **(d) Appropriate standards for international competitive tendering are specified and are consistent with international standards**

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<sup>4</sup> “*where (i) it is difficult to define precise terms of reference and the required input from the consultants; (2) the client expects the consultants to demonstrate innovation in their proposals*”; (section 72 (1) (a)).

<sup>5</sup> Section 40 (1) (b): urgent need due to unforeseeable circumstances; Section 40 (1) (c): catastrophic event

<sup>6</sup> This provision may be overridden in case the Minister uses his discretionary power according to Section 14 (1) as elaborated under indicator 1 (a).

Standards for international competitive bidding (section 45) are consistent with international standards. Open international tendering shall be in accordance with Part IV and Part V of Act 663.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The legal framework meets all the following conditions: (a) Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable. (b) Competitive procurement is the default method of public procurement. (c) Fractioning of contracts to limit competition is prohibited. (d) Appropriate standards for international competitive tendering are specified and are consistent with international standards	<b>3</b>
The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework meets the conditions of (a) and (b).	<b>1</b>
The legal framework fails to substantially comply with any three of the conditions a) through d).	<b>0</b>

**Conditions Met:**

a substantially met, b-d met.

**Comment/Proposed Mitigation Measure:**

In sections 44 and 45 of the Act, reference to Schedule 3 of the Act - Thresholds for Procurement Methods should be included to clarify unambiguously the use of allowable procurement methods.

With reference to the notice of invitation of expression of interest for consulting services, section 66 (1) and Schedule 3 should be harmonized to clearly define where the notice should be published.

The conditions for selecting consultants by inviting proposals from a single consultant are considered broad and discretionary (section 72 (5)).

**Sub-indicator 1(c) — Advertising rules and time limits. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 3**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Requires that procurement opportunities other than sole source or price quotations be publicly advertised.**

Invitations to tender and invitations to pre-qualify above thresholds defined in Schedule 3 of Act 663 – Thresholds for Procurement Methods are to be published in at least two newspapers and the Procurement Bulletin (Act 663, section 47).

Due to a lack of interest on behalf of the private sector, and high cost for publishing and distribution, PPA has discontinued publishing the Procurement Bulletin and is currently evaluating options on how to solve this problem. For more details, refer to sub-indicator 5 (a).

**(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought.**

Act 663, Section 53(2) specifies a maximum of four weeks for preparation of tenders under National Competitive Tendering (no minimum specified). The need for a minimum is addressed in a Public Notice from the PPA published in the media on 16 December 2005 in which entities are directed to give a minimum of two weeks to submit tenders under NCB and price quotation.

The proposed amendment to Act 663 specifies *“the procurement entity shall stipulate a period of two weeks for the submission of tenders under the national competitive tendering”*.

However, in the assessor’s opinion a minimum of two weeks is not as a general rule sufficient time for potential bidders to obtain documents and respond to the advertisements.

According to section 45 (2) c), in the case of international competitive tendering, at least 6 weeks shall be allowed for submission of tenders. No minimum time is defined for consultancy services and for prequalification.

**(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible.**

According to Act 663, section 47, invitations to tender and invitations to pre-qualify above the thresholds defined in Schedule 3 are to be published in at least two newspapers and the Procurement Bulletin.

As mentioned before, the Procurement Bulletin has not been published on a regular basis (for more information refer to sub-indicator 5 a). In order to ensure broad publication of tender notices, PPA indicated that the newspapers are checked daily for tender notices and that these advertisements are then posted by PPA on the PPA website.

**(d) Content of publication includes sufficient information to enable potential bidders to determine their ability and interest in bidding.**

Sections 48 and 66 provide the detailed contents of the invitation to tender, invitation to prequalify, and invitation for expression of interest. The "Particular Instructions to Applicants" of the Standard Prequalification Documents and the Standard Tender Documents include specific qualification criteria. The publications are assessed to include sufficient information to allow bidders to determine their interest and ability in bidding.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legal framework meets the following conditions : (a) Requires that procurement opportunities other than sole source or price quotations be publicly advertised. (b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought. (c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible. (d) Content of publication includes sufficient information to enable potential bidders to determine their ability and interest in bidding.	<b>3</b>
The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework meets the conditions of (a) plus one of the remaining conditions.	<b>1</b>
The legal framework only meets the conditions of (a) above.	<b>0</b>

**Conditions Met:**

a, c and d met, b not met.

**Comment/Proposed Mitigation Measure:**

It is generally recommended that different minimum requirements be established for the respective procurement methods taking the procurement method, the nature, and the complexity of the procurement into account. For National Competitive Bidding, a minimum of 4 weeks is normally defined for potential bidders to obtain documents and respond to the advertisement. The provisions in the PPA and the Manual need to be harmonized.

**Section 45 – International competitive tendering (2) (b): Publication of all advertisements should be mandatory on the PPA website as a minimum and if desired in a newspaper with adequate circulation internationally.**

**Section 47 – Procedures for inviting tenders or applications to pre-quality (2): Publication of all advertisements should be mandatory on the PPA website and in a newspaper with adequate circulation nationally.**

*Section 47 (1):* Should be omitted because it is redundant with the above provisions.

**Sub-indicator 1(d) — Rules on participation. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of pass/fail basis for determining qualifications to the extent possible; limits**

**domestic price preferential, if allowed, to a reasonable amount (e.g. 15% or less); and requires justification for set asides that limit competition.**

According to the Act, participation of any contractor or supplier is to be based on qualification and appropriate financial and legal capacity (sections 22, 32, 3q). However, the shortlist for consulting services may comprise only national consultants (Act 663 section 67 (2)). Also, the eligibility clause in standard letter for expressions of interest is unclear (see also 1f).

With regard to the margin of preference Act 663, section 60 states, “(1) A procurement entity may grant a margin of preference for the benefit of tenders for work by domestic contractors or for the benefit of tenders for domestically produced goods or for the benefit of domestic suppliers of services. (2) The margin of preference shall be calculated in accordance with the procurement regulations and reflected in the procurement proceedings. (3) The margin of preference shall be authorized by the Board and be subject to approval by the Board.”

The draft regulations define the eligibility criteria for domestic contractors and the margin of preference (15% - 20 % for goods, 7.5 % - 10 % for works). The margin of preference, which applies in particular tender needs to be specified in the Tender Data Sheet. The “Guidelines for Margins of Preference” are posted on the PPA website.

**(b) Ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.**

Supplier registration is not required by law. Suppliers and contractors can be debarred in case of criminal or corrupt practises (Act 663, sections 3g, 91).

As detailed in the draft regulations, section 60, to be eligible for the margin of domestic preference under ICT for works, the following minimum criteria must be met to be considered a domestic contractor: i) are registered and incorporated under the laws of Ghana; ii) have majority shareholding by Ghanaians; and iii) will not subcontract more than 50 percent of the total value of the works to foreign contractors. Under certain conditions, joint ventures between a domestic contractor and its foreign partner and subcontracting by foreign firms may be eligible for domestic preference as well.

**(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.**

Suppliers and contractors can be debarred in case of criminal or corrupt practises (Act 663, sections 3g, 91). Procedures on how to conduct debarment have not been established yet and as elaborated by PPA, no supplier or contractor has been debarred so far.

**(d) Establishes rules for the participation of government owned enterprises that promote fair competition.**

No rules exist for the participation of government owned enterprises, which would establish a fair level playing field in case government enterprises compete with the private sector. According to PPA, this is not of substantial relevance in the country.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
<p>The legal framework meets the following conditions:</p> <p>(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of pass/fail basis for determining qualifications to extent possible; limits domestic price preferential, if allowed, to a reasonable amount (e.g.15% or less); and requires justification for set asides that limit competition.</p> <p>(b) Ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.</p> <p>(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.</p> <p>(d) Establishes rules for the participation of government owned enterprises that promote fair competition.</p>	<b>3</b>
The law and regulations meet the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The law and regulations meet the conditions of (a) plus one of the remaining conditions.	<b>1</b>
The law and regulations do not meet the conditions of a) through d) above.	<b>0</b>

**Conditions Met:**

a substantially met, b and c met; d not met.

**Comment/Proposed Mitigation Measure:**

Since Act 663 refers to the regulations as the basis for calculating the margin of preference, it is important for the draft regulations to be formalized.

Rules for the participation of state owned enterprises should be specified in the Act 663 to promote fair competition.

**Procedures for debarment should be established.**

*Section 44 – National competitive tendering:* It needs to be clarified if registration is mandatory for international companies to participate in National Competitive Tendering.

**Sub-indicator 1(e) — Tender documentation and technical specifications. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 3**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenders to be able to respond to the requirement.**

The legislative framework establishes the minimum content of tender documents (Act 663, sections 48, 50, 68).

**(b) Requires the use of neutral specifications citing international standards when possible.**

Act 663, section 33 (2) defines that specifications including drawings, etc. “shall be based on objective technical and quality characteristics of the goods, works or services to be procured and there shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless a precise or intelligible way of describing the characteristics of the goods, works or services to be procured does not exist, in which case, the works “or equivalent” shall be included”.

Act 663 further specifies in section 45 (2) d), that in case of international competitive tendering “technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade ...”.

**(c) Requires recognition of standards which are equivalent when neutral specifications are not available.**

As elaborated above, the law requires the adding of the words “or equivalent” when neutral specifications are not available.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legal framework meets the following conditions: (a) Establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenders to be able to respond to the requirement. (b) Requires the use of neutral specifications citing international standards when possible. (c) Requires recognition of standards which are equivalent when neutral specifications are not available.	<b>3</b>
The legal framework substantially meets the conditions of (a) plus one of the remaining conditions.	<b>2</b>
The legal framework meets the conditions of (a).	<b>1</b>
The content of the bidding documents is totally or largely left at the discretion of the procuring entity.	<b>0</b>

**Conditions Met:**

a-c met.

**Comment/Proposed Mitigation Measure:**

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**Sub-indicator 1(f) — Tender evaluation and award criteria. Assessment Score: 1,  
Minimum Required OECD/DAC Mandatory score: 3**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents.**

Act 663, section 50 (3) defines that the tender invitation documents shall include the criteria and procedures for the evaluation of the qualifications of suppliers and contractors. It further elaborates that the “*criteria to be used by the procuring entity to determine the successful tender, including any margin of preference or any other criteria other than the price to be used under section 59 (4) (b) (c) or (d) and the factors apart from the price to be used to determine the lowest evaluated bid, shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the tender documents*”.

Act 663 section 59 (4) elaborates that “*to determine the lowest evaluated tender, the procurement entity shall consider*

- a) *the tender price, subject to any margin of preference applied under section 60 (2);*
- b) *the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provisions of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;*
- c) *the effect the acceptance of the tender will have on (i) balance of payments position and foreign exchange reserves of the country; (ii) countertrade arrangements offered by suppliers and contractors; (iii) the extent of local content, including manufacturer, labour and materials, in goods, works or services being offered by suppliers or contractors; (iv) the economic-development potential offered by tenders, including domestic investment or other business activity; (v) the encouragement of employment, the reservation of certain production for domestic suppliers; (vi) the transfer of technology; (vii) the development of managerial scientific and operational skills; and*
- d) *national security considerations.*

The criteria listed above under c) and d) are assessed to be vague and not relevant to a procurement decision. Analogous criteria are defined in Act 663, section 69, for the evaluation of proposals for consultancy services.

The mission explained that the evaluation criteria stated in Act 663 such as the impact on balance of payment, economic-planning national security considerations which derived from the 1994 UNCITRAL Model Law are not to be used as they are not criteria that should be taken into account when evaluating tenders. It was also brought to the attention of the Government that these provisions are outdated and have been replaced in the new UNCITRAL draft law.

**(b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible.**

The Standard Tender Documents (STD) include provisions regarding pass/fail criteria.

**(c) The evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered.**

The evaluation of proposals for consulting services gives adequate importance to quality and regulates how price and quality are considered.

**(d) During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process;**

Act 663, section 77 states that “(1) The procurement entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants. (2) A party to negotiations shall not reveal to any other person any technical, price or other information relating to negotiations without the consent of the other party.”

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legal framework mandates that: (a) The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents. (b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible. (c) The evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered. (d) During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process;	<b>3</b>
The legal framework covers the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal frame work covers (a) but does not fully cover the other conditions.	<b>1</b>
The legal framework does not adequately address any of the conditions (a) through (d) above	<b>0</b>

**Conditions Met:**

a partially met; b, c and d met; professional judgement applied

**Comment/Proposed Mitigation Measure:**

The criteria specified in *section 59-Evaluation of tenders and section 69-Criteria for the evaluation of proposals* (such as impact on balance of payment, economic-development potential, etc.) should be considered at the sector planning stage but not as additional evaluation criteria, which can override quality and price criteria as stated in the Act and in the tender documents.

Therefore, to determine the lowest evaluated tender, the stipulations under *section 59 (4)(c) and (d)* and analogously in *section 69 (2)(c) and (d)* should be removed.

National security considerations are already addressed in *section 40 - Single source procurement 1 (f)*. Thus discretionary and broad ambiguous criteria for selection of procurement methods and for contract award appear to be overly arbitrary.

**Sub-indicator 1(g) — Submission, receipt and opening of tenders. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 3**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission.**

The legal framework provides for appropriate public opening procedures (Act 663 sections 56 (2) for goods and 73 (5) for services). Opening immediately follows the closing date for submission.

**(b) Records of proceedings for bid openings are retained and available for review.**

Records of opening proceedings are retained and available for review (Act 663, sections 28, 56 (5)).

**(c) Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited.**

Confidentiality of bids is maintained and disclosure of sensitive debriefing is prohibited (sections 63, 65 (9), 77 (1)).

**(d) The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.**

The modality of submitting tenders is well defined to avoid unnecessary rejection of tenders (section 53 (6)).

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The legal framework provides for the following conditions: (a) Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission. (b) Records of proceedings for bid openings are retained and available for review. (c) Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited. (d) The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.	<b>3</b>
The legal framework provides for (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework provides for (a) plus one of the remaining conditions.	<b>1</b>
There is no requirement in the legal framework for public opening of tenders.	<b>0</b>

**Conditions Met:**

a-d is met.

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 1(h) — Complaints. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) The right to review for participants in a procurement process**

Act 663, Part VII – Review, provides for an administrative review system. Suppliers, contractors and consultants have the right to complain first to the procurement entity concerned, if the procurement contract has not already entered into force (section 79 (1)). The complaint has to be launched within 20 days after the circumstances giving rise to the complaint came to the notice of the complainant. The procurement entity is supposed to make a decision on the complaint within 21 days. If the head of the procuring entity does not respond to a complaint within the stipulated time, the complaint can institute proceedings for administrative review by the PPA.

The exceptions specified in the Act section 78 – *Right to review (2)* weaken the right to review.

**(b) Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review.**

If the procuring entity does not respond to a complaint within the stipulated time, if the contract has already entered into force, or if the supplier, contractor, or consultant claims to be adversely affected by a decision of the head of the procurement entity under section 79, the complainant can institute proceedings for administrative review. The Board of PPA acts as a second tier (section 80). The Board may declare the legal rules or principles that govern the subject-matter of the complaint; order that the provisions of Act 663 to be complied with; annul in whole or in part an illegal act or decision of the procurement entity, other than any act or decision bringing the procurement contract into force; require the payment of compensation for reasonable costs incurred; etc.

There is a potential conflict of interest since the Appeals & Complaints Panel of the Board of PPA is a subdivision of the PPA, which also gives approval for single-source procurement or restricted tendering (refer to sub-indicator 4 (d)). Moreover, while the complaint is being handled, it does not systematically suspend the process, which means that the Board of PPA can issue decisions after awards have been made and contracts signed.

**(c) Establishes the matters that are subject to review**

Act 663, section 78 (1) states that “*Any supplier, contractor or consultant that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on the procurement entity by this Act, may seek review in accordance with this Part.*”

Section 78 (2) continues “*Notwithstanding subsection (1), the following shall not be subject to review*

- a) *the selection of a method of procurement under sections 35 to 42;*
- b) *the choice of a selection procedure under section 75 (6) (a), 75 (6) (b) or section 76;*
- c) *the limitation of procurement proceedings in accordance with section 44 (comment: nationality)*
- d) *a decision by the procurement entity under section 29 to reject tenders, proposals, offers or quotation*

These exceptions specified in Act 663 section 78 (2) are assessed to weaken the right to review. The mission explained that these restrictions were originally mentioned in the 1994 UNCITRAL Model Law but that they are no longer considered in the new UNCITRAL Model law draft.

The provision stating that in case a complaint is dismissed, the complainant can be asked for payment of compensation creates another restriction.

**(d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.**

The head of the procurement entity shall issue a decision within twenty-one days after submission of the complaint (Act 663, section (5)). If the head of the procurement entity does not issue a decision in due time, the complainant is entitled to institute proceedings for administrative review (Act 663, section (7)). The administrative review body, the Board of PPA, shall issue a written decision within twenty-one days of starting a review, stating the reasons for decision (Act 663, section 80 (4)). According to the mission the deadlines for issuing decisions are too long and should be reduced from 21 days to 7 working days.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The legal framework provides for the following: (a) The right to review for participants in a procurement process (b) Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review. (c) Establishes the matters that are subject to review (d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.	<b>3</b>
The legal framework provides for (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework provides for (a) plus one of the remaining conditions.	<b>1</b>
The right for review of the proper application of the procurement process is not provided in the legal framework.	<b>0</b>

**Conditions Met:**

a partially met, all other scoring criteria met, professional judgement applied.

**Comment/Proposed Mitigation Measure:**

**Interested or actual bidders should be allowed to appeal at any time of the procurement process. The exceptions specified in the Act section 78 – *Right to review (2)* weaken the right to review and should be deleted.**

<b>Indicator 2. Existence of Implementing Regulations and Documentation:</b>
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**Sub-indicator 2(a) – Implementing regulation that provides defined processes and procedures not included in higher-level legislation. Assessment Score: 0, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) They are clear, comprehensive and consolidated set of regulations available in a single and accessible place.**

Act 663 section 97 mandates the Minister, in consultation with the Board, to make regulations by legislative instrument to give effect to the purposes of the Act 663.

There are no regulations that supplement and detail the provisions of the procurement law in Ghana. A draft (Regulations-PPA, 2003 (Act 663)) exists and has been made available at the PPA website “PPBghana.org”. As indicated by PPA, the regulations will be finalized once the amendment to Act 663 has been passed.

**(b) They are updated regularly;**

The regulations are not yet officially in place, and thus has not yet become relevant.

**(c) The responsibility for maintenance is defined.**

It is the Board of PPA, under the Act 663, section 3 (c), which has the responsibility to develop draft rules, instructions, and other regulatory documentation on public procurement. This has not yet become well defined and has not yet been tested.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There are regulations that supplement and detail the provisions of the procurement law that meet the following requirements: (a) They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place (b) They are updated regularly; (c) The responsibility for maintenance is defined	<b>3</b>
The regulations meet the conditions of (a) plus one of the remaining conditions.	<b>2</b>
The regulations exist but there is no regular updating, the responsibility for updating is not clearly defined or there are many important omissions in the regulations or inconsistencies with the law.	<b>1</b>
There are no regulations or the existing ones do not meet substantially any of the requirements listed above.	<b>0</b>

**Conditions Met:**

a, b and c not met.

**Comment/Proposed Mitigation Measure:**

The regulations should be formalized, and need to be less repetitive and redundant with the Manual.

The Manual, which was initially prepared for training purposes, should be revised and focus on details and explanations of the Act and the regulations.

**Sub-indicator 2(b) – Model tender documents for goods, works, and services. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies;**

In line with Act 663, section 3c, 3h and 97, standard invitation and tender documents have been made available by PPA and are published on the PPA website (<http://www.ppbghana.org>). They cover the entire procurement cycle ranging from prequalification to tender documents (IDT, NCT, price quotation) and to evaluation forms for the procurement of goods and works. For consultancy services, standard documents are provided for request of expressions of interest, request for proposals, as well as for contracts (lump sum contracts and time-based contracts) and evaluation forms.

**(b) There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering.**

The standard clauses are in agreement with the legal framework.

**(c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.**

PPA has prepared Draft Terms of Reference for the review of its standard tender documents. The ToR are subject to the Board’s approval. Since the new members of the Board have not been appointed by the President yet, the intended review of standard documents has been delayed.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
(a) There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies; (b) There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering. (c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.	<b>3</b>
Model documents and a minimum set of clauses or templates are available, but the use of such documents is not mandatory or regulated. The documents are not updated regularly.	<b>2</b>
Model documents are not available, but a set of mandatory clauses is established for inclusion in tender documents.	<b>1</b>
There are no model documents and the procuring entities develop their own documents for with little or no guidance.	<b>0</b>

**Conditions Met:**

a, b, and c met.

**Comment/Proposed Mitigation Measure:**

PPA has identified the need to review the standard tender documents. In this context, the Bank’s paper on the Use of Country Procurement Systems in Bank-Supported Operations: Proposed Pilot Program, Section III. B/Stage II including Annex C should be taken into consideration.

**Sub-indicator 2(c) – Procedures for pre-qualification. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2+**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Provide for limitations on the content of pre-qualification criteria that are based on the needs of the specific procurement.**

Pre-qualification procedures for goods and works are defined in Act 663 section 23 (2), section 48, and Schedule 3. According to section 48 (2), the invitation to prequalify shall contain among others the criteria and procedures to be used to evaluate the qualifications of suppliers or contractors. The procedures for notice of invitation of expression of interest and preparation of shortlists for consultants are specified in sections 66 and 67.

**(b) Specify the use of pass/fail for application of qualification criteria.**

According to Act 663, section 50, procurement entities “shall use the appropriate standard tender documents stipulated in Schedule 4 with such minimum changes acceptable to the Board.” The Standard Prequalification Document for Procurement of Works, Major Equipment and Industrial Installations elaborates that “Prequalification will be based on Applicants meeting all the following minimum pass–fail criteria regarding their general and particular construction experience, financial position, personnel and equipment capabilities, and other relevant information as demonstrated by the Applicant’s responses in the Information Forms attached to the Letter of Application.”

The provisions on evaluation criteria in the case of expression of interest are less specific.

