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**REPUBLIC OF PARAGUAY  
COUNTRY PROCUREMENT ASSESSMENT REVIEW**

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Argentina, Chile, Uruguay, Paraguay  
Country Management Unit  
Latin America and the Caribbean Region

## CURRENCY

Currency Unit = Guarani (G/.)  
US\$1= 6,300 G/ (As of July 2002)  
US\$1= 4,170 G/ (Average for 2001)

## ACRONYMS

AII	Auditoria Interna Institucional (Internal Audit Unit)
ANDE	Administración Nacional de Electricidad ( <i>National Electricity Administration</i> )
Bank	World Bank
CAS	Country Assistance Strategy
CAPACO	Cámara Paraguaya de la Construcción ( <i>Chamber of Construction Contractors of Paraguay</i> )
CAVIALPA	Cámara de Constructoras Viales Paraguayas ( <i>Chamber of Highways Contractors of Paraguay</i> )
CFAA	Country Financial Accountability Assessment
CGR	Contraloría General de la Republica ( <i>Office of the Comptroller General</i> )
CISNI	Consejo Impulsor del Sistema Nacional de Integridad ( <i>Counsel to Promote the National Integrity System</i> )
CNI	Comisión Nacional de Integridad ( <i>National Integrity Commission</i> )
CPAR	Country Procurement Assessment Review
DINOP	Dirección Nacional de Obras Publicas ( <i>National Directorate of Public Works</i> )
FOMIN	Fondo Multilateral de Inversiones del IADB ( <i>Multilateral Investment Fund of IADB</i> )
GOP	Government of Paraguay
IADB	Inter American Development Bank
ICB	International Competitive Bidding
ICR	Implementation Completion Report
IPR	Independent Procurement Review
IPS	Instituto de Previsión Social ( <i>Social Security Administration</i> )
NCB	National Competitive Bidding
MH	Ministerio de Hacienda ( <i>Ministry of Finance</i> )
MOPC	Ministerio de Obras Publicas y Comunicaciones ( <i>Ministry of Public Works and Communications</i> )
MSPBS	Ministerio de Salud Pública y Bienestar Social ( <i>Ministry of Public Health and Social Welfare</i> )
PIU	Project Implementation Unit
PNUD	Programa de las Naciones Unidas para el Desarrollo ( <i>United Nations Development Program</i> )
SNAP	Secretaria Nacional para la Administración Pública ( <i>National Secretariat for Public Administration</i> )
UCNT	Unidad Central Normativa y Técnica ( <i>Central Policy and Technical Unit for procurement</i> )
UOC	Unidad Operativa de Contratación ( <i>Procurement Technical Unit</i> )

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COUNTRY PROCUREMENT ASSESSMENT REVIEW  
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## PREFACE

1. The preparation of this CPAR was agreed between the Government, IADB and Bank management as a necessary input to the CAS, and to the public procurement modernization effort which is partially underway with IADB support. As part of a joint effort on fiduciary work, the IADB carried out a review of public financial management and controls in 2001. This CPAR was carried out in accordance with the Initiating Concept Memorandum (ICM) of March 8, 2002, and the CPAR instruction on the subject. The previous CPAR was carried out in September 1997.

2. This report is based on the findings of a cooperative effort between Paraguayan officials from the public and private sector and a World Bank team that visited Paraguay between March 11 and 26, 2002. Preparation work included: (i) desk review of existing and proposed regulations and other documents; (ii) a one-day workshop with the participation of 38 representatives of 20 public and private entities ) that took place in Asunción on March 22, 2002; (iii) individual discussions with officials representing about 15 entities and individuals from the public and private sectors. The CPAR team also held discussions with members of the National Senate in respect of the draft procurement law. The main official Government counterpart was the *Ministerio de Hacienda*, MH, (Ministry of Finance). The Bank team acknowledges in particular the completeness and quality of the information provided by the staff of the Contraloría General de la República (CGR) staff. A list of participating entities and individuals is given in Annex J, Volume II.

3. Other key partners were the CISNI, Transparencia Paraguay and the IADB Country Office. The Comisión Nacional de Integridad (CNI) sponsored the above mentioned workshop and provided considerable help in the gathering of information and contacts. IADB staff from the Asunción and Headquarter offices provided input and acted as peer reviewers.