**(c) Provide guidance on when to apply a pre-qualification procedure**

Act 663, sections 23, 48, 66, and 67, define the pre-qualification proceedings. Schedule 3 gives guidance (thresholds) on when to apply a pre-qualification procedure.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Procedures exist that define pre-qualification which: (a) Provide for limitations on the content of pre-qualification criteria that are based on the needs of the specific procurement (b) Specify the use of pass/fail for application of qualification criteria. (c) Provide guidance on when to apply a pre-qualification procedure.	<b>3</b>
Procedures exist that cover (a) plus one of the remaining conditions.	<b>2</b>
Procedures exist that cover (a).	<b>1</b>
Procedures for the application of pre-qualification procedures do not exist.	<b>0</b>

**Conditions Met:**

a, b, and c met.

**Comment/Proposed Mitigation Measure:**

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**Sub-indicator 2(d) – Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2+**

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate.**

As elaborated under indicator 1 (b) (a), section 35 (2) defines the quality and cost-based method of selection (QCBS) as the preferred procedure when selecting consultants. According to section 72, the procurement entity may select consultants by quality-based selection in case of complex or highly specialized assignments; assignments that have a high downstream impact where the objective is to have the best experts; and assignments that can be carried out in substantially different ways where proposals will not be comparable.

The Act distinguishes between selection procedures where price is a factor (section 75) and selection procedures where price is not a factor (section 76).

**(b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.**

Act 663 provides procedures and methodologies for the assessment of technical capacity and for combining price and quality considerations. In case of QCBS, the procurement entity shall establish criteria to evaluate the proposals and determine the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of proposals (section 69). The technical and the financial proposals shall be submitted in separate sealed envelopes and the evaluation shall be carried out in two stages: first the quality, and then the cost. A threshold on the quality and technical aspects shall be established. Each proposal shall be rated in accordance with the criteria and the relative weight set out in the invitation for proposals. After the assessment of the technical proposals has been finalized, the financial proposals shall be publicly opened. The prices of the proposals that have attained a rating at or above the threshold are evaluated. For QCBS, the proposal with the best combined evaluation in terms of criteria established is selected as the successful bidder (section 75). The consultant with the winning proposal shall be invited for negotiations which shall focus on the technical proposal.

As elaborated under indicator 1 (f) the evaluation criteria used to determine the best combined evaluation include criteria such as impact on balance of payment, national security, etc. which should not be taken into account when evaluation tenders (assessed under indicator 1 (f)).

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
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The legal framework and its implementing regulations provide for the following: (a) Conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate. (b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.	<b>3</b>
Implementing regulations meet a) above but leave b) to the discretion of the procuring entity.	<b>2</b>
Implementing regulations leave the possibility of use of technical capacity in selection but neither the law nor the regulations elaborate on the procedure.	<b>1</b>
Neither the law nor implementing regulations cover this procedure	<b>0</b>

**Conditions Met:**

a and b met.

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 2(e) – User’s guide or manual for contracting entities. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) There is a unique procurement manual detailing all procedures for the correct administration of procurement regulations and laws.**

A unique 132-page procurement manual was issued in 2006 (Public Procurement Manual) and is posted on the PPA website. The manual “provides guidelines and step by step procedures to assist procurement entities to undertake procurement in accordance with the Act”.

**(b) The manual is updated regularly;**

The manual was released in November 2006. According to PPA, there has been no need for an update so far. Once the proposed amendments to Act 663 and the related proposed regulations currently under review will be finalized, the manual will need to be updated. It should focus on details and explanations of the Act and the regulations (refer to sub-indicator 2 (a)).

**(c) The responsibility for maintenance of the manual is clearly established.**

Responsibility for maintenance of the manual is defined and lies with the Board of PPA (Act 663, section 3c and 3h).

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
(a) There is a unique procurement manual detailing all procedures for the correct administration of procurement regulations and laws. (b) The manual is updated regularly; (c) The responsibility for maintenance of the manual is clearly established.	3
There is no unique manual but there is an obligation for the procuring agencies to have one that meets conditions (b) and (c.)	2
There is no manual and no obligation to have one but many procurement agencies have an internal manual for administration of procurement.	1
There is no manual or requirement to have one.	0

**Conditions Met:**

a, b, and c met.

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 2(f) – General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements. Assessment Score: 3/3, Minimum Required OECD/DAC Mandatory score: 3**

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) There are GCC for the most common types of contracts and their use is mandatory.**

There are General Conditions of Contract (GCC) for most common types of contract and their use is mandatory (Act 663 section 50, Schedule 4). They form one section in the respective Standard Tendering Documents.

**(b) The content of the GCC is generally consistent with internationally accepted practice.**

The content of the GCC is generally consistent with internationally accepted practice.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Both of the following apply: a) There are GCC for the most common types of contracts and their use is mandatory. b) The content of the GCC is generally consistent with internationally accepted practice.	3
There are GCC for the most common types of contracts, consistent with international practice, but their use is not mandatory.	2
There are GCC for the most common types of contracts but they do not conform to internationally accepted practice and their use is not mandatory.	1
There are no GCC and individual agencies use the form of contract of their choice.	0

**Conditions Met:**

a and b met.

**Comment/Proposed Mitigation Measure:**

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## **Pillar II. Institutional Framework and Management Capacity – Summary of Findings**

This pillar analyses the integration of the public procurement system with public financial management; the separation of the regulatory and normative aspects of public procurement; and institutional systems for public dissemination, monitoring and evaluation, training strategy and staff performances.

### **Progress achieved:**

To strengthen public procurement planning and its linkages with the public financial management system, PPA has developed a web-based procurement planning tool including monitoring of contract awards and expenses and as of February 2009 has trained approximately 400 procurement entities in the use of this planning tool. The procurement entities have been advised to post their procurement plans into the system.

In February 2007, the Board of PPA inaugurated the Appeals and Complaints Panel to deliberate procurement complaints on behalf of the Board. 31 cases have been concluded as of May 2009.

To increase the accuracy of data generated in the annual assessments of the performance of procuring entities, the PPME tool has been refined. The most recent PPA 2008 Annual Report of June 2009 covers 760 procuring entities and for the first time, a special presentation showing the performance of the 23 High Spending Entities is attached to the report. According to the 2008 assessment report, in terms of value of procurement expenditure, 84 % of procurement of the high spending entities has been awarded following ICT procedures (9.14 % in terms of number of procurement transactions).

After the conclusion of the mission, PPA launched an E-Procurement Bulletin to more efficiently organize the dissemination of procurement organization. The first two issues of the E-Procurement Bulletins were used to address compliance and performance issues related to procurement planning and the role and functions of Entity Tender Committees. Procurement entities were encouraged to directly post advertisements and contract awards on the PPA website.

To disseminate the Public Procurement Act and to ensure compliance with its provisions, PPA has implemented a comprehensive short-term training program. Based on 25 targeted training modules, in 2007 and 2008 3,840 procurement practitioners were trained, 4,222 members of Tender Committees and Tender Review Boards, 200 service providers, and 353 staff of oversight institutions totaling 8,615 people. In addition to that, with the support of World Bank funded IDF grants, 227 internal audit staff was trained in audit of Procurement and Assets Management Systems and 35 core staff of the Ghana Audit Service was trained in Forensic, Special funds and Procurement Audits. More recently, training has been developed for contract management and other oversight institutions.

### **Opportunities for improvements:**

The following major issues remain (for further details refer to the Proposed Action Plan):

- A stronger framework to integrate the planning and monitoring of procurement expenditures into the public financial system; for this to improve the annual procurement plans within each MDA should be used as the major inputs (building blocks) to the budget process before August of each year. This good practice will allow for much quicker updates by procurement entities and their subsequent approval by each entity's Tender Committee not later than one month after the end of the fiscal year (by end January), and then centralized public disclosure by PPA.

- The Government of Ghana is currently implementing an IFMIS-System (GIFMIS) that will integrate budget reports and payment requests so as to systematically have constant status on budget execution. The system will assist in more timely payments once a contract is awarded. The system is supposed to be fully rolled out as of January 1, 2011.
- To ensure continuity and objectivity in the work of PPA, the members of the Board should be augmented to include representatives from the private sector associations, civil society groups or other associations. Each Board member should be a leader in his/her field and highly regarded in his/her profession or industry sector and should be able to provide added value in the work of PPA in policy formulation. Staggered terms for Board members should be introduced to ensure continuity of expertise and issues to maintain institutional memory and avoid gaps upon change of government.
- To provide for separation of responsibilities and to avoid conflict of interest, PPA should not have an approval function for single-source procurement or restricted tendering.
- Publication of all advertisements should be mandatory on the PPA website as a minimum and if required in a newspaper with adequate circulation. Procurement plans should be published on the PPA website in time.
- Additional documentary evidence is required to substantiate progress in generating national level statistics for procurement.
- Quality control standards, which provide for staff performance evaluation, should be broadly applied.

**Pillar II. Institutional Framework and Management Capacity – Detailed Findings**

The twelve sub-indicators of Pillar II have been assessed applying the “Methodology for the Assessment of National Procurement Systems”. The scores achieved compare to the Benchmark UCS Mandatory Score defined in the Bank’s methodology for “Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program” as follows:

**Table 4: Pillar II. Institutional Framework and Management Capacity – Assessment scores**

<b>Pillar II. Institutional Framework and Management Capacity</b>	<b>Current Assessment 2010</b>	<b>Benchmark UCS Mandatory Score</b>
<b>3) Integration and mainstreaming of the public procurement system into the public sector governance system.</b>		
a) – Procurement planning and data on costing are part of the budget formulation and multiyear planning.	1	2
b) – Budget law and financial procedures support timely procurement, contract execution, and payment.	2	2
c) – Procurement actions not initiated without budget appropriations.	2	2
d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	0	2
<b>4) Normative and regulatory functions.</b>		
a) – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework.	2	2
b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators)	3	2
c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b).	1	2
d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	0	3
<b>5. Institutional development capacity</b>		
a) – System for collecting and disseminating procurement information and accessibility.	1	2
b) – Systems and procedures for collecting and monitoring national procurement statistics.	1	2
c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity.	3	2
d) – Quality control standards and staff performance evaluation for capacity development.	1	2

<b>Indicator 3. The public procurement system is mainstreamed and well integrated into the public sector governance system</b>
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**Sub-indicator 3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multiyear planning. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2**

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

Assessment:

**(a) There is a regular planning exercise instituted by law or regulation that:**

- **starts with the preparation of multiyear plans for the government agencies, from which annual operating plans are derived;**
- **followed by annual procurement plans and estimation of the associated expenditures;**
- **And culminates in the annual budget formulation.**

The 2009 External Review of Public Financial Management (draft) calls for renewed efforts in public financial management reforms and the adoption of a strategic budgeting process based on a more effective Medium-term Expenditure Framework (MTEF). It notes that as the budget stands now, expenditure allocations are increasingly constrained. The study recommends to strengthen the MTEF, aiming at making the budgeting process more strategic. To improve the screening of public investment proposals, it is suggested that investment project selection should be guided by clearly defined priorities and the preparation of pre-feasibility studies.

According to Act 663 section 21, procurement plans are to be prepared and submitted to the Entity Tender Committee one month prior to the end of the fiscal year for approval. After budget approval and at quarterly intervals, each procurement entity shall submit an update to the Tender Committee.

**(b) Procurement plans are prepared in support of the budget planning and formulation process.**

The procurement entity is responsible for procurement subject to Act 663. The head of an entity and any officer to whom responsibility is delegated are responsible and accountable for actions taken and for any instructions with regard to this Act, including the timely preparation of procurement plans.

As indicated by the Auditor General's Office, an estimated 45 % of MDAs do not have annual procurement plans. The situation seems to be improving however.

The law does not oblige the procurement entities to send a copy of its procurement plan to PPA for monitoring or publication. However, PPA has developed a web-based procurement planning tool including monitoring of contract awards and expenses and has trained approximately 400 procurement entities as of February 2009. PPA has advised these entities to post their 2009 procurement plans into the system by February 15. Besides, based on a Board policy decision PPA has published an announcement to all procurement entities indicating that no approval will be given to use restricted tendering or single source procurement without reference to the approved procurement plan.

According to information provided by PPA, as of mid May 2009 only 51 procurement plans for 2009 had been submitted including only 3 of the 26 high spending procurement entities. Discussions with PPA in April 2010 indicated that some improvements have been made. PPA has committed the maiden edition of its recently published E-Procurement Bulletin (Vol. 1, Issue 1 of May/June 2010) to the importance of procurement planning. The entities, which have submitted their procurement plans online, are listed in the E-Procurement Bulletin. As of April 30, 2010, 92 entities had submitted their procurement plans, as of June 30, 2010, 129 procurement entities had submitted their procurement plans (out of a total population of approximately 1000 procurement entities).

One of the activities included in the PPA Draft Strategic Plan 2009 - 2011 is to coordinate with other institutions for effective linkage between budget preparation, payment, and audit processes.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
<p>(a) There is a regular planning exercise instituted by law or regulation that:</p> <ul style="list-style-type: none"> <li>• starts with the preparation of multiyear plans for the government agencies, from which annual operating plans are derived</li> <li>• followed by annual procurement plans and estimation of the associated expenditures</li> <li>• And culminates in the annual budget formulation.</li> </ul> <p>(b) Procurement plans are prepared in support of the budget planning and formulation process.</p>	<b>3</b>
<p>The majority of procurement plans are prepared based on the annual and multiyear operating plans independently from budget allocation but they are revised to meet the forward budget estimates for the sector or agency allocations before expenses are committed.</p>	<b>2</b>
<p>Procurement plans are normally prepared based on the annual and multiyear operating plans. Links with budget planning are weak and plans are not required to match the budgetary allocation available before expenses are committed.</p>	<b>1</b>
<p>There is no integrated procurement and budget planning of the nature described. Procurement plans are drawn without obvious and direct connection with the budget planning exercise and there is no requirement to match procurement plans with availability of funds before expenses are committed.</p>	<b>0</b>

**Conditions Met:**

A score of 2 requires that the majority of procurement plans are prepared based on the annual and multiyear operating plans and that they are revised to meet the forward budget estimates before expenses are committed. Therefore, score 1 describes the current situation best.

**Comments/Proposed Mitigation Measure:**

Procurement planning should become more pro-active. Once the budget ceilings are known (usually in August), the different budget items could be broken down and the procurement activities could be planned and used as major inputs to the budget process. This would allow for quicker updates by procurement entities and their subsequent approval by each entity’s Tender Committee not later than one month after the end of the fiscal year (by end January).

Since considerable progress has been achieved to make the web-based procurement planning tool operational and due to the fact that about 400 procurement entities have already been trained, in the context of amending Act 663, it should be considered to make the use of the tool and the timely publication on the PPA website mandatory for all procurement entities. Such a step would enhance policy implementation and would lead to increased efficiency and transparency in the procurement process.

These recommendations would coincide with PPA’s goal to coordinate with other institutions for effective linkage between budget preparation, payments, and audit processes.

**Sub-indicator 3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Budget funds are committed or appropriated within a week from the award of the contract to cover the full amount of the contract (or amount to cover the portion of the contract to be performed within the budget period).**

In Ghana, budget funds are allocated through Appropriation Bill before the end of the fiscal year (see Financial Administration Act). The approved budget is manually uploaded from one IT system to another one, i.e. from ACTIVATE to NETS – National Expenditure Tracking System. The Controller & Accountant General Department (CAGD) uses NETS to do budget releases for Item III (Service) and Item IV (Investment) based on cash requests prepared by MDAs and approved by the MOFEP Chief Director.

The Budget Management System (BMS) is used to prepare and issue the Bank Transfer Advice (BTA) to Bank of Ghana for transfer of cash to individual MDA bank accounts. The Cash Management Module of BPMS is configured to handle the cash release process. As mentioned in the UCS PFM Report 2009 (draft), MDAs complain that the process for completing transactions in BPMS are too cumbersome and requires up to 24 signatures including that of the internal auditor to process a payment and it is suggested that cash release for Item III (Service) and Item IV (Investment) should be done at organizational level. It is also mentioned in the UCS PFM Report 2009 (draft), that cash releases are not predictable.

**(b) There are published business standards for processing of invoices by the government agencies that meet obligations for timely payment stated in the contract.**

Published Business Standards for processing of invoices exist (see section 3 of the Treasury Realignment Business Processes).

**(c) Payments are authorized within four weeks following approval of invoices or monthly certifications for progress payments.**

Authorization of payments usually requires more than four weeks.

As elaborated by CAGD, a number of practical issues cause delays in the payment process. First, although regional alignment has been done, payments tend to be over-centralized at MOFEP level. Second, if documentation is not complete, i.e. due to a missing contract amendment requested payments are not within the contract, certification for completed work is missing, etc., payment will be considered an “unlawful charge” and be rejected. Third, financial officers do not see the problems caused by payment delays and take their time.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
Budget and financial procedures in place meet the requirements of a) to c) above	<b>3</b>
Budget and financial procedures in place meet the requirements of a) but there are no published business standards. Authorization of payments is generally timely.	<b>2</b>
Procedures in place take longer than stated in a) and conditions b) and c) are not generally met.	<b>1</b>
The procedures in place do not meet the requirements in a material way.	<b>0</b>

**Conditions Met:**

a and b met, professional judgement applied.

**Comment/Proposed Mitigation Measure:**

The training module to be developed for contract management should include contract amendments and the payment process. Procuring entities which show a high percentage of late payments according to the 2008 self-assessment of procurement entities should be encouraged to monitor and improve their payment practices.

**Sub-indicator 3(c) – No initiation of procurement actions without existing budget appropriations. Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) The law requires certification of availability of funds before solicitation of tenders takes place.**

According to the law, budget funds are approved by January 1<sup>st</sup>. Act 663, section 17 (1) requires that each procurement entity shall establish a Tender Committee. In performance of its functions, the Tender Committee shall ensure that at every stage of the procurement activity, procedures prescribed in this Act have been followed.

Act 663, section 21 (3) states that “*after budget approval and at quarterly intervals after that, each procurement entity shall submit an update of the procurement plan to the Tender Committee.*”

**(b) There is a system in place (e.g. paper or electronic interface between the financial management and the procurement systems) that ensures enforcement of the law.**

A system that ensures that no initiation of procurement actions takes place before budget appropriation is yet to be made fully operational. As indicated under sub-indicator 3 (a), it is not yet ensured that all procurement plans are prepared on time and that they are timely adjusted according to budget allocations.

Although the government’s Budget and Expenditure Management System (BPEMS) is now in its tenth year, currently only a fraction of expenditures are processed through the system. In the 2009 External Review of Public Financial Management, a re-launch has been recommended.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The system meets requirements (a) and (b) above.	3
The system meets requirement (a) but requirement (b) is not fully enforced due to weaknesses in the system.	2
The system meets requirement (a) only.	1
There system does not meet requirements (a) and (b).	0

**Conditions Met:**

a met, b not fully met

**Comment/Proposed Mitigation Measure:**

As suggested in the 2009 ERPFM (draft report), budget releases by CAGD need to be made contingent on the submission by MDAs of updated procurement plans that are consistent with the Parliament-approved budget Appropriations Act.

**Sub-indicator 3(d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming. Assessment Score: 0, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Neither the Financial Administration Act and the Internal Audit Agency Act nor Act 663 define the required feed-back mechanism to ensure that information of contracts covering major budget expenditures is provided to the budgetary and financial management systems in a timely manner to support overall public financial management.

In the interviews, MoF has stressed that appropriate feed back mechanisms are missing and that systematic completion reports for major contracts including the total of payments and variations to the original contract amount would be desirable to strengthen budget discipline and reduce budget overruns.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The procurement system is sufficiently integrated with the financial management and budgetary systems to provide information on the completion of all major contracts.	<b>3</b>
Information on completion of the majority of large contracts is submitted as described above.	<b>2</b>
Information on the completion of contracts is erratic or is normally submitted with considerable delay after the fiscal budgetary period. .	<b>1</b>
The procurement system does not generally provide this information.	<b>0</b>

**Conditions Met:**

The procurement system does not generally provide this information.

**Comment/Proposed Mitigation Measure:**

The Government of Ghana is currently implementing an IFMIS-System (GIFMIS) that will integrate budget reports and payment requests so as to systematically have constant status on budget execution. There is a module on procurement included that will use procurement plans as inputs to the budget planning process and the system will assist in more timely payments once the contract is awarded. GIFMIS will start with pilot projects in 2010 and is supposed to be fully rolled out as of Jan 1, 2011.

**Indicator 4. The country has a functional regulatory body**

**Sub-indicator 4 (a) – The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Part I of Act 663 details the establishment of the Public Procurement Board, later renamed Public Procurement Authority (PPA). Section 1 of the Act specifies that PPA is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is a normative or regulatory body or the functions are clearly assigned to various units within the government which is specified in the legal and regulatory framework in unambiguous way without gaps or overlaps.	<b>3</b>
There is a regulatory body or functional designation to various units within government, but it is not established as part of the legal and regulatory framework and there are gaps or overlaps of regulatory responsibilities.	<b>2</b>
Only part of the functional responsibilities of a regulatory body are assigned throughout the government leaving significant parts of the work unassigned.	<b>1</b>
Separate functional responsibilities to regulate the procurement system are not recognized as part of the legal and regulatory framework and are not effectively performed.	<b>0</b>

**Conditions Met:**

There is a regulatory body within the government and it is established as part of the legal and regulatory framework but there are overlaps of regulatory responsibilities.

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 4(b) – The body has a defined set of responsibilities that include but are not limited to the following: Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

- providing advice to contracting entities;
- drafting amendments to the legislative and regulatory framework and implementing regulations;
- monitoring public procurement ;
- providing procurement information;
- managing statistical databases;
- reporting on procurement to other parts of government;

- developing and supporting implementation of initiatives for improvements of the public procurement system; and
- providing implementation tools and documents to support training and capacity development of implementing staff.

The PPA list of assigned responsibilities includes, but is not limited to all of the above-mentioned responsibilities of the sub-indicator. Section 3 of Act 663 states the functions which include the responsibilities to:

- advise Government on issues relating to procurement (section 3 (l))
- develop draft rules, instructions and other regulatory documentation (section 3 (c))
- monitor and supervise public procurement (section 3 (d))
- establish and implement an information system relating to public procurement (section 3 (f))
- present annual reports to the Minister of Finance on public procurement processes (section 3 (i))
- make proposals for the formulation of policies on procurement, ensure policy implementation, assess the operations of the public procurement processes and submit proposals for improvement of the processes (section 3 (a-d, h))
- facilitate the training of public officials involved in public procurement at various levels and support training and professional development (section 3 j, k).

In practice, PPA is also responsible for giving approval to single-source procurement and restricted tendering (refer to sub-indicator 1 (b)). Besides, the Board of PPA acts as administrative review body (refer to sub-indicator 1 (h) and indicator 10).

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
All the eight functions listed in the sub indicator are clearly assigned to one or several agencies with out creating gaps or overlaps in responsibility.	<b>3</b>
At least five functions are assigned to an appropriate agency or agencies and there is no overlap or conflict in responsibilities.	<b>2</b>
Four or less functions are assigned to appropriate entities and there are overlaps and conflicts in responsibilities.	<b>1</b>
Functions are not clearly assigned and/or assignments are often in conflict with other agency responsibilities.	<b>0</b>

**Conditions Met:**

The condition of this sub-indicator is met. All the eight functions listed in the sub indicator are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility.

**Comment/Proposed Mitigation Measure:**

The broad set of responsibilities of PPA and its Board create areas of conflict of interest (refer to sub-indicator 4 (d)).

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**Sub-indicator 4 (c) – The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

The PPA is an autonomous body (body corporate according to Act 663, section 1 (1)). Its finances are secured in the legal framework as section 10 of Act 663 states “Parliament shall provide the Board with such monies as it may require to meet its expenditures. The Board may also receive money from other sources approved by the Minister.”

PPA has a Board comprising 9 members, i.e. a chairperson, four persons from the public sector made up of a representative of the Attorney General and three other persons nominated by the Minister, three persons from the private sector, and the Chief Executive (Act 663, section 4). According to section 4 (2), *the “members of the Board shall be appointed by the President acting in consultation with the Council of State.”* The quorum for a meeting of the Board shall be five including the Chief Executive (section 6 (3)).

The Chief Executive is appointed in accordance with Article 195 of the Constitution. Subject to general directions the Board may give, the Chief Executive is responsible for the day-to-day administration of the Secretariat of the Board and the implementation of the decisions of the Board (Act 663, section 9).

The assessment team was informed that due to the change in government beginning of 2009 the Board of PPA was not sitting for several months. As explained, the term of four years defined in Act 663, section 5 (1) (a),<sup>7</sup> had expired and new Board members needed to be appointed by the President. Many functions of PPA including decisions concerning a complaint require actions to be taken by the Board. As a result, PPA was temporarily not fully capable of acting in compliance with the law.

The mission addressed issues of independence originating from the Executive branch and conflict of interest among the functions of PPA. The members of the Board are appointed by the President, in consultation with the Council of State and PPA receives part of its funding from the Minister of Finance. The fact that the members of the Board were all changed at the same time does not only add to the issue related to the Board’s independence but also to issues related to continuity of expertise to maintain institutional memory. Combining the responsibility for regulatory, approval, and complaint functions at PPA inevitably results in conflict of interest cases. This set up hinders the PPA in carrying out its mandate in an independent manner.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The regulatory body (or the assignment of responsibilities for the regulatory function if there is not a body) is at an adequate level in Government and financing is secured by the legal/regulatory framework.	3
The body is at an adequate level but financing is subject to administrative decisions and can be changed easily.	2
The level of the body is too low or financing is inadequate for proper discharge of its responsibilities.	1
The level of the body is low, financing is inadequate and the body has no or little independence to perform its obligations.	0

<sup>7</sup> The term is 4 years to ensure correlation with the mandate of the President of Ghana.

**Conditions Met:**

The level of independence of the body is too low for proper discharge of its responsibilities.

**Comment/Proposed Mitigation Measure:**

The members of the Board should be augmented to include representatives from the private sector associations, civil society groups or other associations. Each Board member should (a) be a leader in his/her field and highly regarded in his/her professions or industry sector and (b) be able to provide added value in the work of PPA in policy formulation.

Staggered terms for Board members should be introduced to ensure continuity of expertise and issues to maintain institutional memory and avoid gaps upon change of governments.

The PPA multi-year Strategic Plan should be updated annually and monitored closely.

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**Sub-indicator 4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions. Assessment Score: 0, Minimum Required OECD/DAC Mandatory score: 3**

There is the sub-indicator assessment question above and 2 scoring criteria under this sub-indicator as listed below:

As per section 3 of Act 663, PPA is not responsible for direct procurement transactions and its members are not represented in any tender committees. According to Part IV of the Act – Methods of Procurement, PPA has however a prior-review function and takes decisions regarding approval of single source and restricted tendering. The 2007 Annual Report for example lists all decisions taken by the Board in 2006. Moreover, PPA has further competencies in the area of complaints (refer to sub-indicator 10 e).

The mission explained the situation of conflict of interest created by the broad array of PPA’s functions. PPA’s mandate is to harmonize the process of public procurement to secure a judicious, economic, and efficient use of state recourses and ensure that public procurement is carried out in a fair, transparent, and non-discriminatory manner. In this regard, it is responsible for many activities including giving advice and clearance to procuring entities while also organizing and participating in the administrative review procedures according to Part VII of the Act. This gives rise to a situation of conflict of interest and the PPA cannot be judge and jury at the same time. If PPA wants to maintain its role in handling procurement complaints, PPA should only give general advice on the application of the procurement law and regulations.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The body meets the requirement stated above.	3
The body does not meet the requirement as stated above.	0

**Conditions Met:**

The body does not meet the requirement as stated above.

**Comment/Proposed Mitigation Measure:**

PPA should only give general advice on the application of the procurement law and regulations but should not provide any specific advice on individual procurement transactions (help-desk).

**PPA should not have an approval function for single-source procurement or restricted tendering. Section 38 – Restricted tendering, and section 40 – Single source procurement (2) should be amended.**

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#### **Indicator 5. Existence of institutional development capacity**

**Sub indicator 5(a) – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Act 663, section 3 (g) mandates PPA to “*publish a monthly Public Procurement Bulletin which shall contain information germane to public procurement, including proposed procurement notices, notices of invitation to tender and contract award information*”.

The Procurement Bulletin was first launched in August 2007. However, as mentioned above only a few volumes were published (Volume 1 August – October 2007, Volume 2 November – December 2007, and Special Supplement to Daily Graphic on April 24, 2008). PPA indicated that there was little demand for the printed version on behalf of the private sector and that the publication was very costly. Besides, it proved very difficult to receive the information to be published in a timely manner from the procurement entities since it has not been mandatory in the Act for procurement entities to forward information to be published to PPA.

At the time of the mission, the publication of the Procurement Bulletin had been stalled and PPA was considering a new strategy to make the distribution of the Procurement Bulletin more efficient or replace it by other tools. Actions under consideration comprised i) to encourage procurement entities to post their approved procurement plans into the web-based procurement planning software from where PPA could run reports in advance of tender invitations; ii) in the amendment of the Act, to include a provision that compels all procurement entities to forward their tender notices to PPA or a private publisher contracted by PPA for a one stop publishing and sale of tender notices; iii) to enquire from countries that have succeeded in churning out monthly procurement bulletins aspects in their procurement act that allows for them to have the tender notices of the entities for publishing in their bulletin, and if feasible adopt it in the amendment. At the same time, considerable efforts have been made on behalf of PPA to increasingly transform the PPA website into a one-stop service for procurement information. As explained to the mission, newspapers are screened daily and advertisements for tender invitations, requests for proposals or pre-qualifications are copied and posted at the PPA website. Contract awards are increasingly published but information on procurement plans is still not available.

After the conclusion of the mission, PPA launched an E-Procurement Bulletin. Two issues have been published (May/June 2010 and July-September 2010). They featured procurement planning (Issue 1) and the role of the Entity Tender Committees (Issue 2), highlighted publication requirements, and included links to tendering opportunities and contract awards posted on the PPA website. Whereas the introduction of the E-Procurement Bulletin is considered as a step in the right direction facilitating compliance with the Act and disseminating information more cost efficiently, the main issue remains as long as the publication of advertisements on the PPA website on behalf of procurement entities is not made mandatory in the Act.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is an integrated information system that provides as a minimum, up-to-date information as described above and is easily accessible to all interested parties at no or minimum cost. Responsibility for its management and operation is clearly defined.	3
There is an integrated system of the characteristics described that provides up-to-date information for the majority of contracts at the central government level but access is limited.	2
There is a system but it only provides information on some of the contracts and the system accessibility is limited	1
There is no procurement information system except for some individual agency systems. Entities keep information on contract awards and some statistics.	0

### Conditions Met:

There is a system but it only provides information on some of the contracts and the system accessibility is limited.

The PPA website increasingly provides information but the system of collecting data is not fully reliable and the system accessibility may be limited in rural areas.

### Comment/Proposed Mitigation Measure:

The system of collecting and disseminating procurement information should be reviewed with a view to make it more effective and efficient.

As elaborated under sub-indicator 1c, publication of all advertisements should be mandatory on the website as a minimum and if required in a newspaper with adequate circulation.

As elaborated under sub-indicator 3 a, procurement plans should be published on the PPA website in time.

The Procurement Bulletin could be published as an e-bulletin on the PPA website.

### **Sub-indicator 5(b) – The country has systems and procedures for collecting and monitoring national procurement statistics. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

#### **(a) There is a system in operation to collect data**

PPA is in the process of developing a system for capturing relevant procurement information and aggregating the data at the national level. As of June 2010, no aggregated statistics indicating number and value of public procurement contracts concluded in Ghana in 2007, 2008, or 2009 could be provided. The 2008 National Procurement Assessment Report of June 2009 provides data on 760 procuring entities (out of a total population of about 1,000) including the 23 high spending entities.

**(b) The system collects data on procurement by method, duration of different stages of the procurement cycle, awards of contracts, unit prices for most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements.**

The PPME tool (Public Procurement Model of Excellence) is used to collect data from procurement entities on compliance and performance.

In 2008, an independent review of the procurement entities' self-assessment applying the PPME tool was conducted. The report concluded that is an innovative and valuable tool to monitor public procurement performance and practices at the entity level. Further improvement of the model was suggested such as refining the Key Performance Criteria (KPC) and disclosing the average rating of each KPC, better sampling of procurement units and contracts, modification of some formulae, and enhanced quality control. A particularly important aspect in the study was the need to focus on big spenders and high volume contracts to ensure value for money and take into account the risk mitigation perspective.

As elaborated by PPA, the PPME tool was consequently refined to implement the proposed changes. 760 procurement entities were assessed in 2008. Consultants reportedly carried out the assessments and the findings were subject to quality assurance by PPA. The 2008 National Procurement Assessment Report was published in June 2009. For the first time, a special presentation showing the performance of the 23 High Spending Entities is attached to the report. According to the 2008 assessment report, in terms of value of procurement expenditure, 84 % of procurement of the high spending entities has been awarded following IC procedures (9.14 % in terms of number of procurement transactions).

**(c) Reliability of the information is high (verified by audits)**

As mentioned above, the reliability of data generated by the procurement entities' self-assessment was independently reviewed in 2007. A number of improvements regarding the assessment approach and regarding the PPME tool were suggested to ensure the reliability of data and the PPME tool has been refined in the meantime. PPA did quality assurance. The 2008 assessment and the assessment report have not been verified by independent audits.

**(d) Analysis of information is routinely carried out, published and fed back into the system.**

Since 2006, four self-assessments using the PPME tool have been carried out covering the years 2005, 2006, 2007, and 2008, and the results have been published.

The 2008 National Procurement Assessment Report summarizes the findings of the assessment of 760 entities. The entity's selection was done irrespective of the size of its budget, thus giving a blend of high, medium and low-spend entities. Second cycle schools constitute the majority of entities assessed in 2008 and the 23 high spending procurement entities were included. Four consultancy firms were commissioned to conduct the assessment using the Public Procurement Model of Excellence (PPME) tool.

To capture quantitative data on actual procurement actions, assessors use a Contracts Data Sheet to fill in necessary contract details. The quantitative report generated from the Contracts Data Sheets is the Performance Measurement Indicators (PMI) Report, which presents the level of achievement for 11<sup>8</sup> indicators. Besides, a Performance Assessment System (PAS) Report is generated reflecting strengths and weaknesses in the following four areas: Management System; Information and Communication;

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<sup>8</sup> Advertisement of Tender Opportunities, Publication of Awards, Time for Tender Invitation and Opening, Tender Participation, Responsive Tenders, Method of Procurement, Tender Processing-Lead Time, Cancelled Tendering Procedures, Protests, Resolution of Contract Disputes, Contract Completion.

Procurement Process; and Contract Management. The National Assessment Report aggregates the scores of all assessed entities. A special report showing quantitative and performance data of the 23 high spending entities is attached to the report.<sup>9</sup>

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The country has a system that meets the four requirements (a) through (d) listed above.	<b>3</b>
The country has a system that meets (a) plus two of the remaining conditions.	<b>2</b>
The system is in place to meet (a) plus one of the remaining conditions.	<b>1</b>
There is no statistical data collection system in place.	<b>0</b>

**Conditions Met:**

a, b, and c partially met, d not met, professional judgment applied

**Comment/Proposed Mitigation Measure:**

PPA should continue its efforts to compile national procurement statistics, i.e. total number and value of procurement nationwide.

The 2008 Assessment Special Report focusing on the 23 high spending entities should be continued and quality and quantity of representative data should be strengthened. Performance gaps should be fed back to the entities for improvements.

**Sub-indicator 5 (c) – A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**There is a training and capacity building strategy that provides for**

**(a) Substantive permanent training programs of suitable quality and content for the needs of the system.**

Following a 2005 Training Needs Assessment commissioned by PPA together with the Internal Audit Agency and the Accountant-General's Department, a procurement capacity and training strategy was designed and 25 different short term training modules were developed for i) members of entity tender committees and review boards, ii) procurement practitioners, iii) oversight institutions and iv) service providers.

<sup>9</sup> Remark: The 2008 National Procurement Assessment Report (methodology, sampling, completeness, reliability of data, etc.) has not been validated during the present procurement assessment for the purpose of Use of Country Systems.

In 2007 and 2008, a comprehensive training program was implemented. 3,840 procurement practitioners were trained, 4,222 members of Tender Committees and Tender Review Boards, 200 service providers and 353 staff of oversight institutions, totalling 8,615 people.

In cooperation with SECO, Switzerland, and GTZ, Germany, additional capacity development will focus on contract administration and training of oversight institutions such as Ghana Audit Service, internal auditors, Serious Fraud Office, police and CHRAJ; Prosecution: Parliament, media, civil society NGOs and the general public; as well as mop up training for procurement practitioners, Entity Tender Committees/Tender Review Boards and service providers.

PPA has worked closely with the Ghana Institute for Management and Public Administration (GIMPA) and other training institutions to offer a number of medium- and long-term procurement courses (for details, refer to sub-indicator 6 (b)).

Considering the low level of procurement capacity in Ghana, the profusion of procuring bodies and review bodies raises a major issue, which is elaborated in detail under sub-indicator 6 (d).

**(b) Evaluation and periodic adjustment based on feedback and needs.**

The training strategy has been further developed. Additional courses for contract management and for oversight institutions are being conducted as presented above (a). However, training impact and feedback could be evaluated more systematically and used for updating the capacity development and training strategy of 2007. PPA has explained that with the assistance of UNDP a first assessment of training impact shall be carried out before the end of 2010.

**(c) Advisory service or help desk to address questions by procuring entities, suppliers, contractors and public.**

A help-desk-service has been established at PPA. It is providing advisory services for public and private sector parties. Frequently asked questions are posted on the PPA website.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
There is a training and capacity building strategy that provides for: (a) Substantive permanent training programs of suitable quality and content for the needs of the system. (b) Evaluation and periodic adjustment based on feedback and need. (c) Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public.	<b>3</b>
There is a training and capacity building strategy that provides for a) above.	<b>2</b>
The existing program is insufficient to meet the needs of the system and there is no procurement help desk or advisory service.	<b>1</b>
No formal training or help desk programs exist.	<b>0</b>

**Conditions Met:**

a, b and c met

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 5(d) – Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues. Assessment Score: 1/3, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Quality control standards provide quality assurance standards and a monitoring system for procurement processes and products**

A monitoring system for procurement activities is described in the “Benchmarking, Monitoring & Evaluation Manual”. Monitoring and Evaluation practices will follow established standards, ensuring credibility, impartiality, transparency and usefulness of findings (see Guiding Principles, bullet iii).

Performance standards are spelled out in the Procurement Manual. Moreover, the October 2006 report "Establishment of a Career Path and Career Development of Procurement Professionals and Practitioners in the Public/ Civil Service", currently with the Public Services Commission, provides for a comprehensive approach to the development of a procurement cadre and is expected to be implemented in the coming years. The report also makes reference to career progression criteria (section 4.0 of Annex 1) and makes explicit reference to the importance of staff performance appraisal reports in this context.

**(b) Quality control standards provide for a staff performance evaluation process based on outcomes and professional behaviors.**

It is not clear whether the standards outlined in the Manual and the Report are currently being used systematically for purposes of staff performance. PPA provided its internal Performance Management and Appraisal Report and explained that it is based on similar assessment schemes generally used in the public service. The PPA staff assessment report comprises the following sub-sections: knowledge of work; performance; attitude to work and general behaviour; initiative and leadership; delegation; organizational ability; punctuality at work; attendance to work; communication; inter-personal relationship; general conduct; appearance; training needs and/or placement/promotion (if any); and the overall assessment.

**(c) Quality control standards ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards.**

The assessors did not obtain evidence of any operational audits carried out regularly to monitor compliance with quality standards.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The procurement system complies with (a) through (c) above.	3
The procurement system complies with (a) and (b) above but there is no regular auditing to monitor compliance.	2
The procurement system has quality standards but does not monitor nor use the standards for staff performance evaluation.	1
The system does not have quality assurance or staff performance evaluation systems	0

**Conditions Met:**

a met; b and c not met.

**Comment/Proposed Mitigation Measure:**

Quality controls standards, which provide for staff performance evaluation, should be broadly applied.

Operational audits should be carried out regularly to monitor compliance with quality standards.

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### **Pillar III. Procurement Operations and Market Practices – Summary of Findings**

This pillar assesses the operational effectiveness and efficiency of the procurement system. It analyses the efficiency of procurement transactions at the procurement entity level, the functionality of the market, and the quality of contract implementation. Capacity, professionalization and retention of competencies acquired, are all underlying critical factors.

#### **Progress achieved:**

Ghana has defined skills and knowledge profiles for procurement. The October 2006 report "Establishment of a Career Path and Career Development of Procurement Professionals and Practitioners in the Public/ Civil Service" proposes a two-tier, five step structure for procurement officers. Corresponding skills and competencies profiles are described in Annex 2 of the report. A Technical Working Group inaugurated by the PPA prepared the report. Discussions on the implementation of the document with the Office of the Head of Civil Service are concluded. As explained during the mission, not all employees in the Ghana public service fall under the scope of responsibility of the Civil Service Commission (only 18 entities). Therefore, the Civil Service Commission intends to start establishing the procurement career path for all government staff being under jurisdiction of the Commission.

Already the overall framework for Ghana has firmly established implementation within procurement entities, which are highly decentralized. Also there is substantial progress in several capacity building activities that are underway or starting soon.

#### **Opportunities for improvements:**

The mission is highlighting the following issues (for the full list of actions recommended, please refer to the Proposed Action Plan):

- To have a sustainable and adequate procurement competence among government officials, the public services and other services in Ghana need to attract and retain procurement professionals. The government should establish a professional procurement cadre and career path in the public service, as well as the other services, as the 2006 report on this issue has still to be implemented.
- The involvement of several layers of government (head of entity, entity tender committee, tender review board) results in split responsibilities, lack of accountability, and long processing times. Given the high number of tender review board members at the central, ministerial, regional, and district level, the current processes also stress the available capacity. The government should think about ways to make the procurement evaluation, approval, and award processes more efficient. These efforts should include a strong capacity development program to increase efficiency and professionalization of procurement.
- In parallel gradually reduce the fragmentation of too many small size procurement entities, and begin to establish a minimum size for a procurement entity that can operate with a high degree of professional quality. The review function of the tender review boards needs to be strengthened to ensure that the decisions are taken professionally based on the technical evaluation. In this context, the composition and frequency of meetings of the tender review boards should be reviewed and the Government should consider rationalizing the numerous tender review boards. The new Tender Review Boards should have a professional composition based on qualifications.

- There are improvements needed in efficiency and speed for award of contracts, contract management and payments. As the Public Procurement Act does not specify any controls on contract amendments, specific provisions should be introduced to harmonize across the government and to minimize disputes.
- Specific methods and procedures for the procurement of public/private partnerships (PPP) should be established in the legal framework based on the principles of transparency, fairness, open competition, and complaints mechanisms.
- A process to monitor the outcome of dispute resolution processes and to address performance issues should be defined.

### **Pillar III. Procurement Operations and Market Practices – Details of Findings**

The ten sub-indicators of Pillar III have been assessed applying the “Methodology for the Assessment of National Procurement Systems”. The scores achieved compare to the Benchmark UCS Mandatory Score defined in the Bank’s methodology for “Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program” as follows:

**Table 5 :** Pillar III. Procurement Operations and Market Practices – Assessment scores

<b>Pillar III. Procurement Operations and Market Practices</b>	<b>Current Assessment 2010</b>	<b>Benchmark UCS Mandatory Score</b>
<b>6. Efficiency of procurement operations and practices.</b>		
a) – Adequacy of procurement competence among government officials.	1	2
b) –Procurement training and information programs	2	2
c) – Norms for the safekeeping of records and documents related to transactions and contract management.	1	2+
d) – Provisions for delegation of authority.	1 (tbd)	2
<b>7. Functionality of the public procurement market.</b>		
a) – Effective mechanisms for partnerships between the public and private sector	2	2
b) – Private sector institutions are well organized and able to facilitate access to the market.	2	2
c) – Systemic constraints inhibiting the private sector’s capacity to access the procurement market.	2	2+
<b>8. Existence of contract administration and dispute resolution provisions.</b>		
a) – Procedures are clearly defined for undertaking contract administration responsibilities	2	2
b) – Contracts include adequate dispute resolution procedures.	2	3
c) – Procedures exist to enforce the outcome of the dispute resolution process.	2	3

#### **Indicator 6. The country’s procurement operations and practices are efficient**

**Sub-indicator 6(a) – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) There are defined skill and knowledge profiles for specialized procurement jobs.**

The October 2006 report "Establishment of a Career Path and Career Development of Procurement Professionals and Practitioners in the Public/ Civil Service" proposes a two-tier, five step structure for procurement officers (page 4). Corresponding skills and competencies profiles are described in Annex 2 of the report. The report was prepared by a Technical Working Group inaugurated by the PPA. Discussions on the implementation of the document with the Office of the Head of Civil Service are concluded. As explained during the mission, not all employees in the Ghana public service fall under

the scope of responsibility of the Civil Service Commission (only 18 entities). Therefore, the Civil Service Commission intends to start establishing the procurement career path for government staff being under jurisdiction of the Commission.