4. The Bank team consisted of Messieurs Jaime Román, Lead Procurement Specialist (LCOPR), Enrique Pinilla and German Klein (Consultants). Mr. Heriberto Villasboa assisted with the development of cases studies and provided logistic support. Mr. Peter Hansen, Country Officer guided the mission on country matters and coordination with local officials. Messieurs. Dino Capriolo, IADB, Juan Gaviria, LCSFP, Robert Hunja, OPCPR, and Ronald Myers, LCSP were peer reviewers. Written contributions were also received from Pamela Bigart, OPCPR, Roberto Panzardi, LCSP. The report was cleared Axel Van Trotsenburg , Director LCC7C, and B. Becq (RPA).

5. The final report was reviewed with Government officials and civil society representatives in Asunción in November 2002. It was updated in January 2003 to account for the enactment of the Public Procurement Law 2051 of 2002. . The Government of Paraguay agreed with the findings of the report and the proposed action plan therein with letter to the Bank dated March 10, 2003.

## ***Executive Summary***

### ***Introduction***

1. The Paraguayan economy is one of the smallest in the Region. The combined public procurement by central ministries, autonomous agencies, state companies and provincial governments was about US\$ 800 Million or 32% of the national budget in 2001. The bulk of that procurement is carried out by a few central agencies. The Ministry of Public Works and Communications is the agency with the largest volume of public procurement. As in the other countries in the Region, public procurement in Paraguay is considered inefficient, non transparent and above all corrupt. In general Paraguay is considered a country with a high incidence of corruption.

2. The Government in cooperation with civil society and supported by international donors has taken steps to enhance the public procurement process. In 2001 Paraguay, with Bank and IADB support, established the National Integrity Plan. In the year 2001 the Government launched a procurement reform project within the Secretariat for National State Reform, and obtained an IADB technical assistance grant (Developing a System of Public Procurement.) to support its implementation. The project is in the early stages of implementation. It is expected that this assessment and the action plan thereof will contribute to the successful implementation of that project.

### ***Legal Framework***

3. Until December 2002 Public procurement in Paraguay was governed by an outdated, rigid and cumbersome legislation that did not allow the use of innovative practices and techniques, such as electronic procurement. Basic procurement regulations were contained in Law 22 of 1909 on Administrative Organization. The Public Works Law 1533 of 2000 (PWL), established a separate regime for the procurement of civil works construction and related consulting services, which complicated things further. A prominent feature of the PWL was the National Directorate of Public Works (DINOP) in the Ministry of Public Works and Communications (MOPC). The DINOP was a hybrid department made up of representatives of the government and the associations of contractors. The DINOP was given overall responsibility for the oversight and approval of procurement of all public works related state contracts, which caused a strong reaction from other government agencies. There was also a potential conflict of interest given the dual role of the contractors as approvers of bidding documents and potential bidders.

4. Public Procurement Law 2051 of 2002 (*Ley de Contrataciones Públicas*) enacted in December 2002 unified in a single statute all public procurement legislation. The new statute contains very positive features that should contribute to a considerable improvement of public procurement in Paraguay. However, as discussed further in this report, it contains a number of inconvenient and unclear provisos inconsistent with modern procurement practices, the overcoming of several of which may require amending the law in the future. But to a large extent the shortcomings may be amended

through a good regulatory decree that removes any ambiguities and sets up clear basis for good and efficient practices and procedures. For the drafting of the regulatory decree, GOP should seek expert advice from local and international specialists with practical experience on public procurement in Paraguay and in other countries. Otherwise, there is a considerable risk that the decree may end up as an instrument that endorses the use of outdated and undesirable procedures and practices.

#### *Procedures and Practices*

5. The lack of clarity and specificity of the legal framework has resulted in diverse interpretations of the statutes and the proliferation of diverse procedures and practices, many of them developed by the agencies to suit their individual needs. The diversity of procedures and practices has made it difficult for contractors and suppliers to bid for contracts across government agencies. Their preference, therefore, has been to specialize themselves in bidding for a reduced number of entities, which resulted in limited competition and the establishment of cartels.

6. With the exception of contracts financed by the IADB, the Bank and other donors, the large majority of contracts are awarded on the basis of limited bidding or shopping. This may be in part due to the nature and relatively small size of the goods and services required by state agencies, which with the exception of Asuncion is particularly evident in the case of the municipalities. But the use of those methods may also be due to the considerable degree of discretionary power exercised by the authorities to break up contracts to avoid competitive and more transparent procurement methods; and to the fact that public competitive bidding takes longer than other methods

7. Specific issues of general occurrence that affect efficiency and transparency in the procurement process include: (i) uncertainty about project budgets and lengthy process for the release of funds that disrupt procurement planning and implementation; (ii) absence of procurement manuals and standard bidding documents that result in a large variety of procedures that make participation in the bidding process difficult, therefore, reducing competition; (iii) requirement that bidding documents for works related contracts must be approved by DINOP; which has become a source of delay, and has resulted in considerable discontent among state agencies; (iv) mandatory registration of works contractors and consultants in DINOP's registry, which discourage participation and reduces competition; (iv) vague bid evaluation procedures for procurement of goods and services; and (v) absence of a methodology for selection and employment of consultants, which has resulted in a selection procedures based primarily on price. As mentioned before, Law 2051 addresses those issues or provides the framework for resolving them.