The intended career path will help retain procurement staff since procurement officers will be able to advance to senior positions.

**(b) There is systematic matching of skills against requirements for competitive recruitment.**

The assessors did not obtain clear evidence of a systematic matching of skills against requirements for competitive recruitment. The abovementioned report appreciates the challenges of the reform process and makes reference to "a lack of recognition and appropriate placement of procurement professionals in the public/ civil service as a result of the non-existence of a structured procurement class in the system". However, this picture is expected to change as the skills and knowledge profiles developed are introduced as a basis for new recruitments.

**(c) Staff required undertaking procurement activities on an ad hoc basis have the knowledge they need to undertake the activity or have access to professional staff that can provide this knowledge.**

An institutional skills and training needs assessment of the existing cadre (Act 654, 658, 663) has been conducted in July 2006. One of the major gaps identified was a lack of understanding of all 3 laws among all levels of staff in the MDA's and MMDA's. Page 4 of the Career Path Report further reports that in some entities "the procurement function is performed by those in the Supply and Materials Management Class, majority of who lack the relevant skills".

Although a comprehensive short-term training program was implemented in 2007 and 2008 targeting 3,840 procurement practitioners and 4,222 members of Tender Committees and Tender Review Boards as outlined under sub-indicator 5 (c), it is too early to confirm that staff tasked to do procurement activities on an ad-hoc basis would generally have the necessary skills to do so.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The system meets the requirements (a) through (d) listed above.	<b>3</b>
The system meets (a) plus one of the remaining conditions.	<b>2</b>
The system only meets (a) above.	<b>1</b>
The system does not meet any of the requirements.	<b>0</b>

**Conditions Met:**

a met; b and c not met.

**Comment/Proposed Mitigation Measure:**

To attract and retain procurement professionals, the government should establish a professional procurement cadre and career path in the public service by implementing the 2006 report "Establishment of a Career Path and Career Development of Procurement Professionals and Practitioners in the Public/ Civil Service". Procurement staff should be recruited in compliance with the outlined skills and competencies.

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**Sub-indicator 6(b) – The procurement training and information programs for government officials and for private sector participants are consistent with demand. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Training programs’ design is based on a skills gap inventory to match the needs of the system.**

An institutional skills and training needs assessment of the existing cadre (Act 654, 658, 663) was conducted in July 2006, as mentioned before.

**(b) Information and training programs on public procurement for private sector are offered regularly either by the government or by private institutions.**

As outlined before, the short-term training program conducted in 2007 and 2008 included 200 service providers. The program was designed to give providers of goods, works and services an introduction to the public procurement system and basic bidding skills to enable them to participate successfully in public procurement. It consists of 7 core modules introducing the key provisions of the Public Procurement Act and standard documentation and one specialist module on preparing tenders. This training program is however not offered regularly.

Four states Polytechnics and GIMPA offer diploma programs in Procurement and Materials Management, a pre-degree program. Annually, GIMPA has 23 students participating in a two-year full-time course. The Millenium Challenge Account (MiDA) provides funding for internships.

Bachelor and Master Programs in Procurement and Materials Management have been developed by GIMPA but no accreditation has been received so far. The programs will now be reviewed as there is a recent decision from the National Accreditation Board, that Bachelor programs now need four years instead of three years (as had been the case previously).

**(c) The waiting time to get into a course (for public or private sector participants) is reasonable, say one or two terms.**

The assessors were not able to obtain evidence of regular information and training programs for the private sector to be capable to meet the public procurement requirements e.g. tender preparation, contract management, right to review.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The training and information programs available meet all the requirements listed in (a)-(c) above.	<b>3</b>
The training programs are sufficient in terms of content and frequency (waiting time) for government participants but there are few information programs for private sector.	<b>2</b>
There are training programs but they are deficient in terms of content and supply.	<b>1</b>
There is no systematic training or information program for public or private sector participants.	<b>0</b>

**Conditions Met:**

a met, b and c not met.

**Comment/Proposed Mitigation Measure:**

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**Sub-indicator 6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2+**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access.**

Act 663, section 28 (1) defines the procurement records, which are to be kept at the operational level.

**(b) The records should include:**

- **Public notices of bidding opportunities**
- **Bidding documents and addenda**
- **Bid opening records**
- **Bid evaluation reports**
- **Formal appeals by bidders and outcomes**
- **Final signed contract documents and addenda and amendments**
- **Claims and dispute resolutions**
- **Final payments**
- **Disbursement data (as required by the country’s financial management system).**

Act 663, section 28 (1) specifies that a procurement entity shall maintain a record of procurement proceedings. The detailed list includes most of the abovementioned documents. Section 28 (1) does however not mention the following documents: public notices of bidding opportunities; bidding documents and addenda; final signed contract documents and addenda and amendments.

**(c) There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles.**

There is reference to retention policy for procurement records in the Omnibus Schedule for the Retention and the Disposition of Public Records, Schedules 2, 4, and 5. Usually, procurement records are to be kept for 5 years and then to be transferred to the Record Centre for review.

**(d) There are established security protocols to protect records either physical or electronic.**

No information on established security protocols was received.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The procurement system complies with the requirements (a) through (d) listed above	<b>3</b>
The procurement system complies with requirements (a), plus two of the remaining conditions.	<b>2</b>
The procurement system complies with (a) but not with the rest.	<b>1</b>

There is no mandatory list of documents or retention policy leaving it to the discretion of the procuring entity.	0
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**Conditions Met:**

a and c met; b and d not met.

**Comment/Proposed Mitigation Measure:**

When amending Act 663, it should be considered to add the following documents to the information to be kept according to section 28 (1): public notices of bidding opportunities; bidding documents and addenda; final signed contract documents and addenda and amendments.

Security protocols should be developed to protect records.

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**Sub-indicator 6(d) – There are provisions for delegating authority to others who have the capacity to exercise responsibilities. Assessment Score: 1 (tbd), Minimum Required OECD/DAC Mandatory score: 2.**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Delegation of decision making authority is decentralized to the lowest competent levels consistent with the risks associated and the monetary sums involved.**

Under Act 663, the procurement entity is responsible for procurement. According to para. 2.3 of the Manual, the Head of the procurement entity and any officer to whom authority is delegated are responsible and accountable for procurement actions that are undertaken by their entity. The head of entity is responsible for establishing a procurement unit to undertake all activities related to procurement within the entity. He/She appoints or designates a proficient procurement person with the requisite qualifications, experience and skills as Head of procurement unit. Each procurement entity establishes a Tender Committee, which ensures that at every stage of the procurement process, procedures prescribed in the Act have been followed. It refers to the appropriate Tender Review Board (the Boards are established at four levels: District, Regional, Ministry, and Central levels for prior reviews depending on the thresholds as defined in Act 663, Schedule 3) for approval, any procurement above its approval threshold. Each procurement entity appoints a Tender Evaluation Panel, which has expertise to evaluate tenders and to assist the Tender Committee in its work. The panel evaluates bids and proposals according to predetermined and published evaluation criteria. The Tender Review Boards review the decisions of procurement entities under them and give concurrent approval or otherwise. According to Act 663, section 17 (2) (c), approval is a one stop only approval.

In consequence, each ministry has one Ministerial Tender Review Board for cases (value of contracts) higher than the Entity Tender Committee's threshold. Each region has one Regional Tender Review Board for cases (value of contract) higher than District Tender Review Board. The District/Regional/Ministerial/Central Tender Review Boards submit reports of their reviews to PPA who quality assures and makes any required follow-up action. The Tender Review Boards once constituted remain permanent throughout four years. Since they have political representation, they are reconstituted after elections. This schema is replicated at state enterprises and specific national agencies, which also have their own Tender Committees. Today, over 1,200 procurement entities are identified.

The problem with this set up is that there are a multitude of entities involved in procurement transactions. Not only do they have to be constantly trained but this set up results in shared responsibilities, lack of accountability, delays in transactions and stress on available national capacity. It is practically impossible

to have enough resources to fill all these positions with the level of expertise required. The mission recommended the rationalization of the numerous tender review boards spread out throughout the country and linking the capacity issue in the procurement area with other reforms of Governance and civil service.

The proposed amendments to Act 663 are expected to address this issue.

**(b) Delegation is regulated by law.**

Delegation is regulated by law (Act 663, section 17 (2) and Schedule 3). For example, the current authority of a Head of Entity of a decentralised procuring entity is currently limited to about USD 4,000 (equivalent) for goods and consulting services, and to about USD 7,000 (equivalent) for works.

The authority of Entity Tender Committees of decentralised procuring entities is limited to about USD 7,000 (equivalent) for services, about USD 19,000 (equivalent) for goods and about USD 35,000 (equivalent) for works (Act 663, Schedule 3-2(B1)).

**(c) Accountability for decisions is precisely defined.**

Act 663, 15 (2) states *“The head of an entity and any officer to whom responsibility is delegated are responsible and accountable for action taken and for any instructions with regard to the implementation of this Act that may be issued by the Minister acting in consultation with the Board.”* Section 15 (4) continues *“The head of the entity is responsible to ensure that provisions of this Act are applied with; and concurrent approval by any Tender Review Board shall not absolve the head of entity from accountability for a contract that may be determined to have been procured in a manner that is inconsistent with the provisions of this Act.”*

In practice however, the involvement of several layers of government results in split responsibilities and adversely affects accountability.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The system meets all requirements listed in a) to c) above.	<b>3</b>
The law establishes delegation and accountabilities but the system concentrates decisions at a high level creating congestions and delays.	<b>2</b>
Delegation is regulated in very general terms creating a need to clarify accountability for decision making.	<b>1</b>
Delegation is not regulated by law and left at the discretion of the procuring entity. There is lack of clarity on accountability.	<b>0</b>

**Conditions Met:**

(a not met, b met, c not met) *“Delegation is regulated in very general terms creating a need to clarify accountability for decision making”*

**Comment/Proposed Mitigation Measure:**

**The involvement of several layers of government (head of entity, entity tender committee, tender review board) results in split responsibilities, lack of accountability, and long processing times. Given the high number of tender review board members at the central, ministerial, regional, and district level, the current processes also stress the available capacity.**

**The government should think about ways to make the procurement evaluation, approval, and award processes more efficient. In particular:**

- i. A strong capacity development program should be developed to increase efficiency.**

- ii. **Strengthen the procurement quality control function within each entity (prior review function) to professionalize procurement.**
- iii. **In parallel gradually reduce the fragmentation of too many small size procurement entities, and begin to establish a minimum size for a procurement entity that can operate with a high degree of professional quality.**
- iv. **The review function of the tender review boards needs to be strengthened to ensure that the decisions are taken professionally based on the technical evaluation. Firstly, the composition and frequency of meetings of the tender review boards should be reviewed. Secondly, the Government should consider rationalizing the numerous tender review boards spread out throughout the country.**
- v. **The Ministerial and Center Tender Review Boards could be amalgamated and staff could be assigned full time creating the foundation for further professionalization. Also, District and Regional Tender Review Boards could be amalgamated. The new Tender Review Boards should have a professional composition based on qualifications.**

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<b>Indicator 7. Functionality of the public procurement market</b>
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**Sub-indicator 7(a) – There are effective mechanisms for partnerships between the public and private sector. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Government encourages open dialogue with the private sector and has established formal mechanisms for open dialogue through associations or other means.**

The Government encourages open dialogue with the private sector. As reported by business associations, the Annual Report of PPA is usually publicly presented providing a discussion forum with the private sector. There are Development Dialogues, and established public and private sector forum sponsored by the World Bank.

Act 663 calls for three private sector representatives in the Board of PPA (Act 663, section 4 (1) (d)). The private sector representatives currently on the Board are individuals who do not represent a private sector association.

The composition of Tender Review Boards allows for the participation of the private sector. According to the mission, procurement implementation should remain the responsibility of the administration and this role should be reviewed. If the government wants to build trust in its systems by the private sector, it should strengthen the involvement of private sector representatives in the Board of PPA for policy and handling complaints.

**(b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.**

In 2007 and 2008, PPA carried out a number of trainings on Act 663 as outlined under sub-indicator 6 (b). The program was designed to give providers of goods, works and services an introduction to the public procurement system and basic bidding skills to enable them to participate successfully in public procurement. It consists of 7 core modules introducing the key provisions of the Public Procurement Act and standard documentation and one specialist module on preparing tenders. The 2008 National Procurement Assessment Reports acknowledges the need for PPA to intensify its efforts at getting service providers to register for its training program.

**(c) The government encourages public/private partnerships and the mechanisms are well established in the legal framework to make possible such arrangements**

Mechanisms for public/private partnerships are not established in the legal framework.

However, with funding of the World Bank, a Public Private Partnership (PPP) Resource Centre for Ghana shall be established. An Expression of Interest has been published recently. The assignment is to assist Ghana’s Government, specifically the MOFEP to increase the Government’s capacity to promote and manage PPP’s and assess the feasibility of establishing a Public Private Partnership Centre. To provide expert advice, PPA has been invited to participating in a steering committee, which has been established to set up the program.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
(a) Government encourages open dialogue with the private sector and has several established and formal mechanisms for open dialogue through associations or other means. (b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace (c) The government encourages public/private partnerships and the mechanisms are well established in the legal framework to make possible such arrangements	<b>3</b>
The system meets (a) plus one other condition above.	<b>2</b>
The system only provides for (a) above.	<b>1</b>
There are no obvious mechanisms for dialogue or partnership between the public and private sector.	<b>0</b>

**Conditions Met:**

a and b met, c not met.

**Comment/Proposed Mitigation Measure:**

Specific methods and procedures for the procurement of public/private partnerships (PPP) should be established in the legal framework based on the same principles (transparency, fairness, open competition, complaints mechanism).

**Sub-indicator 7(b) – Private sector institutions are well organized and able to facilitate access to the market. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

While Ghana displays an increasingly vibrant private sector, the competitiveness can still be further improved. This is particularly the case for the Micro, Small and Medium Enterprises (MSME) sector which represents a third of the workforce but accounts to only six percent of GDP according to the Project Appraisal Document (PAD) for the World Bank financed Micro, Small and Medium Enterprise Project. The PAD also stresses the limited international market exposure of the MSME sector, lack of management capacity, their default in compliance with standards, and low quality products. This results in a limited number of contractors that are in a position to compete for large-volume contracts.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The private sector is competitive, well organized and able to participate in the competition for public procurement contracts.	<b>3</b>
There is a reasonably well functioning private sector but competition for large contracts is concentrated in a relatively small number of firms.	<b>2</b>
The private sector is relatively weak and/or competition is limited owing to monopolistic or oligopolistic features in important segments of the market	<b>1</b>
The private sector is not well organized and lacks capacity and access to information for participation in the public procurement market.	<b>0</b>

**Conditions Met:**

There is a reasonably well functioning private sector, but competition for large contracts is concentrated in a relatively small number of firms.

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 7(c) – There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2+**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Ghana's ranking in the doing business indicators is on a positive trend. The country has further moved up from 94 to 82 from 2006 to 2008. Besides, Ghana is rated 50 among 181 countries in terms of contracts enforceability. Still some constraints continue to inhibit private sector access to the public procurement market, notably lack of access to credit among the MSME sector. This is singled out as a major constraint in the PAD for the MSME project which states that high interest rates and limited access to medium-long term finance is a constraint for the MSMEs.

As outlined under sub-indicator 3 (b), delays in payment are a critical factor in public procurement. Each procuring entity has its own budget. 132 payment centres are constituted as hub for several entities. They are served by 38 Treasuries. Private sector representatives complain about late payments stating that it may take up to eight to ten months to receive the final payment. One solution preferred by smaller companies is to work as sub-contractor to foreign firms.

Besides, under the umbrella of a World Bank/IFC program, lines of credit will be set up making available extra cash to banks and thus facilitating loans for SMSE.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There are no major constraints inhibiting private sector access to the public procurement market.	3
There are some constraints inhibiting private sector access to the public procurement market, but competition is sufficient.	2
There are multiple constraints inhibiting private sector access to the public procurement market which often affect competition levels.	1
There are major constraints that discourage competition and the private sector firms are generally reluctant to participate in public procurement.	0

**Conditions Met:**

There are some constraints inhibiting private sector access to the public procurement market, but competition is sufficient.

**Comment/Proposed Mitigation Measure:**

The Act does not specify to which extent contract amendments can be concluded (thresholds, scope of work, duration, etc.). Provisions should be added introducing some limitations.

The manual and training module to be developed for contract management should include contract amendments and the payment process.

Procuring entities, which show a high percentage of late payments according to the 2008 self-assessment of procurement entities should be encouraged to monitor and improve their payment practices.

**Indicator 8. Existence of contract administration and dispute resolution provisions.**

**Sub-indicator 8(a) – Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There are 5 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Procedures for acceptance of final products and for issuance of contract amendments are part of the legal/regulatory framework or are incorporated as standard clauses in contracts.**

The Procurement Manual details contract administration procedures including procedures for acceptance of products and issuance of contract amendments. Standard clauses for contract administration are generally incorporated in contracts.

Act 663 however does not specify to which extent contract amendments can be concluded (thresholds, scope of work, duration, etc.).

**(b) Clauses are generally consistent with internationally accepted practices (see IFI standard contracts for good practice examples).**

General Conditions of Contract (GCC) are incorporated in the Standard Bidding Documents and the standard forms of contract. The clauses are generally consistent with internationally accepted practices. The GCC have not been reviewed in detail yet.

**(c) Quality control (QC) procedures for goods are well defined in the model contracts/documents or in the regulations. QC is carried out by competent officers, inspection firms or specialized testing facilities.**

Model tender documents define quality control procedures for goods. According to the 2008 National Procurement Assessment, 84 % of contracts are completed with acceptable performance (73 % in 2007). However, in only 30 % of the contracts (50 % in 2007) completion reports have been issued.

**(d) Supervision of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors.**

Supervision of civil works is carried out by qualified personnel (individual engineers, engineering firms).

**(e) Final payments are processed promptly as stipulated in the contract.**

Prompt processing of payments needs to be improved generally as mentioned before.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
Contract administration procedures provide for (a) to (e) above.	<b>3</b>
Contract administration procedures provide for (a) plus three of the remaining requirements.	<b>2</b>
Contract administration procedures provide for (a) plus two of the remaining requirements.	<b>1</b>
Contract administration procedures do not meet the requirements of (a) to (e) above.	<b>0</b>

**Conditions Met:**

a, b, c and d met; e not met.

**Comment/Proposed Mitigation Measure:**

The Act should specify limitations and rules to frame contract amendments.

The training module to be developed for contract management should include contract amendments and the payment process. Procuring entities which show a high percentage of late payments according to the 2008 self-assessment of procurement entities should be encouraged to monitor and improve their payment practices.

**Sub-indicator 8(b) – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There are 5 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) There is an Arbitration law in the country.**

The principal law governing arbitration in Ghana is the Arbitration Act, 1961 (Act 38). The Act deals with both domestic awards and foreign awards by reciprocating countries. The Ghana Arbitration Centre, a company limited by guarantee, was established in 1996 and has a panel of arbitrators and conciliators being accredited members of the Centre. The Centre has issued out Arbitration Rules that govern the initiation and conduct of proceedings of the Centre.

**(b) The law is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency and enforceability.**

Section 14 of Act 38 addresses the neutrality of the arbitrators and the Act provides for due process. It includes steps for appointment of arbitrators (section 14) and enforcement of their decisions (section 25(1) and (2)). However, the Act does not contain explicit provisions for expediency; consistency with generally accepted practices could therefore not be assessed. There is a need to check the accuracy of the current arbitration law adopted in 1961.

**(c) The country accepts as a matter of course international arbitration for international competitive bidding.**

International arbitration for international competitive bidding is accepted and referred to in standard contract documents.

**(d) Provisions for Alternative Dispute Resolution (ADR) are standard in contracts.**

Provisions for Alternative Dispute Resolution are described in Act 38. The year 2000 saw the Alternative Dispute Resolution Bill elaborated based on a modified UNCITRAL Model Law. The Bill seeks to harmonize the law regulating arbitration with international conventions, rules and practises in arbitration; to provide the legal and institutional framework that will facilitate and encourage the settlement of disputes through ADR procedures; and to govern customary arbitration through legislation.

Other ADR mechanisms available in Ghana include: negotiation, mediation and conciliation. Customary arbitration is also a form of ADR available in the country and is governed by the recently implemented Chieftaincy Act 2008, Act 759.

**(e) ADR provisions conform to the international standard wording (may refer to IFI standard bidding documents for sample of good international practice).**

The standard tender documents contain clauses on arbitration, which have been modelled on those in use by the World Bank.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The system meets all the good practice standards (a) to (e) above	3
The system meets (a) plus three of the remaining good practice standards.	2
The system meets (a) plus two of the remaining good practice standards.	1
The system does not use ADR as a normal dispute resolution mechanism in public contracts.	0

**Conditions Met:**

a, c, d and e met; b not met.

**Comment/Proposed Mitigation Measure:**

A process to monitor expediency should be developed.

**Sub-indicator 8(c) – Procedures exist to enforce the outcome of the dispute resolution process. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) The country is a member of the New York Convention on enforcement of international arbitration awards.**

The country is member of the New York Convention on enforcement of international arbitration awards (Art. 38 ADL).

**(b) The country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts.**

Act 38, section 29 provides procedures for enabling the winner in a dispute to seek enforcement of the outcome by going to the courts.

**(c) The country has a process to monitor this area of contract administration and to address performance issues.**

The assessors did not obtain evidence of the existence of a process to monitor the outcome of a dispute resolution process and to address performance issues.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The procurement system in the country meets the requirements of a-c above	3
The country meets two of the three conditions above.	2
The country meets condition a).	1
The country does not meet any of the requirements.	0

**Conditions Met:**

a and b met, c not met.

**Comment/Proposed Mitigation Measure:**

A process to monitor the outcome of a dispute resolution process and to address performance issues should be defined.

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#### **Pillar IV. Transparency and Integrity of the Procurement System – Summary of Findings**

This pillar assesses if the system is in place operates with integrity, has appropriate controls to support implementation in conformity with the legal and regulatory framework, and addresses the potential for corruption in a comprehensive manner.

##### **Progress achieved:**

In Ghana, the mission observes that the internal and external audit institutions are improving. The Internal Audit Agency (IAA) has overseen the establishment of 268 Internal Audit Units (out of the expected target of 432 IAUs). The Ghana Audit Service (OAG) has taken measures to build up capacity to comply with the mandate of conducting annual audits of the procurement activities of entities. Most prominently, GAS has recently established a specialized Procurement Audit Unit. Audit Reports Implementation Committees (ARICs), which are responsible for overseeing the implementation of audit recommendations, have been established in 214 out of 342 MDAs and MMDAs. With the support of World Bank funded IDF grants, 227 internal audit staff was trained in audit of Procurement and Assets Management Systems and 35 core staff of the Ghana Audit Service was trained in Forensic, Special funds and Procurement Audits.

With respect to creating a well functioning complaints and appeals system for suppliers and contractors, the mission recognizes the progress that has been achieved in establishing a Complaints and Appeals Panel that reports to the Board of the PPA. In another effort to increase transparency and integrity, in 2009 a specific anti-corruption subdivision was created inside the Commission on Human Rights and Administrative Justice (CHRAJ), which has the mandate to investigate complaints and allegations related to corruption. This unit is also empowered to investigate complaints that public officers have violated a Code of Conduct or conflict of interest issues. For prevention, Guidelines on Conflict of Interest were developed to assist public officials identify, manage, and resolve conflicts of interest and several workshops have been conducted.

In January 2010, the Right to Information Act, 2009 was enacted. The purpose of the Right to Information Act is to give substance to the constitutional provision that all persons shall have the right to information. It provides for access to official information held by government agencies, and for the qualifications and conditions under which the access should be obtained. It is expected that the Act, once implemented, will inject truthfulness and transparency into governance, empower citizens to engage government and minimize corruption.

Stakeholders support the government's ethics and anti-corruption measures. The Ghana Integrity Initiative has established an Advocacy and Legal Advice Centre to provide a platform for citizens, corporate bodies and all legal persons resident in Ghana to participate more efficiently in the fight against corruption

##### **Opportunities for improvements:**

There are still major milestones to achieve to inspire sufficient public confidence and to facilitate further transparency and anti-corruption progress (for details, refer to the Proposed Action Plan).

- To oversee the procurement function effectively, the review function of the Tender Review Boards needs to be strengthened to ensure that the decisions are taken professionally based on the technical evaluation. All Internal Audit Units (IAU) need to become fully operational, annual audit plans and quarterly reports need to be submitted in due time.

- Internal auditors need to be adequately trained in carrying out procurement performance audits. Therefore, the Internal Audit Agency (IAA) should establish a pool of experts in procurement who can carry out procurement performance audits.
- Enforcement and follow-up on audit findings need to be based on the Auditor General and Public Accounts Committee recommendations and timely implementation by ARIC's.
- Ghana Audit Service (GAS) and IAA should cooperate closely in preparing manuals for specialized procurement audits, should jointly organize pilot procurement audits, and should ensure that procurement specialists or consultants are used on demand to access the required specialist know-how.
- To establish a state of the art system for administrative review, the complaints and appeals process should be overhauled: To comply with international good practice, the Appeals and Complaints Panel (A&C Panel) should be given the right to request information from the procurement entity and the time limits for providing this information should be specified; The deadlines for issuing decisions should be reviewed; Suspension of procurement proceedings need to be clarified; Procedures for the Complaints and Appeals process should be established comprising the work of the A&C Panel and decision-making; Payment of compensation of costs incurred in case a complaint is dismissed should be deleted; Decisions should be timely posted on the PPA website.
- To ensure independence of the administrative review body, PPA should only give general and not give any specific advice on individual procurement transactions (help-desk) and should not have an approval function for single-source procurement and restricted tendering.
- Ensure continuity of the work of the A&C Panel even in times of political changes, as for example by introducing staggered terms.

### **Pillar IV. Transparency and Integrity of the Procurement System – Details of Findings**

The eighteen sub-indicators of Pillar IV have been assessed applying the “Methodology for the Assessment of National Procurement Systems”. The scores achieved compare to the Benchmark UCS Mandatory Score defined in the Bank’s methodology for “Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program” as follows:

**Table 6: Pillar IV. Integrity and Transparency of the Public Procurement System – Assessment scores**

<b>Pillar IV. Integrity and Transparency of the Public Procurement System</b>	<b>Current Assessment 2010</b>	<b>Benchmark UCS Mandatory Score</b>
<b>9. Effectiveness of control and audit systems</b>		
a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement..	1	2+
b) – Enforcement and follow-up on findings and recommendations of the control.	1	2+
c) – The internal control system provides timely information on compliance to enable management action.	2	2+
d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	0	2
e) – Auditors are sufficiently informed about procurement requirements.	1	2
<b>10. Efficiency of appeals mechanism.</b>		
a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	2+	3
b) – Capacity of the complaint review system and enforcement of decisions.	2	3
c) – Fairness of the complaints system.	2	3
d) – Public access to decisions.	0	2
e) – Independence of the administrative review body.	0	3
<b>11. Accessibility to information.</b>		
Publication and distribution of information.	2	2+
<b>12. Ethics and anticorruption policy and measures.</b>		
a) – Legal provisions on corruption, fraud, conflict of interest, and unethical behavior.	3	3
b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices.	3	3
c) – Enforcement of rulings and penalties.	1	2+
d) – Measures exist to prevent and detect fraud and corruption in public procurement.	2	3
e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors.	2	2
f) – Mechanism for reporting fraudulent, corrupt, or unethical behavior.	2	3
g) - Codes of Conduct/Codes of Ethics for participant and provision for disclosure for those in decision making positions.	3	2

**Indicator 9. The country has effective control and audit systems**

**Sub-indicator 9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2+**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function.**

The legal framework that governs the auditing of the public accounts and procurement in Ghana is embedded in

- Article 187 to 189 of the Constitution
- Audit Services Act, 2000 (Act 584)
- The Financial Administration Act, 2003
- The Internal Audit Agency Act, 2003 and
- The Public Procurement Act, 2003 (Act 663)

*Internal Control*

A number of internal oversight functions are embedded in the Public Procurement Act, most prominently the quality control and decision-making function of the Tender Review Boards. Besides, the Internal Audit Agency (IAA) was established by the IAA Act 2003, with the objective to co-ordinate, facilitate and provide quality assurance for internal audit activities.

*External Control*

The Constitution together with the Audit Services Act, 2000 have defined the roles and responsibilities of the Auditor General who is responsible for the external oversight function of government. According to The Public Procurement Act (section 91) the Auditor General shall conduct annual audits of the procurement activities of entities and shall furnish copies of reports on the audits to the Board upon request from the Board. He shall also carry out specific audits into the procurement activities of entities and compliance by contractors, suppliers and consultants at the request of the Board. The statutory audit of procurement activities may be relied upon by the Board to institute measures to improve the procurement system.

*Parliamentary Oversight and Audit Report Implementation Committees*

The Public Accounts Committee (PAC) holds public hearings on the audit reports. The Internal Audit Agency Act and the Audit Service Act require MDAs and MMDAs to establish Audit Report Implementation Committees (ARICs), which are responsible for ensuring the implementation of the recommendations of audit reports.

The system in the country is assessed adequately independent and sufficient to oversee the procurement function.

**(b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.**

*Tender Review Boards*

The Tender Review Boards are responsible for reviewing the activities at each step of the procurement cycle leading to the selection of the lowest evaluated bid, best offer by the procurement entity in order to ensure compliance with the provisions of the Public Procurement Act and its operating instructions and guidelines. They give concurrent approval or other instructions to enable the procurement entity to continue with the procurement process and furnish PPA with reports. They are also mandated to review decisions of heads of entities in respect of complaints (Act 663, section 20).

The composition of these Tender Review Boards allows for the participation of the private sector. The mission explained that normally the private sector should not be involved in tender evaluation committees (except consultants hired for specialized expertise). As elaborated under sub-indicator 6 (d), the review function of the tender review boards needs to be strengthened to ensure that the decisions are taken professionally based on the technical evaluation. Firstly, the composition and frequency of meetings of the tender review boards should be reviewed. Secondly, the Government should consider rationalizing the numerous tender review boards. To establish clear lines of responsibility, it should be clarified that the procurement entity proposes an award of contract and that the Tender Review Board is responsible for quality assurance and clearance. Moreover, as mentioned before, the approval function of PPA for choosing less competitive methods of procurement should be deleted.

#### *Internal Audits*

The Internal Audit Agency (IAA) established by law in 2003 has staff strength of 36 and is responsible to set standards and assure quality of internal auditing in the public sector and is governed by a Board that reports to the President.

The IAA has made substantial progress in facilitating the setting-up and establishment of functional Internal Audit Units (IAU) in MDAs and MMDAs. Out of the expected target of 432 IAUs expected to be established, 272 have become operational by the end of the year 2008 compared to 58 as at December 2005. The IAUs have clearly established rules and procedure of operation through the adoption of internal audit standards and regulations. IAUs report directly to the IAA with copies to the line MDA and the Auditor General.

#### *External Audits*

To conduct annual audits of the procurement activities of entities, the Ghana Audit Service has taken measures to build up capacity to comply with this requirement. It recently established a Procurement Audit Unit. This unit is staffed with 12 auditors, but it is not fully operational yet. In the future, this unit shall organize pilot procurement audits and train auditors to carry out specialized procurement audits. As of May 2009, no procurement audits have been carried out. Traditionally, audits have focused on compliance with Act 663 within the scope of regular financial audits. A Quality Assurance Unit was established in September 2008 and manuals are being prepared to guide the work of staff that will be assigned from other units within GAS.

As stated in the ERPFM 2007 report, the relationship of IAA with Ghana Audit Services should be further strengthened to ensure that standards adopted by the internal audits are sufficiently robust to permit the external auditors to place reliance on their work.

### **(c) Proper balance between timely and efficient decision making and adequate risk mitigation.**

IAA requires each IAU to prepare and submit an Annual Audit Plan of its internal audit activities to form the basis of assessing its performance. 65 % of the expected Annual Audit Plans for 2008 were received at the end of the period.

The Internal Audit Agency Act, section 16 (3) requires an IAU to submit its reports on the internal audit it carries out to the Director-General of the IAA. In line with this, IAA requires IAUs to submit quarterly internal audit reports. Analysis of IAA disclosed that 26.5 % of the expected reports were received on time.

**(d) Specific periodic risk assessment and controls tailored to risk management.**

As stated in the UCS FM Report (draft), internal audits still focus on pre-payment audit instead of risk-based audit concentrating on systemic issues with the objectives of ensuring 1) conformity to the Government’s strategy; 2) effectiveness and efficiency of operations; 3) reliability of financial reporting; and 4) compliance with applicable laws and regulations. Presently, the IAA is unable to attract enough personnel with the required skills and competencies to perform specialized audits. 11 qualified personnel were recruited as directors of audit for the MDAs but only 3 are now in post.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The system in the country provides for: (a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function. (b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures. (c) Proper balance between timely and efficient decision making and adequate risk mitigation. (d) Specific periodic risk assessment and controls tailored to risk management.	<b>3</b>
The system in the country meets a) plus two of the above.	<b>2</b>
The system meets a) but controls are unduly burdensome and time-consuming hindering efficient decision making.	<b>1</b>
Controls are imprecise or lax and inadequate to the point that there is weak enforcement of the laws and regulations and ample risk for fraud and corruption.	<b>0</b>

**Conditions Met:**

a and b met, c and d not met

**Comment/Proposed Mitigation Measure:**

To oversee the procurement function effectively, the review function of the Tender Review Boards needs to be strengthened to ensure that the decisions are taken professionally based on the technical evaluations (refer to sub-indicator 6).

All IAUs need to become fully operational (established and fully staffed). The Government should do an assessment on the implementation status and provide the adequate resources.

Annual Audit Plans and quarterly reports need to be submitted in due time. IAA should closely monitor.

Manuals for specialized procurement audits should be developed and pilot audits should be carried out jointly.

Since procurement is considered a high-risk area, periodic risk assessments and controls related to procurement should be carried.

Refer to sub-indicator 6 b (prior review function of the Tender Review Boards).

**Sub-indicator 9(b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2+**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Enforcement and follow up of auditing findings is entrusted to the Audit Reports Implementation Committee (ARIC). ARICs are required under section 30 (1) of the Audit Service Act, 2000 to be established in all ministries, departments, agencies, metropolitan, municipal and district assemblies. ARICs are responsible for following up Auditor General and Public Accounts Committee recommendations as well as internal audit reports.

The majority of the currently existing ARICs have been newly established during 2008. According to IAA, at the end of the year 2008, 214 out of 342 MDAs and MMDAs, representing 62,6 % had functional ARICs. Thus an increase of 369 % from the 2007 figure of 58 has been registered in 2008.

In 2008, IAA requested managements of MDAs and MMDAs to provide response on status of implementation of recommendations made in the quarterly internal audit reports. Responses from management indicated that about 17 % of Internal Audit recommendations had been implemented during the year under review.

In terms of follow-up to external audit findings, ARICs work has been hampered by the following.

The report of the Auditor General on the Public Accounts of Ghana’s ministries, departments and other Agencies for the year ended 31 December 2005 stated that he was unable to provide a status report on the implementation of recommendations by MDAs from 2000 to 2004 because Parliament through the Public Accounts Committee (PAC) has not been able to consider the relevant reports due mainly to resource constraints. For 2006 and 2007, while the public accounts report was submitted within legally established timeframes (end March), and the backlog of audits has been reduced according to ERPFM 2009 (draft), the subsequent step, i.e. the presentation of the Auditor General’s report to parliament was not completed, because the Speaker of Parliament did not recognize the authority of the Auditor General in his acting capacity. Now that the Auditor General’s authority has been recognized, the Report of the Auditor-General on the Public Accounts of Ghana for the year ended 31 December 2006 and for the year ended 31 December 2007 will be tabled again.

Furthermore, the Financial Administration Act 2003 Part VIII provides for the establishment of a Financial Tribunal. The Tribunal has jurisdiction to enforce recommendations of the Public Accounts Committee on the Auditor General’s report as approved by Parliament. The orders of the Tribunal are enforceable in the same manner as an order of the High Court. As emphasized in the ERPFM 2000 Report (draft), the Tribunal needs to be established to strengthen governments approach to fraud and corruption.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
Internal or external audits are carried at least annually and recommendations are responded to or implemented within six months of the submission of the auditors’ report.	<b>3</b>
Audits are carried out annually but response to or implementation of the auditors’ recommendations takes up to a year.	<b>2</b>
Audits are performed annually but recommendations are rarely responded to or implemented.	<b>1</b>
Audits are performed erratically and recommendations are not normally implemented.	<b>0</b>

**Conditions Met:**

Audits are performed annually but recommendations are rarely responded to or implemented.

**Comment/Proposed Mitigation Measure:**

Enforcement and follow up of auditing findings needs to be based on the Auditor General and Public Accounts Committee recommendations and timely implementation be ensured by ARICs.

The Financial Tribunal needs to be established and become operational.

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**Sub-indicator 9(c) – The internal control system provides timely information on compliance to enable management action. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2+**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) There are written standards for the internal control unit to convey issues to management depending on the urgency of the matter.**

The Internal Audit Units are primarily responsible for the evaluation of the internal controls in MDA's and MMDAs. About 62 % of the expected IAUs have become operational by the end of 2008. The Internal Audit Agency has ensured the establishment of internal audit regulations and standards and the use of an audit manual and programs by IAUs. The IDF Support to Internal Audit Agency to Improve Internal Audit Skills has facilitated this work: The Internal Audit Manual has been completed and training was scheduled to start in the second quarter of 2010; Reporting guidelines for IAUs have been developed and issued for their usage in preparing internal audit reports; A training of trainers on the audit process, audit project management and audit reporting has also been conducted for staff of IAA and selected IAUs; A needs assessment exercise was conducted, and training in quality assessment has been offered to staff of IAA and selected IAUs.

**(b) There is established regular periodic reporting to management throughout the year.**

The IAA has monitored on a quarterly basis throughout the year the reports submitted by IAUs for their adherence to statutory regulations and procedures.

**(c) The established periodicity and written standards are complied with.**

Analysis of IAA disclosed that 65 % of the expected Annual Audit Plans for 2008 were received on time and that 26.5 % of the expected quarterly reports were received on time. According to IAA, the low submission of quarterly reports is attributable to the slow response from management of most MDAs and MMDAs to enable the IAUs finalize their audit reports for submission to IAA. As stated in the Implementation Status and Results Report for the period ending 31 January 2010 (IDF Support to Internal Audit Agency to Improve Internal Audits Skills), the frequency of submission of quarterly internal audit reports require follow-up and further training and even the submission from the defined four key ministries has not been regular.

IAA reviewed about 55 % of the received quarterly internal audit report during the year 2008. The review of these reports disclosed various systemic issues relating to non-compliance with statutory regulations as well as Government directives.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
All requirements (a) through (c) listed above are met.	<b>3</b>
Requirement (a) plus one of the above are met.	<b>2</b>
Only requirement (a) is met.	<b>1</b>
There is no functioning internal control system	<b>0</b>

**Conditions Met:**

a and b met, c not met.

**Comment/Proposed Mitigation Measure:**

IAUs should comply with the requirements set by IAA to submit Annual Audit Plans and quarterly reports in due time.

IAA should closely monitor.

**Sub-indicator 9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted. Assessment Score: 0, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

The internal control systems throughout government are generally in place although they will differ quite substantially between those in Ministries, departments and Agencies which will reflect a more suitably defined system as compared to those of say in the district assemblies. It would therefore be reasonable to deduce that although the procedures exist adherence to them is uneven throughout government.

The Public Sector Internal Audit Standards that have been developed are designed to primarily provide technical guidance to internal auditors in the performance of their duties. The standards are not designed to address the conduct of specialist functions such as procurement audits. A compliance checklist has been developed and is used but is not designed to address specialist activities, which would pertain to performance audits. According to the Internal Audit Agency Act, section 3 (3a) the set standards and procedures for the conduct of internal audit activities in the MDA's and MMDA's shall promote economy, efficiency and effectiveness in the administration of government programs and operations.

Overall, internal auditing still focuses on controlling expenditure commitments and payments. This type of auditing is done by financial controllers to ensure that the Government's payment obligations remain within the limits of projected cash availability. While the audit includes compliance with rules in procurement and other expenditure processes it cannot and should not be substituted for procurement or performance audits. Ghana does not have any entity in place responsible for carrying out internal nor external procurement controls.

The Ghana Audit Service has published Performance Audit Guidelines.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
There are internal control procedures including a manual that state the requirements for this activity which is widely available to all staff.	<b>3</b>
There are internal control procedures but there are omissions or practices that need some improvement.	<b>2</b>
There are procedures but adherence to them is uneven.	<b>1</b>
The internal control system is poorly defined or non-existent.	<b>0</b>

**Conditions Met:**

The internal control system is poorly defined or non-existent.

**Comment/Proposed Mitigation Measure:**

Procedures to conduct specialized procurement performance / quality audits need to be developed (in cooperation with GAS).

**Internal auditors need to be adequately trained in carrying out procurement performance audits. Therefore, IAA should establish a pool of experts in procurement who can carry out procurement performance audits. Performance audits could focus on priority issues (e.g. quality and publication of procurement plans, quality and publication of advertisements, quality of technical evaluations, practices for contract amendments, delays in payments, etc.).**

**Sub-indicator 9(e) – Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Auditors are generally expected to have reasonably good knowledge of PFM issues, which would include procurement. Traditionally, audits have focused on compliance with Act 663 within the scope of regular financial audits. For this purpose, a procurement checklist, which serves as a guide has been developed and is being used.

With the support of the aforementioned World Bank funded IDF grant, 227 internal audit staff was trained in audit of Procurement and Assets management systems in 2008. Further training is up coming in the context of the GTZ funded training programme for oversight institutions to be organized by PPA and targeting about 1,000 internal auditors.

As stated by IAA, only a few specialized internal procurement audits have been carried out so far. The reports are expected to focus on compliance with the Procurement law (they have not been submitted yet). In general, internal auditors do not have the required competencies yet to carry out specialized procurement audits. As mentioned under sub-indicator 9 (c), the Internal Audit Manual has just recently been completed and training was scheduled to start in the second quarter of 2010. The major constraint facing IAA in the discharge of its mandate has been the issue of retention of high calibre Internal Audit Staff in the MDAs and MMDAs.

As mentioned before, Act 663 mandates, that the Auditor General shall conduct annual audits of the procurement activities of entities. At the time of assessment, no specialized procurement audits were available. With the support of an IDF program on Capacity Building for Specialized Audit, the Ghana Audit Service has taken measures to build up capacity to comply with this requirement. 35 core staff of the Audit Service was trained in 2009 in Forensic, Special funds and Procurement Audits. As further explained, GAS has recently established a Procurement Audit Unit. This unit is staffed with 12 auditors, but it is not fully operational yet. Two pilot audits have been planned upon the completion of the training, which are supposed to afford the staff the opportunity to put into practice the knowledge acquired in the areas of Procurement and Special Funds Audits.

Moreover, a Quality Assurance Unit was established in September 2008 and manuals have recently been prepared to guide the work of staff that will be assigned from other units within GAS.

Further training is up coming in the context of the IDF program and the training scheduled by PPA for oversight institutions. As mentioned before, a train-the-trainer programme will be included targeting the newly established GAS Procurement Audit Unit.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
There is an established program to train internal and external auditors to ensure that they are well versed in procurement principles, operations, laws, and regulations and the selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits.	<b>3</b>
If auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.	<b>2</b>
There is a requirement that the auditors have general knowledge of procurement principles, operations, laws, and regulations but they are not supported generally by specialists in procurement.	<b>1</b>
There is no requirement for the auditors to have knowledge of procurement and there is no formal training program and no technical support is provided to the auditors.	<b>0</b>

**Conditions Met:**

There is a requirement that the auditors have general knowledge of procurement principles, operations, laws, and regulations, but they are not supported generally by specialists in procurement.

**Comment/Proposed Mitigation Measure:**

Focus should be on in-depth audit techniques to review the entire procurement cycle from procurement planning and requirement definition all the way to contract management (including payments) and final delivery of goods, works and services.

OAG and IAA should cooperate closely in preparing manuals for specialized procurement audits, should jointly organize pilot procurement audits, and should ensure that procurement specialists or consultants are used on demand to access the required specialist know-how.



**Indicator 10. Efficiency of appeals mechanism.**

**Sub-indicator 10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law. Assessment Score: 2 (tbd), Minimum Required OECD/DAC Mandatory score: 3**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) Decisions are rendered on the basis of available evidence submitted by the parties to a specified body that has the authority to issue a final decision that is binding unless referred to an appeals body.**

Part VII of Act 663 describes the review mechanism and specifics that any supplier, contractor or consultant shall in the first instance submit his complaint in writing to the head of the procurement entity if the contract has not already entered into force (section 79). He is entitled to seek for administrative review by the Board of PPA (section 80) (refer to sub-indicator 1 (h)).

Decisions are not all the time deliberated on the basis of available information. Missing information and time limits for issuing decisions impede/delay the complaints process. Some complaints were dismissed because the Appeals & Complaints Panel (A&C Panel) was not able to obtain information from the procuring entities. The A&C Panel should be given the right to request information from the procuring entity and time limits for providing information should be specified.

**(b) An appeals body exists which has the authority to review decisions of the specified complaints body and issue final enforceable decisions.**

According to the 2007 PPA Annual Report, the Board of PPA inaugurated The Appeals and Complaints Panel (A&C Panel) on February 23, 2007 to deliberate procurement complaints on behalf of the Board. The A&C Panel of 2007 comprised seven (7) members: legal, procurement experts, and representatives from the private and public sector, i.e. the Private Enterprise Foundation, Attorney-General's Department, Ministry of Finance and 3 representatives of the Public Procurement Authority. The Panel was chaired by a seasoned corporate lawyer/consultant of JSA Corporate & Legal Consult. The A&C Panel submits its recommendations to the Board of PPA, which takes the final decisions. The decisions can be challenged in the commercial courts.

As mentioned before, after the 2009 elections, the Board of PPA had not been constituted for several months, (refer to sub-indicator 4 (c)) and consequently, the administrative review board was not operational for about one year. At the time the mission took place in April 2010, the A&C Panel had been reconstituted.

Proposed rules and procedures for the A&C Panel were developed (dated 26 October 2006) and in October 2007, PPA issued the Administrative Review Process Guidelines #1. The guidelines basically repeat the stipulations of the Act and they have not been formally adapted yet and they. The composition of the A&C Panel is not specified in the guidelines. Besides, the times specified for the submission of complaints are incorrectly stated in the Guidelines.

**(c) There are times specified for the submission and review of complaints and issuing of decisions that do not unduly delay the procurement process.**

Deadlines for review procedures are specified in the Act, section 79 and 80 (4). A complaint must be submitted within 20 days of occurrence of the event. The procurement entity is supposed to make a decision on the complaint within 21 days. The procurement entity is entitled to suspend the procurement contract for 7 days, in exceptional cases for a maximum of 30 days. Within another 21 days, the complainant can seek administrative review. The A&C Panel of the Board of PPA is also entitled to suspend the procurement process for a period not exceeding 30 days and shall issue a written decision within 21 days of commencement of review. According to the mission the deadlines for issuing decisions by the procuring entity are too long and should be reduced from 21 days to 7 working days.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The country has a system that meets the requirements of (a) through (c) above	<b>3</b>
The country has a system that meets (a) and (b) above, but the process is not controlled with regard to (c).	<b>2</b>
The system only provides for (a) above with any appeals having to go through the judicial system requiring a lengthy process.	<b>1</b>
The system does not meet the conditions of (a) –(c) above, leaving only the courts.	<b>0</b>

**Conditions Met:**

a partly met, b met, c not met

The country has a system that meets (a) and (b) above, but the process is not controlled with regard to (c).

Final score tbd

**Comment/Proposed Mitigation Measure:**

**The Appeals and Complaints Panel should be given the right to request information from the procuring entity and the time limits for providing this information should be specified.**

**Review by the procurement entity: The deadlines for the issuing decisions are too long and should be reduced from 21 days to 7 working days (Section 79 of the PPA Act – Review by procurement entity (5)).**

The Act should be modified to include a standstill period to allow the bidders to submit a complaint between contract and signature.

**Sub-indicator 10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Act 663 sections 79 and 80 establish terms and timelines for resolution of complaints and administrative review (see comments above). The A&C Panel, responsible for administrative review on behalf of the Board of PPA, was established in 2007. After the 2009 elections it was not operational for almost one year and according to interviews carried out, the Panel does not work very well. It is dependant on information to be provided by procuring entities. In some cases, when

information was not provided, the case had to be closed. Besides, there are issues of competence and efficiency. As elaborated during the mission, PPA is in the process of preparing a policy paper aimed at establishing an independent panel. PPA highlighted the need for a well functioning Panel in order to avoid the involvement of commercial courts and a decision-making process, which takes several years.

The mission stressed that the Board should take action to ensure that procurement entities provide information requested to resolve a complaint in due time and to ensure that decisions taken are enforced. Some remedies are unclear, notably when the contract has already entered into force. The Act should be modified to include a stand still period to allow the bidders to submit a complaint between contract award and signature.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The complaint review system has precise and reasonable conditions and timeframes for decision by the complaint review system and clear enforcement authority and mechanisms.	<b>3</b>
There are terms and timeframes established for resolution of complaints but mechanisms and authority for enforcement are unclear or cumbersome..	<b>2</b>
Terms and timeframes for resolution of complaints or enforcement mechanisms and responsibilities are vague.	<b>1</b>
There are no stipulated terms and timeframes for resolution of complaints and responsibility for enforcement is not clear.	<b>0</b>

**Conditions Met:**

There are terms and timeframes established for resolution of complaints but mechanisms and authority for enforcement are unclear or cumbersome.

**Comment/Proposed Mitigation Measure:**

**The provision in Section 82 – Suspension of Procurement Proceedings stipulates that a contract can be suspended for seven days. This needs to be clarified since the consequences are unclear (i.e. the PPA Board cannot annul the contract according to Section 80 – Administrative Review (3)).**

**Sub-indicator 10 (c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**A review of decision making shows that:**

**a) they are based on information relevant to the case**

Article 23 of the Constitution imposes a duty on government officials to act fairly and reasonably. Act 663 Part VII describes the review system but does not address the question of evidence and information upon which decision must be rendered.

As mentioned under sub-indicators 10 (a) and (b), the A&C Panel is currently dependant on the procuring entity to provide information and no time limits for providing such information are specified.

**b) they are balanced and unbiased in consideration of the relevant information**

A report was released on 26 October 2006 by the Appeals and Complaints Task Force entitled 'Proposed Rules and Procedures for the Establishment of an Appeals and Complaints Panel'. In 2007, PPA issued corresponding guidelines for the administrative review process. The rules make reference to Article 23 of the 1992 Constitution, which imposes a duty on administrative bodies and officials to act fairly and reasonably and to conform to the rules imposed on them by law. In accordance with the constitution, the Board is bound to give fair and reasonable decisions. Overall, the Administrative Review Process Guidelines have not been formally adapted yet and also lack the required level of detail.

Procedures for the complaints and appeals process should be established comprising the scope of work of the A&C Panel and decision-making.

**c) they are generally upheld when subject to higher level review**

Decisions should result in remedies that are relevant to correcting the implementation of the process (Act 663, section 80 (3)). As stated in the rules, a complainant has the option to go to court, if for example the Board takes an unreasonable decision (Reference is made to Article 23 of the 1992 constitution and Order 55).

**d) they result in remedies that are relevant to correcting the implementation of the process or procedures.**

Section 80 of Act 663 specifies the remedies that are relevant to correcting the implementation of the process/ procedures. The Board may

- (a) declare the legal rules or principles that govern the subject-matter of the complaint;
- (b) order that the provisions of the Act to be complied with;
- (c) require the procurement entity to act or to proceed in a legal manner or to reach a legal decision
- (d) annul in whole or in part an illegal act or decision of the procurement entity, other than any act or decision bringing the procurement contract into force;
- (e) revise or substitute an illegal decision
- (f) require the payment of compensation for reasonable costs incurred by the supplier or contractor who submitted the complaint, in connection with the procurement proceedings as a result of an illegal decision of, or procedure followed by the procurement entity;
- (g) order that the procurement proceedings be terminated;
- (h) dismiss the complaint and require the payment of compensation for reasonable costs incurred by the procurement entity or the Board.

As stated in the rules, a complainant has the option to go to court, if for example the Board takes an unreasonable decision (Reference is made to Article 23 of the 1992 constitution and Order 55).

According to data provided by PPA, the Complaints & Appeal Panel handled twenty (20) cases during the year 2007 and 11 cases in 2008. The following table shows the decisions that were taken:

**Table 7: Decisions taken by the Administrative Review Board in 2007 and 2008**

<b>Decisions taken by the Administrative Review Board in 2007 and 2008</b>					
<b>Year</b>	<b>Total number of cases concluded</b>	<b>Concluded in favour of procurement entity</b>	<b>Concluded in favour of complainant</b>	<b>Closed due to lack of response by procurement entity</b>	<b>Not concluded because of dissolution of Board of PPA</b>
2007	20	4	10	5	n.a.
2008	11	3	5	2	1
2007/2008	31	7	15	7	1

Based on the information provided it was not possible to fully assess to what extent the decisions resulted in remedies that are relevant to correcting the procurement process. In four cases it was stated, that corrections were requested (for example re-evaluation of bids, re-tendering); in three cases the complaint was forwarded to the Attorney General or the Auditor General; in two cases, the procurement entities were asked to realign their procurement practices; and in one case, compensation was to be paid to the complainant. Seven out of a total of 31 cases were closed due to lack of response by the procurement entity. One case submitted in 2008 could not be concluded because of the dissolution of the Board of PPA.

It is not known to the mission if/how many more cases were submitted in 2009 and were pending because of this reason. Reportedly, 5 new cases were submitted beginning of 2010.

Due to lack of information it could not be analyzed if the complaints were resolved within the timeframes specified in Act 663.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
Procedures governing the decision making process of the review body provide that decisions are: a) based on information relevant to the case. b) balanced and unbiased in consideration of the relevant information c) can be subject to higher level review d) result in remedies that are relevant to correcting the implementation of the process or procedures	<b>3</b>
Procedures comply with (a) plus two of the remaining conditions above.	<b>2</b>
Procedures comply with (a) above.	<b>1</b>
The system does not comply with any of the above	<b>0</b>

**Conditions Met:**

a partly met, b, and c met; d not met.

**Comment/Proposed Mitigation Measure:**

**The Board should establish procedures for the complaints and appeals process comprising the scope of work of the A&C Panel and decision-making.**

**The Board should take action to ensure that procurement entities provide information requested to resolve a complaint in due time and to ensure that decisions taken are enforced.**

**The provision in section 80 – Administrative review (3) h, stating that in case a complaint is dismissed, the complainant can be asked for payment of compensation of costs incurred, should be deleted since it is counterproductive.**

**Ensure continuity of the work of the A&C Panel even in times of political changes (as for example by staggered terms).**

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**Sub-indicator 10(d) – Decisions are published and made available to all interested parties and to the public. Assessment Score: 0, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Section 81(5) states the requirements (and exceptions) to making decisions by the procurement entity or by the administrative review body available for inspection to the public.

The Annual Report 2007 of PPA, Appendix 2, provided a status list of cases under review covering the 20 aforementioned cases that were handled in 2007.

The most recent compilation of completed procurement related appeals and complaint cases as published on the PPA website originates from November 2008. As of the time of report writing, only four cases (in total) have been published on the PPA website.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
All decisions are publicly posted in a government web site or another easily accessible place	3
All decisions are posted in a somewhat restricted access media (e.g. the official gazette of limited circulation).	2
Publication is not mandatory and publication is left to the discretion of the review bodies making access difficult.	1
Decisions are not published and access is restricted.	0

**Conditions Met:**

Decisions are not published and access is restricted.

**Comment/Proposed Mitigation Measure:**

**Decisions should be timely posted on the PPA website.**

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**Sub-indicator 10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints. Assessment Score: 0, Minimum Required OECD/DAC Mandatory score: 3**

The Appeals and Complaints Panel acts on behalf of the Board of PPA. 4 members represent the public and private sectors. 3 members represent the management of PPA, i.e. CEO, Director BME and Director Legal.

Due to the nature of this sub-indicator, it is to be scored as either 3 or 0. Since it can not be stated, that the complaint review body is fully independent and autonomous from the rest of the system with regard to resolving complaints, the sub-indicator is assessed 0.

Given the fact that three out of seven members of the A&C Panel represent the management of PPA, the following areas are considered critical in terms of independence and conflict of interest: (i) the current definition of the right to review could be challenged as insufficient (see assessment of sub-indicator 1(h)) whereas staff of PPA is likely to support the procurement system set up ; (ii) the help-desk established at PPA may have given advice on the case under review; (iii) PPA may have given approval for single-source procurement or restricted tendering on the case under review.

Moreover, continuity of the work of the A&C Panel is not guaranteed. The Panel was dissolved end of 2008 because of the 2009 elections, and the new panel was only reinstalled in September 2009. Also the Board of PPA, which takes the final decision on complaints, was not sitting for several months.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The complaint review body is independent and autonomous with regard to resolving complaints.	<b>3</b>
The complaint review body is not independent and autonomous with regard to resolving complaints.	<b>0</b>

**Conditions Met:**

The complaint body is not independent and autonomous with regard to resolving complaints.

**Comment/Proposed Mitigation Measure:**

Membership of the A&C Panel should be reviewed.

**PPA should only give general and not specific advice on individual procurement transactions (help-desk) and should not have an approval function for single-source procurement/selection or restricted tendering. (Refer to sub-indicator 4 d)**

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<b>Indicator 11. Degree of access to information</b>
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**Sub-indicator 11(a) – Information is published and distributed through available media with support from information technology when feasible. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2+**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Public access to procurement information is facilitated through the PPA website [www.ppbghana.org](http://www.ppbghana.org). The information provided is comprehensive in many aspects. Contract awards are increasingly published. However, no information on procurement plans is available and as outlined under sub-indicator 5 (a), it is not mandatory for procurement entities to provide information to PPA for publication on the PPA website or to post the ads on the PPA website directly. This results in a process of collecting and posting data on tender opportunities, which is not efficient and not fully reliable.

Overall, as stated in the 2008 National Procurement Assessment Report, only 85 % of open tendering procedures were in fact publicly advertised (compared to 93 % in 2007). 83 % of contracts awards have been published by procurement entities in 2008 compared to 71 % in 2007.

By establishing the E-Procurement Bulletin, PPA has renewed its efforts to establish the PPA website as a one-stop service. The second issue of the E-Procurement Bulletin was committed to the role of Entity Tender Committees, notably related to the publication of open tenders. A graph illustrates the necessity to enter procurement plans on PPA’s Web based Procurement Planning System, to publish tenders in dailies/newspapers, to update PPA’s website with published tenders, to perform public tender openings, to communicate tender awards to successful and unsuccessful suppliers/contractors, and to update PPA’s website with contract award details.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
Information on procurement is easily accessible in media of wide circulation and availability. The information provided is centralized at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	<b>3</b>
Information is posted in media not readily and widely accessible or not user friendly for the public at large OR is difficult to understand to the average user OR essential information is lacking.	<b>2</b>
Information is difficult to get and very limited in content and availability.	<b>1</b>
There is no public information system as such and it is generally up the procuring entity to publish information.	<b>0</b>

**Conditions Met:**

Information is posted in media not readily and widely accessible or not user friendly for the public at large OR is difficult to understand to the average user OR essential information is lacking.

**Comment/Proposed Mitigation Measure:**

Commitment, backed by requirements in the legal/regulatory framework should ensure that procurement agencies duly post the information required on a timely basis.

**Indicator 12. The country has ethics and anticorruption measures in place**

**Sub-indicator 12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 3**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Although the need to incorporate anti-corruption provisions in tender documents is not explicitly stated in Act 663, all of the Tender documents with the exception of Request for Quotations and Request for Proposals have adequate provisions on fraud and corruption. In addition, section 66 of the Financial Administration Act (Financial Administration Tribunal) provides for anti-corruption measures applicable to procurement officers. The offences are listed in section 62 of the Act. PPA intends to review all standard bidding documents to ensure best practice.

All criteria are thus considered to be substantially met.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The procurement law or the regulations specify this mandatory requirement and give precise instructions on how to incorporate the matter in tendering documents. Tender documents include adequate provisions on fraud and corruption.	<b>3</b>
The procurement law or the regulations specify this mandatory requirement but leaves no precise instruction on how to incorporate the matter in tendering documents leaving this up to the procuring agencies. Tender documents generally cover this but without consistency.	<b>2</b>
The legal/regulatory framework does not establish a clear requirement to include language in documents but makes fraud and corruption punishable acts under the law. Few tendering documents include appropriate language dealing with fraud and corruption.	<b>1</b>
The legal framework does not directly address fraud, corruption or unethical behavior and its consequences. Tender documents generally do not cover the matter.	<b>0</b>

**Conditions Met:**

The procurement law or the regulations specify this mandatory requirement and give precise instructions on how to incorporate the matter in tendering documents. Tender documents include adequate provisions on fraud and corruption.

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 3**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

Act 663 section 93 (1) on corrupt practices specifies that entities and participants must comply with article 284 of the Constitution. Section 93 (2) of Act 663 also refers to the Criminal Code of 1960 (Act 29) in which corrupt practices are defined. Section 92 of Act 663 details offences related to procurement (section 92 (2)) and the corresponding sanctions (penalties as defined by section 92 (2)).

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The legal/regulatory framework explicitly deals with the matter. It defines fraud and corruption in procurement and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.	<b>3</b>
The legal/regulatory framework includes reference to other laws that specifically deal with the matter (e.g. anti corruption legislation in general). The same treatment is given to the consequences.	<b>2</b>
The legal/regulatory framework has general anti corruption and fraud provisions but does not detail the individual responsibilities and consequences which are left to the general relevant legislation of the country.	<b>1</b>
The legal/regulatory framework does not deal with the matter.	<b>0</b>

**Conditions Met:**

The legal/ regulatory framework explicitly deals with the matter. It defines fraud and corruption in procurement and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.

**Comment/Proposed Mitigation Measure:**

**Sub-indicator 12(c) – Evidence of enforcement of rulings and penalties exists. Assessment Score: 1, Minimum Required OECD/DAC Mandatory score: 2+**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

In 2008 and 2009, Ghana scored 3.9 points on the Corruption Perception Index of Transparency International (scale 1-10, with 0 being the most corrupt) compared to 3.3 in 2006 and was ranked 69 out of 180 countries in 2009. According to the Economist Intelligence Unit 2006 Country Profile for Ghana, the media in Ghana plays an important role in exposing corruption cases.

However, the assessors were not able to obtain evidence of corruption cases reported or cases being prosecuted. Accordingly, the ratio between cases being reported and cases prosecuted could not be established. The Financial Administration Tribunal, which has jurisdiction to enforce recommendations of the Public Accounts Committee on the Auditor General’s report, and whose orders are enforceable in the same manner as an order of the High Court, is not operational yet.

In 2009, a specific anti-corruption subdivision was created inside the Commission on Human Rights and Administrative Justice (CHRAJ), which has the mandate to investigate complaints and allegations related to corruption. This unit is also empowered to investigate complaints that public officers have violated a

Code of Conduct or conflict of interest issues. For prevention, Guidelines on Conflict of Interest were developed to assist public officials identify, manage, and resolve conflicts of interest. To this end, workshops were conducted and participating institutions were encouraged to develop their own conflict of interest rules.

As explained by CHRAJ, Ghana has signed the UN Convention Against Corruption, which in Article 9 specifically refers to public procurement, but the country has not passed a law to enforce its provisions. The current definition of corruption is considered too narrow and not in line with the UN Convention

In 2009, CHRAJ has investigated 60 cases out of which about 60 % are completed. Some major cases are reportedly not completed yet.

No formal cooperation has been established between CHRAJ and PPA yet. Such cooperation could help establish confidence in the public procurement system, notably in the complaints and appeals mechanisms.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
There is ample evidence that the laws on corrupt practices are being enforced in the country by application of stated penalties.	<b>3</b>
There is evidence available on a few cases where laws on corrupt practices have been enforced.	<b>2</b>
Laws exist, but evidence of enforcement is weak.	<b>1</b>
There is no evidence of enforcement.	<b>0</b>

**Conditions Met:**

Laws exist, but evidence of enforcement is weak.

**Comment/Proposed Mitigation Measure:**

The Financial Administration Tribunal needs to be established and PPA and other concerned Government bodies should monitor this data to ensure that appropriate enforcement of rulings and penalties occurs.

**Sub-indicator 12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement. Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

According to Ghana's Growth and Poverty Reduction Strategy (GPRS) II (November 2005), the Government's policy on corruption has focused on fraudulent payments and wages in the public sector. The report further notes that the Government's anti-corruption strategy can be further strengthened through capacity building of the anti-corruption institutions and law enforcement agencies.

In April 2009, the Ghana Integrity Initiative, the national chapter of Transparency International has established an Advocacy and Legal Advice Centre to provide a platform for citizens, corporate bodies and all legal persons resident in Ghana to participate more efficiently in the fight against corruption. The mandate of the Advocacy and Legal Advice Centre is to assist and give advice to victims and witnesses of corruption. Focus will be on the administrative and legal procedures as well as on the monitoring of mechanisms of corruption. PPA has been identified as one of the partners needed for the effective operation of the centre.

PPA has included a module on Procurement Principles and Ethics in its short-term training program. The up-coming training of oversight institutions on the procurement law will include the following target groups, who play an important role in preventing, detecting and enforcing fraud and corruption in procurement: OAG, IAA, Serious Fraud Office, Police, CHRAJ, Prosecution, Parliament, Media, Practitioners, Civil Society, NGOs and the general public.

As indicated under sub-indicator 12 (c), the procurement system would benefit from a formalized cooperation between PPA and other public institutions and civil society organizations engaged in anti-corruption to better prevent and detect corruption in procurement.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
The government has in place a comprehensive anticorruption program to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. Special measures are in place for detection and prevention of corruption associated with procurement,	<b>3</b>
The government has in place an anticorruption program but it requires better coordination or authority at a higher level to be effective. No special measures exist for public procurement.	<b>2</b>
The government has isolated anticorruption activities not properly coordinated to be an effective integrated program.	<b>1</b>
The government does not have an anticorruption program	<b>0</b>

**Conditions Met:**

The government has in place an anticorruption program but it requires better coordination or authority at a higher level to be effective. No special measures exist for public procurement.

**Comment/Proposed Mitigation Measure:**

The government should follow a more active approach and PPA should work with the Ghana Anti-Corruption Coalition to establish special measures for detection and prevention of corruption associated with procurement.

**Sub-indicator 12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 2**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

The Ghana Anti-Corruption Coalition (GACC) includes the Private Enterprise Foundation (PEF), Ghana Journalists Association (GJA) and the Ghana Integrity Initiative (GII, local chapter of Transparency International). The Government is also represented in the Coalition through the Serious Fraud Office,

which forms part of the Public Services of Ghana, and the Commission for Human Rights and Administrative Justice (CHRAJ), enacted in October 1993.

As elaborated by the Ghana Anti-Corruption Coalition, a dialogue with PPA has been started to discuss some shortfalls in Act 663 related to anti-corruption. Critical issues include by-passing of rules, delaying the procurement process, missing/non-disclosure of procurement plans, manipulation of cost estimates, delayed payments, application of emergency clauses, etc. PPA has signaled to prepare a list of additional anti-corruption measures.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
(a) There are strong and credible civil society organizations that exercise social audit and control. (b) Organizations have government guarantees to function and cooperation for their operation and are generally promoted and respected by the public. (c) There is evidence that civil society contributes to shape and improve integrity of public procurement.	<b>3</b>
There are several civil society organizations working on the matter and the dialogue with the government is frequent but it has limited impact on improving the system.	<b>2</b>
There are only a few organizations involved in the matter, the dialogue with the government is difficult and the contributions from the public to promote improvements are taken in an insignificant way.	<b>1</b>
There is no evidence of public involvement in the system OR the government does not want to engage the public organizations in the matter.	<b>0</b>

**Conditions Met:**

There are several civil society organizations working on the matter and the dialogue with the government is frequent, but it has limited impact on improving the system.

**Comment/Proposed Mitigation Measure:**

The Government should support efforts in this area undertaken by stakeholders. PPA should be encouraged to work with GACC on anti-corruption measures related to procurement.

**Sub-criteria 12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior. Assessment Score: 2, Minimum Required OECD/DAC Mandatory score: 3**

There is the sub-indicator assessment question above and 4 scoring criteria under this sub-indicator as listed below:

The Serious Fraud Office and the Commission for Human Rights and Administrative Justice (CHRAJ) are mechanisms for reporting fraudulent, corrupt, or unethical behaviour. Security and confidentiality is addressed through the Act 720 (Whistleblowers Act, 2006).

The Right to Information Act, 2009 (initially discussed as Right to Information bill) was enacted on 19 January 2010 (date of Gazette notification). The purpose of the Right to Information Act is to give

substance to the constitutional provision that all persons shall have the right to information. It provides for access to official information held by government agencies, and for the qualifications and conditions under which the access should be obtained. It is expected that the Act, once implemented, will inject truthfulness and transparency into governance, empower citizens to engage government and minimize corruption.

With respect to public procurement it needs to be evaluated which actions will be required to implement the Right to Information Act. To comply with strengthened information rights of bidders and the general public there may be the need to recalibrate certain procedures.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
There is a secure, accessible and confidential system for the public reporting of cases of fraud, unethical behavior and corruption.	<b>3</b>
There is a mechanism in place but accessibility and reliability of the system undermine and limit its use by the public.	<b>2</b>
There is a mechanism in place but security or confidentiality cannot be guaranteed	<b>1</b>
There is no secure mechanism for reporting fraud, unethical behavior and corruption cases	<b>0</b>

**Conditions Met:**

There is a mechanism in place but accessibility and reliability of the system undermine and limit its use by the public.

**Comment/Proposed Mitigation Measure:**

The government should be encouraged to enforce the anti-corruption measures in place to increase confidence in the system. The Right to Information Bill should be implemented.

**Sub-criteria 12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions. Assessment Score: 3, Minimum Required OECD/DAC Mandatory score: 2**

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

**(a) There is a code of conduct or ethics for government officials with particular provisions for those involved in public financial management, including procurement.**

The Code of Conduct for the Ghana Civil Service issued by the office of the head of the civil service is applicable. Part 2(b) of the Code (Guiding principles) specifies that officers should not place themselves under "any financial or other obligation that might influence them in the performance of their official duties, including award of contracts". Part 2(c) of the Code further specifies that civil servants should make choices based solely on merit when (among other things) awarding contracts. Part 7 of the Code details rules for efficient, effective and proper use of public funds and Part 8 addresses gifts, bribes, and conflict of interest.

In addition plans are afoot in PPA to develop a dedicated code for procurement staff in the government as per section 83 of the Act. A declaration on ethical behaviour including a conflict of interest sheet will be developed for suppliers.

**(b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements.**

Act 550 (Public Office Holder (Declaration of Assets and Disqualification Act, 1998)) subjects decision makers and officials (including procurement officers) (schedule 1 of the Act) to specific financial disclosure requirements (section 4).

**(c) The code is of obligatory compliance and consequences are administrative or criminal.**

The Code of Conduct for the Ghana Civil Service issued by the office of the head of the civil service is applicable.

<b>OECD/DAC Methodology Scoring Criteria for Sub-indicator</b>	<b>Score</b>
(a) There is a code of conduct or ethics for government officials with particular provisions for those involved in public financial management, including procurement. (b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements. (c) The code is of obligatory compliance and consequences are administrative or criminal	<b>3</b>
The system meets requirements (a) and (b) but is only a recommended good practice code with no consequences for violations unless covered by criminal codes.	<b>2</b>
There is a code of conduct but determination of accountabilities is unclear.	<b>1</b>
There is no code of conduct.	<b>0</b>

**Conditions Met:**

Assessment:  
a, b and c met.

(a) There is a code of conduct or ethics for government officials with particular provisions for those involved in public financial management, including procurement.

(b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements.

(c) The code is of obligatory compliance and consequences are administrative or criminal

**Comment/Proposed Mitigation Measure:**

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### 4.3 Summary of Scoring and the Way forward

The table below illustrates that the Ghana procurement system has been assessed to meet the mandatory scoring defined in the Bank’s methodology for “Use of Country Procurement Systems in Bank-Supported Operations: Proposed Piloting Program” as follows: 5 sub-indicators out of a total of 17 meet the mandatory score of “3” (29 %); The two sub-indicators which are defined as “pass/fail” (sub-indicators 4 (d) and 10 (e)) do not meet the “pass” criteria; 6 sub-indicators out of 10 meet the defined minimum score of “2” (60 %) requiring corrective measures to advance to “3”; 13 sub-indicators out of 25 meet the mandatory score of “2” (52 %).

The sub-indicators not meeting the required scoring are highlighted.

Table 10: Summary of Scoring

Minimum Required OECD/DAC Mandatory scoring	3	Pass/Fail (0 or 3)	2+	2
Number of Sub-indicators under each particular required scoring	17	2	10	25
Actual number of Sub-indicators meeting required scoring	5	0	6	13
Percentage (%) meeting required scoring	29 %	0 %	60 %	52 %
Number of Sub-indicators not meeting the required scoring	12	2	4	12

  

Sub-indicators not meeting the required scoring	1 (a) 1 (c) 1 (d) 1 (f) 1 (h) 8 (b) 8 (c) 10 (a) (tbd) 10 (b) 10 (c) 12 (d) 12 (f)	4 (d) 10(e)	6 (c) 9 (a) 9 (b) 12 (c)	2 (a) 3 (a) 3 (d) 4 (c) 5 (a) 5 (b) 5 (d) 6 (a) 6 (d) (tbd) 9 (d) 9 (e) 10 (d)
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The results of the analysis using the OECD-DAC tool show that there is still a need to further improve the efficiency of the national procurement system by strengthening the legislative framework, enhancing institutional development capacity, streamlining operations and increasing transparency.

A draft action plan was discussed during the mission with the Public Procurement Authority (PPA) and MOFEP, which is intended to achieve two objectives (i) strengthening Ghana’s own national procurement system, primarily by enacting a long awaited update and streamlining of the legal framework, and (ii) enhancing the candidature of Ghana to become a pilot country for an IDA investment lending operation, which would use an improved country procurement system.

Based on this, the assessment report was finalized and distributed to the Government with copies to the development partners active in Ghana. For the procurement reform listed in the Action Plans, a public consultation process could bring in the views of the private sector and civil society. Furthermore similar discussions with the development partners in Ghana as part of the Public Finance Management (PFM) Sector Group in Ghana could bring in their views.

To advance to Stages 2 and 3 for the procurement UCS pilot, will depend on the results of the above-mentioned process for Stage 1.

## Chapter 5 Action Plan (to be updated by GoG)

The following Action Plan presents a series of institutional strengthening and reform issues and follows a two-step approach for implementation. First, it presents **priority actions (printed in bold)**. Secondly, it lists actions to be carried out in the mid-term (1-3 years) to ensure a sustainable procurement reform process in the country.

### Action Plan Ghana: Strengthening and Reform Actions for Procurement, Internal and External Audit and GAC Agenda

Issues	Mitigations Measures (Actions)	Entity Respon- sible	Status of Government's Comments	Date to Complete Action	Cost Estimated for Action
<b>Strengthening and Reform Actions towards a Pilot Program for Use of the Procurement Country Systems</b>					
<p><b>Issues:</b> The legal framework is not organized hierarchically, the regulations are not finalized, and singular discretionary power over procurement transactions can be exercised.</p> <p>Sub-Indicator 1a: Scope and application</p>	<p>While the legislative and regulatory framework broadly meets the requirements of this sub-indicator, there are specific areas that need further considerations:</p> <p>The Public Procurement Act (Act 663) and the proposed regulations currently under consideration should take the following issues into account:</p> <ul style="list-style-type: none"> <li>- The hierarchy of the legal instruments should be clearly stated.</li> <li>- The regulations should be finalized and published.</li> <li>- <b>Singular discretionary power over procurement transactions at the Minister level should be removed, for example: With reference to the scope of application, the present provision in section 14 (1) (a) that the Minister can decide that it is in the national interest to use a different procedure is considered discretionary and should be removed.</b></li> <li>- With reference to section 15 – Procurement entity (2), the second part of the sentence “that may be issued by the Minister acting in consultation with the Board” shall be removed.</li> </ul>	PPA	<p>The discretion vested in the Minister is not absolute. Section 14(3) of Act 663 and Article 296 of the Constitution are relevant in regulating exercise of discretion.</p> <p>The Point on Section 15(2) is noted. This has been taken care of in the Proposed amendments</p>		
<p><b>Issues:</b> Advertising rules and time limits are unclear.</p> <p>Sub-Indicator 1c: Advertising rules and time limits</p>	<p>It is generally recommended that different minimum requirements be established for the respective procurement methods taking the procurement method, the nature, and the complexity of the procurement into account. For National Competitive Bidding, a minimum of 4 weeks is normally defined for potential bidders to obtain documents and respond to the advertisement. The provisions in the PPA and the Manual need to be harmonized.</p>	PPA	<p>The proposed amendments recommended a minimum of 2 weeks and a maximum of 6 weeks</p> <p>Noted. Being</p>		

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(draft August 27, 2010)*

Issues	Mitigations Measures (Actions)	Entity Respon- sible	Status of Government's Comments	Date to Complete Action	Cost Estimated for Action
	<p><i>Section 45 – International competitive tendering (2) (b): Publication of all advertisements should be mandatory on the PPA website as a minimum and if desired in a newspaper with adequate circulation internationally.</i></p> <p><i>Section 47 – Procedures for inviting tenders or applications to pre-quality (2): Publication of all advertisements should be mandatory on the PPA website and in a newspaper with adequate circulation nationally.</i></p> <p><i>Section 47 (1): Should be omitted because it is redundant with the above provisions.</i></p>		<p>considered in amendments</p> <p>Noted</p>		
<p><b>Issues:</b> <b>Procedures for participation lack clarity and transparency.</b></p> <p><u>Sub-Indicator 1d:</u> Rules on participation.</p>	<p>Since Act 663 refers to the regulations as the basis for calculating the margin of preference, it is important for the draft regulations to be formalized.</p> <p>Rules for the participation of state owned enterprises should be specified in the Act 663 to promote fair competition.</p> <p><b>Procedures for debarment should be established.</b></p> <p><i>Section 44 – National competitive tendering:</i> It needs to be clarified if registration is mandatory for international companies to participate in National Competitive Tendering.</p>	PPA	<p>Noted</p> <p>To be considered</p> <p>Noted.</p> <p>Noted.</p>		
<p><b>Issues:</b> <b>Some evaluation criteria stated in Act 663 are not considered relevant to the decision (ex: impact on balance of payment, economic-planning potential, national security considerations, etc.).</b></p> <p><u>Sub-Indicator 1f:</u> Tender evaluation and award criteria.</p>	<p>The criteria specified in <i>section 59-Evaluation of tenders and section 69-Criteria for the evaluation of proposals</i> (such as impact on balance of payment, economic-development potential, etc.) should be considered at the sector planning stage but not as additional evaluation criteria, which can override quality and price criteria as stated in the Act and in the tender documents.</p> <p>Therefore, to determine the lowest evaluated tender, the stipulations under <i>section 59 (4)(c) and (d)</i> and analogously in <i>section 69 (2)(c) and (d)</i> should be removed.</p> <p>National security considerations are already addressed in <i>section 40 - Single source procurement 1 (f)</i>. Thus discretionary and broad ambiguous criteria for selection of procurement methods and for contract award appear to be overly arbitrary.</p>	PPA	<p>These provisions are relevant for implementation of horizontal policies or collateral issues of national interest through procurement and should be retained.</p>		
<p><b>Issue:</b> There are restrictions to the right to review.</p> <p><u>Sub-indicator 1h:</u> Complaints systems</p>	<p><b>Interested or actual bidders should be allowed to appeal at any time of the procurement process. The exceptions specified in the Act section 78 – Right to review (2) weaken the right to review and should be deleted.</b></p>	PPA	<p>Interested Parties are taken care of by the investigative power of PPA under sections 89 and 90 of Act 663</p> <p>Section 78(2) is modeled after UNCITRAL</p>		

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Issues	Mitigations Measures (Actions)	Entity Respon- sible	Status of Government's Comments	Date to Complete Action	Cost Estimated for Action
			Model Law on Procurement. In view of ongoing UNCITRAL reform of these provisions, amendments should be effected based on final UNCITRAL recommendations		
<p><b>Issue:</b> The regulations exist only as a draft.</p> <p><b>Issue:</b> Manual is mostly repetitive of the Act and the draft regulations.</p> <p>Sub-Indicator 2a: Implementing regulation that provides defined processes and procedures</p>	<p>The regulations should be formalized, and need to be less repetitive and redundant with the Manual.</p> <p>The Manual, which was initially prepared for training purposes, should be revised and focus on details and explanations of the Act and the regulations.</p>	PPA	<p>Noted</p> <p>Noted</p>		
<p><b>Issue:</b> Procurement plans are not used to support the budget planning and formulation process, and the majority of the procurement plans is not published in time.</p> <p>Sub-Indicator 3a: Procurement planning and data on costing are part of the budget formulation and multiyear planning</p>	<p>Procurement planning should become more pro-active. Once the budget ceilings are known (usually in August), the different budget items could be broken down and the procurement activities could be planned and used as major inputs to the budget process. This would allow for quicker updates by procurement entities and their subsequent approval by each entity's Tender Committee not later than one month after the end of the fiscal year (by end January).</p> <p>Since considerable progress has been achieved to make the web-based procurement planning tool operational and due to the fact that about 400 procurement entities have already been trained, in the context of amending Act 663, it should be considered to make the use of the tool and the timely publication on the PPA website mandatory for all procurement entities. Such a step would enhance policy implementation and would lead to increased efficiency and transparency in the procurement process.</p> <p>These recommendations would coincide with PPA's goal to coordinate with other institutions for effective linkage between budget preparation, payments, and audit processes.</p>	PPA/MO FEP	<p>Ghana Integrated Financial Management Information System to take care of this.</p> <p>Noted</p> <p>Noted</p>		
<p><b>Issue:</b> Completion reports are generally not prepared/used as a feedback mechanism for budget execution.</p>	<p>The Government of Ghana is currently implementing an IFMIS-System (GIFMIS) that will integrate budget reports and payment requests so as to systematically have constant status on budget execution. There is a module on procurement included that will use procurement plans as inputs to the budget planning process and the system will assist in more timely payments once the contract is awarded. GIFMIS will start with pilot projects in 2010 and is supposed to be fully rolled out as of Jan 1, 2011.</p>	MOFEP	Noted: will liaise with MOFEP		

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<p><u>Sub-indicator 3d:</u> Systematic completion reports are prepared for certification of budget execution...</p>					
<p><b>Issue:</b> <b>Lack of continuity and objectivity in the work of PPA.</b></p> <p><u>Sub-indicator 4c:</u> The body's organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities.</p>	<p><i>Section 4 – Membership of the Board:</i></p> <p><b>The members of the Board should be augmented to include representatives from the private sector associations, civil society groups or other associations. Each Board member should (a) be a leader in his/her field and highly regarded in his/her professions or industry sector and (b) be able to provide added value in the work of PPA in policy formulation.</b></p> <p><b>Staggered terms for Board members should be introduced to ensure continuity of expertise and issues to maintain institutional memory and avoid gaps upon change of governments.</b></p> <p>The PPA multi-year Strategic Plan should be updated annually and monitored closely.</p>	<p>MOFEP</p> <p>PPA</p>	<p>Noted: to be discussed with MOFEP</p>		
<p><b>Issue:</b> <b>PPA's responsibilities include approval functions for choosing less competitive procurement methods.</b></p> <p><u>Sub-indicator 4d:</u> The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.</p>	<p>PPA should only give general advice on the application of the procurement law and regulations but should not provide any specific advice on individual procurement transactions (help-desk).</p> <p><b>PPA should not have an approval function for single-source procurement or restricted tendering. <i>Section 38 – Restricted tendering, and section 40 – Single source procurement (2) should be amended.</i></b></p>	<p>MOFEP</p>	<p>The Government maintains that approval by the PPA is necessary for purposes of monitoring and compliance so as to prevent abuse. Steps for such an approval process for individual procurement transactions will be spelt out in the regulations</p>		

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<p><b>Issue:</b> <b>Collection of information on tender invitations and contract awards is time-consuming.</b></p> <p><u>Sub-indicator 5a:</u> System for collecting and disseminating procurement information including tender invitations, requests for proposal, and contract award information.</p>	<p>The system of collecting and disseminating procurement information should be reviewed with a view to make it more effective and efficient.</p> <p>As elaborated under sub-indicator 1c, publication of all advertisements should be mandatory on the website as a minimum and if required in a newspaper with adequate circulation.</p> <p>As elaborated under sub-indicator 3 a, procurement plans should be published on the PPA website in time.</p> <p>The Procurement Bulletin could be published as an e-bulletin on the PPA website.</p>	PPA	<p>Noted</p> <p>Noted</p> <p>Noted</p> <p>Noted</p>		
<p><b>Issue:</b> <b>There is a system for collecting procurement information but nationwide statistics are still missing.</b></p> <p><u>Sub-indicator 5b:</u> System and procedures for collecting and monitoring national procurement statistics</p>	<p>PPA should continue its efforts to compile national procurement statistics, i.e. total number and value of procurement nationwide.</p> <p>The 2008 Assessment Special Report focusing on the 23 high spending entities should be continued and quality and quantity of representative data should be strengthened. Performance gaps should be fed back to the entities for improvements.</p>	PPA	<p>Noted. This will be facilitated if the "ACTUALS" sections of the Procurement Plans are submitted by entities.</p> <p>Noted.</p>		
<p><b>Issue:</b> <b>Quality control standards are not used to evaluate staff performance and compliance is not regularly monitored by operational audits.</b></p> <p><u>Sub-Indicator 5d:</u> Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.</p>	<p>Quality controls standards, which provide for staff performance evaluation, should be broadly applied.</p> <p>Operational audits should be carried out regularly to monitor compliance with quality standards.</p>	PPA/IAA	<p>Noted</p> <p>Noted</p>		

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<p><b>Issue:</b> <b>Maintaining Capacity and Creating Incentives for Procurement Professionals as Public Service Staff.</b></p> <p>Sub-Indicator 6a: Adequacy of procurement competence among government officials</p>	<p>To attract and retain procurement professionals, the government should establish a professional procurement cadre and career path in the public service by implementing the 2006 report "Establishment of a Career Path and Career Development of Procurement Professionals and Practitioners in the Public/ Civil Service". Procurement staff should be recruited in compliance with the outlined skills and competencies.</p>	<p>Public/ Civil Services Commiss ion/PPA</p>	<p>Noted.</p>		
<p><b>Issue:</b> <b>Safekeeping Documents</b></p> <p>Sub-Indicator 6c: There are established norms for the safekeeping of records and documents related to transactions and contract management.</p>	<p>When amending Act 663, it should be considered to add the following documents to the information to be kept according to section 28 (1): public notices of bidding opportunities; bidding documents and addenda; final signed contract documents and addenda and amendments.</p> <p>Security protocols should be developed to protect records.</p>	<p>PPA</p>	<p>Noted.</p> <p>Noted.</p>		
<p><b>Issue:</b> <b>The established evaluation, approval, and award processes cause inefficiencies and time delays.</b></p> <p><b>Issue:</b> <b>Increase accountability to professionalize procurement, and reduce time delays.</b></p> <p>Sub-Indicator 6d: There are provisions for delegating authority to others who have the capacity to exercise responsibilities.</p>	<p><b>The involvement of several layers of government (head of entity, entity tender committee, tender review board) results in split responsibilities, lack of accountability, and long processing times. Given the high number of tender review board members at the central, ministerial, regional, and district level, the current processes also stress the available capacity.</b></p> <p><b>The government should think about ways to make the procurement evaluation, approval, and award processes more efficient. In particular:</b></p> <ul style="list-style-type: none"> <li>vi. A strong capacity development program should be developed to increase efficiency.</li> <li>vii. Strengthen the procurement quality control function within each entity (prior review function) to professionalize procurement.</li> <li>viii. In parallel gradually reduce the fragmentation of too many small size procurement entities, and begin to establish a minimum size for a procurement entity that can operate with a high degree of professional quality.</li> <li>ix. The review function of the tender review boards needs to be strengthened to ensure that the decisions are taken professionally based on the technical evaluation. Firstly, the composition and frequency of meetings of the tender review boards should be</li> </ul>	<p>GoG</p>	<p>These concerns are taken care of in amendments.</p> <p>Ongoing</p> <p>Noted.</p> <p>Part of decentralization process by government.</p> <p>Noted.</p>		

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	<p>reviewed. Secondly, the Government should consider rationalizing the numerous tender review boards spread out throughout the country.</p> <p>x. <b>The Ministerial and Center Tender Review Boards could be amalgamated and staff could be assigned full time creating the foundation for further professionalization. Also, District and Regional Tender Review Boards could be amalgamated. The new Tender Review Boards should have a professional composition based on qualifications.</b></p>		<p>This will be largely taken care of under the amendments.</p>		
<p><b>Issue:</b> <b>Procurement of PPP projects is not captured in the Act.</b></p> <p><u>Sub-Indicator 7a:</u> There are specific mechanisms for partnerships between the public and private sector.</p>	<p>Specific methods and procedures for the procurement of public/private partnerships (PPP) should be established in the legal framework based on the same principles (transparency, fairness, open competition, complaints mechanism).</p>	GoG	<p>This is to be handled under a separate legislation by a separate body. There is a Committee working out the modalities for PPP</p>		
<p><b>Issue: There are complaints about late payments.</b></p> <p><u>Sub-Indicator 7c:</u> There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market.</p>	<p>The Act does not specify to which extent contract amendments can be concluded (thresholds, scope of work, duration, etc.). Provisions should be added introducing some limitations.</p> <p>The manual and training module to be developed for contract management should include contract amendments and the payment process.</p> <p>Procuring entities, which show a high percentage of late payments according to the 2008 self-assessment of procurement entities should be encouraged to monitor and improve their payment practices.</p>	PPA	<p>Contract amendments are provided for in the Conditions of Contract for the projects. Entities will be advised to be mindful of this.</p> <p>Noted.</p> <p>All PPA can do is to advise Entities to set realistic payment periods and abide by them.</p>		
<p><b>Issue:</b> <b>Arbitration Act does not contain explicit provisions for expediency.</b></p> <p><u>Sub-Indicator 8b:</u> Contracts include adequate dispute resolution procedures</p>	<p>A process for monitoring expediency should be developed.</p>	PPA	<p>Noted.</p> <p>The point on Arbitration Act is for the A-G and Parliament and not PPA</p>		

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<p><b>Issue:</b> Outcome of dispute resolution should be fed back into the system to address performance issues.</p> <p><u>Sub-Indicator 8c:</u> Procedures exist to enforce the outcome of the dispute resolution process</p>	<p>A process to monitor the outcome of a dispute resolution process and to address performance issues should be defined.</p>	PPA	Noted.		
<p><b>Issue: The defined audit mechanisms are not fully implemented yet.</b></p> <p><u>Sub-Indicator 9a:</u> A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.</p>	<p>To oversee the procurement function effectively, the review function of the Tender Review Boards needs to be strengthened to ensure that the decisions are taken professionally based on the technical evaluations (refer to sub-indicator 6).</p> <p>All IAUs need to become fully operational (established and fully staffed). The Government should do an assessment on the implementation status and provide the adequate resources.</p> <p>Annual Audit Plans and quarterly reports need to be submitted in due time. IAA should closely monitor.</p> <p>Manuals for specialized procurement audits should be developed and pilot audits should be carried out jointly.</p> <p>Since procurement is considered a high-risk area, periodic risk assessments and controls related to procurement should be carried.</p> <p>Refer to sub-indicator 6 b (prior review function of the Tender Review Boards).</p>	IAUs/IAA/ GAS			
<p><b>Issue:</b> Enforcement and follow-up on audit findings are weak.</p> <p><u>Sub-Indicator 9b:</u> Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.</p>	<p>Enforcement and follow up of auditing findings needs to be based on the Auditor General and Public Accounts Committee recommendations and timely implementation be ensured by ARICs.</p> <p>The Financial Tribunal needs to be established and become operational.</p>	IAA			
<p><b>Issue:</b> The defined periodicity and the written standards for the audit reports is</p>	<p>IAUs should comply with the requirements set by IAA to submit Annual Audit Plans and quarterly reports in due time. IAA should closely monitor.</p>	IAA			

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<p>not fully complied with.</p> <p><u>Sub-Indicator 9c:</u> The internal control system provides timely information on compliance to enable management action.</p>					
<p><b>Issue: Performance Audits are not conducted.</b></p> <p>Sub-Indicator 9d: The internal audit systems are sufficiently defined to allow performance audits to be conducted.</p>	<p>Procedures to conduct specialized procurement performance / quality audits need to be developed (in cooperation with GAS).</p> <p><b>Internal auditors need to be adequately trained in carrying out procurement performance audits. Therefore, IAA should establish a pool of experts in procurement who can carry out procurement performance audits. Performance audits could focus on priority issues (e.g. quality and publication of procurement plans, quality and publication of advertisements, quality of technical evaluations, practices for contract amendments, delays in payments, etc.)</b></p>	IAA/OAG/IAUs	Noted. PPA will assist them to carry out these duties effectively.		
<p><b>Issue: Few specialized procurement audits have been carried out so far.</b></p> <p><u>Sub-Indicator 9c:</u> Auditors are sufficiently informed about procurement requirements</p>	<p>Focus should be on in-depth audit techniques to review the entire procurement cycle from procurement planning and requirement definition all the way to contract management (including payments) and final delivery of goods, works and services.</p> <p>OAG and IAA should cooperate closely in preparing manuals for specialized procurement audits, should jointly organize pilot procurement audits, and should ensure that procurement specialists or consultants are used on demand to access the required specialist know-how.</p>	IAA/GAS			
<p><b>Issue: Missing information and time limits for the issuing of decisions is impeding / delaying the complaints process.</b></p> <p><u>Sub-Indicator 10a:</u> Decisions are deliberated on the basis of available information.</p>	<p><b>The Appeals and Complaints Panel should be given the right to request information from the procuring entity and the time limits for providing this information should be specified.</b></p> <p><b>Review by the procurement entity: The deadlines for the issuing decisions are too long and should be reduced from 21 days to 7 working days (Section 79 of the PPA Act – Review by procurement entity (5)).</b></p> <p>The Act should be modified to include a standstill period to allow the bidders to submit a complaint between contract and signature.</p>	MOFEP	<p>Appeals and Complaints Panel is able to request information from entities.</p> <p>This suggestion is not operationally feasible considering the time it takes to gather evidence and the procedures it takes to arrive at a final decision.</p> <p>The standstill period will be considered with the amendment of Suspension provisions under Act 663.</p>		

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<p><b>Issue: Some remedies are unclear.</b> <u>Sub-Indicator 10b:</u> The complaints review system has the capacity to handle complaints efficiently and means to enforce the remedy imposed.</p>	<p>The provision in Section 82 – Suspension of Procurement Proceedings stipulates that a contract can be suspended for seven days. This needs to be clarified since the consequences are unclear (i.e. the PPA Board cannot annul the contract according to Section 80 – Administrative Review (3)).</p>	PPA	Considered in the amendments.		
<p><b>Issue: Continuity of the work of the Appeals and Complaints Panel is not guaranteed.</b> <u>Sub-Indicator 10c:</u> The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information</p>	<p>The Board should establish procedures for the complaints and appeals process comprising the scope of work of the A&amp;C Panel and decision-making.</p> <p>The Board should take action to ensure that procurement entities provide information requested to resolve a complaint in due time and to ensure that decisions taken are enforced.</p> <p>The provision in <i>section 80 – Administrative review (3) h</i>, stating that in case a complaint is dismissed, the complainant can be asked for payment of compensation of costs incurred, should be deleted since it is counterproductive.</p> <p>Ensure continuity of the work of the A&amp;C Panel even in times of political changes (as for example by staggered terms).</p>	PPA	Noted.  Noted.  Noted.  Noted.		
<p><b>Issue: Decisions are not published in a timely manner.</b> <u>Sub-Indicator 10d: Public access to decisions</u></p>	Decisions should be timely posted on the PPA website.	PPA	Noted.		
<p><b>Issue: Since PPA is currently responsible for approving single-source procurement and restricted tendering, the review body is not fully independent.</b> <u>Sub-Indicator 10e:</u> Independence of administrative review body</p>	<p>Membership of the A&amp;C Panel should be reviewed.</p> <p>PPA should only give general and not specific advice on individual procurement transactions (help-desk) and should not have an approval function for single-source procurement/selection or restricted tendering. (Refer to sub-indicator 4 d)</p>	PPA	The Government maintains that approval by the PPA is necessary for purposes of monitoring and compliance so as to prevent abuse. Steps for such an approval process for individual procurement transactions will be spelt out in the regulations.		
<p><b>Issue: Inefficient process</b></p>	Commitment, backed by requirements in the legal/regulatory framework should ensure that procurement agencies duly post the information required	PPA	Noted.		

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Sub-Indicator <u>11</u> : Accessibility to information	on a timely basis.				
<b>Issue:</b> <b>Evidence of enforcement is weak.</b>  Sub-Indicator <u>12c</u> : Evidence of enforcement of rulings and penalties exists.	The Financial Administration Tribunal needs to be established and PPA and other concerned Government bodies should monitor this data to ensure that appropriate enforcement of rulings and penalties occurs.	PPA, Minister of Justice, CHIRAJ	Noted.		
<b>Issue:</b> <b>Special measures for procurement needed.</b>  Sub-Indicator <u>12d</u> : Special measures exist to prevent and detect fraud and corruption in public procurement.	The government should follow a more active approach and PPA should work with the Ghana Anti-Corruption Coalition to establish special measures for detection and prevention of corruption associated with procurement.	PPA, Minister of Justice, CHIRAJ	Noted		
<b>Issue:</b> <b>Confidence in system needs to be established.</b>  Sub-Indicator <u>12f</u> : Mechanisms for reporting fraudulent, corrupt, or unethical behavior	The government should be encouraged to enforce the anti-corruption measures in place to increase confidence in the system. The Right to Information Bill should be implemented.	PPA, Minister of Justice, CHIRAJ	Noted.		
<b>Issue:</b> <b>Communicatio n during implementation of Action Plan</b>  (General issue)	During implementation of the Action Plan it is suggested that there will be regular meetings to discuss the substantive content of the various issues including in particular the amendments and capacity building. The procurement reform could have a broader audience as part of the PFM Sector Group to be discussed with the broad donor community in Ghana.	PPA/Go G			

## Annex 1: List of Persons Met

### List of Persons Met during assessment mission in May 2009

NAME	INSTITUTION	DESIGNATION
Mr. Prof. Newman Kwadwo Kusi	MOFEP	Acting Director of Budget
Mr. David Quist	MOFEP	Head of World Bank Unit
Ms. Cythia Asare Bediako	MOFEP	Director
Mr. James Krodush	MOFEP	
Mr. Daniel Y. Domelevo	Controller and Accountant Gen. Dept.	Director
Mr. Emanuel Fianko	MOE	Procurement Specialist
Mr. Harold Esseku	CWSA	Procurement Specialist
Mr. Eric V. Appiah	PPA	Director BM&E
Mr. David Bennin	PPA	Director Capacity Dev./HR
Mr. Sebastian Jerry Ackotia	PPA	Director Policy and Strategy
Ms. Emelia Nortey	PPA	Director MIS
Ms. Lesley Dodoo	PPA	Director Legal and Public Affairs
Mr. Stephen Yeboah-Ampedu	PPA	BM&E
Ms. Gloria Lamptey	PPA	BM&E
Ms. Seyram Adabla-Senunyeme	PPA	Legal and Public Affairs
Mr. George Winful	Ghana Audit Service	Deputy Auditor General
Mr. John Quarshie	Ghana Audit Service	
Mr. K. E. Ghamsah	Ghana Audit Service	
Mr. Ernest-Anthony Baradoo	Ghana Audit Service	
Mr. Patrick Nomo	Internal Audit Agency	Director General
Mr. Benjamin D. Addo	SEND FOUNDATION	Programme Officer
Mr. Bashnu Jumah	SEND FOUNDATION	Trade Officer
Mr. Bernard Henebeng Asamoah	Ghana Anti-Corruption Coalition	Research Officer
Mr. Nicholas Appiah	GIMPA	Coordinator Procurement Courses
Mr. Fred Appiah	GIMPA	Coordinator Procurement Courses
Mr. Apraku Bondzie William	Association of Work Contractors	Chairman
Mr. E.O. Okomeng	Ghana Association of Consultants	CEO
Ms. Mary Jo Johnson	MCC	Procurement Director
Ms. Samantha Torrance	Swiss Embassy	

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Mr. Samson Terrefe	GTZ	Deputy Country Manager
Ms. Philipine Kwashie	GTZ	Senior Procurement Officer
Mr. Jan Baeuerle	GTZ	Intern
Mr. Ian Myles	High Commission of Canada	Councillor
Mr. Isahac Diwan	World Bank	Country Director
Mr. Winston Percy Onipede Cole	World Bank	Senior PFM Specialist
Mr. Robert DeGraft-Hanson	World Bank	Financial Management Specialist
Mr. Samuel P. Bruce-Smith	World Bank	Consultant
Ms. Kashmira H. Daruwalla	World Bank	Senior Procurement Specialist

**List of Persons Met during follow-up mission in 2010**

NAME	INSTITUTION	DESIGNATION
Ms. Effie Simpson Ekuban	MOFEP	Acting Chief Director
Mr. Gladys Ghartey	MOFEP	Head of World Bank Unit
Mr. James Kroduah	MOFEP	Principal Economic Officer
Mr. Emanuel Fianko	MOE	Procurement Specialist
Mr. Samuel Sallas Mensah	PPA	CEO
Mr. Eric V. Appiah	PPA	Director BM&E
Mr. David Bennin	PPA	Director Capacity Dev./HR
Mr. Sebastian Jerry Ackotia	PPA	Director Policy and Strategy
Ms. Emelia Nortey	PPA	Director MIS
Ms. Lesley Doodoo	PPA	Director Legal and Public Affairs
Mr. Kofi Koranteng	Civil Service Commission	Head of Civil Service
Mr. Emile Francis Short	Commission On Human Rights and Administrative Justice (CHRAJ)	Commissioner
Mr. Richard A. Quayson	Commission On Human Rights and Administrative Justice (CHRAJ)	Deputy Commissioner
Mr. Charles Ayamdoo	Commission On Human Rights and Administrative Justice (CHRAJ)	Director (Anti-Corruption)
Mr. Emmanuel Frempong	Internal Audit Agency	Ag. Director
Mr. Ransford Agyei	Internal Audit Agency	Ag. Director
Mr. Armstrong Amanor	Internal Audit Agency	Ag. Director OPS
Mr. John Osei	Internal Audit Agency	Head, Special Audit
Ms. Bridget Katsriku	Public Service Commission	Member

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Mr. Samuel Arkhurst	PFM Sector Group	MOFEP
Ms. Ruby Bentsi	PFM Sector Group	DFID
Mr. Lin Bucklandt	PFM Sector Group	CIDA
Mr. Stuart Kane	PFM Sector Group	Min. Roads & Highways
Mr. Pa Lamin Beyai	PFM Sector Group	UNDP
Ms. Tine Lunn	PFM Sector Group	Danida
Mr. Baptiste Mandouze	PFM Sector Group	EU
Mr. Hashimoto Nobuyuki	PFM Sector Group	JICA
Ms. Irene Nordjo	PFM Sector Group	Danida
Ms. Valeria Okai	PFM Sector Group	EU
Ms. Eline Okudzeto	PFM Sector Group	AfDB
Mr. David Pedley	PFM Sector Group	DFID
Ms. Kirsten Richter	PFM Sector Group	GTZ
Mr. Belien Tadesse	PFM Sector Group	USAID
Ms. Samantha Torrance	PFM Sector Group	Swiss Embassy/SECO
Mr. Toru Tsukui	PFM Sector Group	Japanese Embassy
Mr. Ruud van der Helm	PFM Sector Group	Netherlands Embassy
Mr. Ted Webber	PFM Sector Group	CAGD
Ms. Katherine Bain	World Bank	Country Program Manager
Mr. Ismaila Ceesay	World Bank	Lead PFM Specialist
Mr. Robert DeGraft-Hanson	World Bank	Financial Management Specialist

## **Annex 2: Bibliography**

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Public Procurement Authority	Benchmarking, Monitoring & Evaluation Manual	Undated
Public Procurement Authority	Cabinet Memorandum "Amendment of the Public Procurement Act, 2003 (Act 663) "	27 May 2008

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<b>Author</b>	<b>Name</b>	<b>Date</b>
Public Procurement Authority	C&A Panel Cases concluded in 2007 and 2008	undated
Public Procurement Authority	Strategic Plan 2007-2009	undated
Public Procurement Authority	Draft Strategic Plan 2009 - 2011	undated
Public Procurement Authority*	Guidelines for Margins of Preference	Undated
Public Procurement Authority*	Manual - Public Procurement Act	August 2006
Public Procurement Authority	Membership of the Appeals and Complaints Panel, letter	Undated
Public Procurement Authority	Performance Management and Appraisal Report	Undated
Public Procurement Authority	Procurement Training Modules, description for modules 1-25	undated
Public Procurement Authority	Proposed Rules and procedures for the Establishment of the Appeals and Complaints Appeal	October 2006
Public Procurement Authority*	Standard Bidding Documents (available from PPAghana.org)	-
Public Procurement Authority	Statistics on Workshop/ Training on Act 663, memo	May 2007
Public Procurement Authority	The PPME Tool - 2 main components, handout	Undated
Public Procurement Authority	Web-Based Procurement Planning Software - Training & User Guide for Procurement Entities	March 2007
Public Records & Archives Administration Dept.	Omnibus Schedule for the Retention and Disposal of Public Records	June 1996
Republic of Ghana	Arbitration Act	1961
Republic of Ghana	Audit Service Act, 2000	2000
Republic of Ghana	Establishment of Career Path and Career Development of Procurement Professionals and Practitioners in the Public/ Civil Service	October 2006
Republic of Ghana	Evidence Decree (N.R.C.D 323)	1975

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(draft August 27, 2010)*

<b>Author</b>	<b>Name</b>	<b>Date</b>
Republic of Ghana	Public Office Holders (Declaration of Assets and Disqualification) Act (Act 550)	1998
Republic of Ghana*	Constitution of Ghana	1992
Republic of Ghana*	Internal Audit Agency Act, 2003	December 2003
Republic of Ghana*	Public Procurement Act (Act 663)	2003
Republic of Ghana	Public Records and Archives Administration Act (Act 535)	1997
Republic of Ghana*	Regulations - Public Procurement (Act 663) DRAFT	Undated
Republic of Ghana*	Whistleblower Act (Act 720)	2006
Republic of Ghana, Auditor-General's Office	Performance Audit Guidelines	May 2003
Republic of Ghana, Auditor-General's Office	Report of the Auditor-General on the Public Accounts of Ghana (Ministries, Departments and Other Agencies of the Central Government), for the year ended 31 December 2006	September 2007
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Shawbell Consulting	Institutional Skills and Training Needs Assessment, Acts 654, 658 and 663	July 2006
Transparency International*	Corruption Perception Index 2008	March 2009
World Bank	Establishment of a Public Private Partnership (PPP) Resource Centre for Ghana, Consulting Services, Expression of Interest	January 2009
World Bank	Email: Arbitration in Ghana	May 1, 2010
World Bank	Email: Data on Tender Review Boards	April 6, 2010
World Bank	Ghana, Assessment for Use of Country System for Project Financial Management (draft) Volume I: Main Report Volume II: Findings of Seven Project Implementing Units	May 2009
World Bank*	Ghana, Country Procurement Assessment Report	June 2003
World Bank	Ghana, 2007 External Review of Public Financial Management (In Two Volumes) Volume I: Main Report Volume II: Public Procurement Assessment Report	June 2008
World Bank	Ghana, 2009 External Review of Public Financial Management Draft (In two Volumes) Volume I – Main Report Volume II: The Medium Term Expenditure Framework Executive Summary	March 2009
World Bank	Ghana - Public Expenditure and Financial Accountability (PEFA) Assessment 2009, Draft Terms of Reference	

Author	Name	Date
World Bank	Public Expenditure and Financial Accountability Assessment (PEFA) Ghana 2009, Draft Concept Note	April 21, 2009
World Bank*	Project Appraisal Document on a Proposed Credit (...) to the Republic of Ghana for a Micro, Small and Medium Enterprise Project	December 2005

\* electronic version available

### **Internet Resources**

<a href="http://doingbusiness.org">doingbusiness.org</a>	Doing Business Indicators, World Bank Group
<a href="http://ghana-anticorruption.org">ghana-anticorruption.org</a>	Ghana Anti-Corruption Coalition
<a href="http://mcc.gov">mcc.gov</a>	The Millennium Challenge Corporation
<a href="http://mofep.gov.gh">mofep.gov.gh</a>	Ministry of Finance and Economic Planning, Ghana
<a href="http://oecd.org">oecd.org</a>	The Organisation for Economic Co-operation and Development
<a href="http://pppghana.org">pppghana.org</a>	Public Procurement Board Ghana
<a href="http://tighana.org">tighana.org</a>	Ghana Integrity Initiative
<a href="http://transparency.org">transparency.org</a>	Transparency International
<a href="http://worldbank.org/ghana">worldbank.org/ghana</a>	Ghana section of the World Bank site