#### *Organization and Resources*

8. The organization, resources and performance of the procurement function follows the same pattern as that of the overall public sector. In Paraguay each government agency carries out its own procurement. There is no lead agency responsible for developing

procurement policy and ensuring the standardization of procedures and documentation. This, in addition to a weak legal framework, is a primary reason for the disparity in the interpretation of the law and the inconsistency among operational procedures. Specific structural, functional and operational improvements to the procurement function are needed and are possible, but their viability and sustainability is closely linked to the implementation of other state modernization initiatives, such as the civil service reform and the restructuring of the executive branch.

9. The new law established a Central Policy and Technical Unit (UCNT) in the Ministry of Finance (MH) , and Operational Procurement Units (UOCs) in each agency, which is positive. The effectiveness and authority of the UCNT, however, will depend of its independence, the clear definition of responsibilities, and good operational capacity and efficiency. To ensure that and isolate it from political interference, the head of the UCNT should be competitively selected on the basis of proven qualifications and experience in public sector management, and should be appointed for a fixed period of service. The Law does not foresee those requirements, but they should, to the extent possible, be pursued in the regulatory decree. Also the effectiveness of the UCNT depends to a large extent of the qualifications and experience of its staff. It is strongly recommended that one or two qualified and experienced international consultants be retained for the establishment and initial operation of the Unit for a period of one or two years.

10. The qualifications, capacity and conditions of employment of procurement staff in Paraguay need strengthening. A procurement career stream does not exist. Recruitment is largely based on political quotas. Staff turn over is high. Due to the lack of a structured compensation package, there is a wide range of salaries among jobs of similar responsibilities. High-level employees receive “supplements”, overtime, representation and other payments that can double their nominal salaries, further distorting the levels of compensation. Salaries of mid level professionals are low when compared to those in the private sector, therefore, is not uncommon that some of those individuals hold two or more jobs with the government or elsewhere.

11. The government is carrying out a civil service reform program, which the Bank supports through an IDF grant. The reforms should consider the establishment within the civil service of a procurement career stream that responds to the responsibilities derived from the new procurement law. The design and implementation of the procurement career stream should be based on a comprehensive survey that determines the existing organization and capacity, workload and other relevant information that provide the basis for designing the job structure, job description, training programs, etc. for the procurement service.

### ***Internal Control and Audit***

12. The Financial Management Law (LAF) 1535 provides the framework for both the internal and external control functions. The Office of the Controller General (CGR) is responsible for external control. Internal audit is the responsibility of Internal Audit

Offices (AII). The office of the Auditor General (AGPE) is responsible for oversight and regulation of the AIIs. The AGPE and AIIs are still in the process of being established, and progress has been very slow. Their institutional structures and functions are not yet defined, particularly in respect of the oversight role of the AGPE. Most agencies still do not have an AII. Therefore, the quality and level of internal controls is either inefficient or nonexistent.

13. The legal framework appears to be satisfactory. But the absence of detailed regulation, guidelines and procedures, and insufficient number of qualified staff, political interference, cultural and corrupt practices are issues that affect the performance of transparent and accountable control. A generally held view is that the focus of the auditors is almost entirely on legal formalities and numbers, with no attention to the evaluation of results. In summary the internal control audit is very weak or non-existent.

14. The effectiveness of the CGR is also constrained by limited financial resources particularly for operating expenses. A considerable portion of its operations involves investigations of fraud and corruption. Also, while CGR review should be ex-post, by regulation and custom, it is frequently required to carry out ex-ante reviews, which makes it a co-manager with the executive branch, and poses a potential conflict with its external control responsibility. Another critical issue, which affects efficiency, is the overlapping of responsibilities between the CGR and the Court of Audits, which dilutes the limited resources available and weakens the control process. This is an issue that requires urgent attention as part of the state modernization effort. The IADB is currently processing a technical assistance grant for modernization of the CGR.

#### *Anti-Corruption Measures*

15. Corruption is highly entrenched in the Paraguayan society. Its origins are traced back to the Stroessner's authoritarian regime. The abuse of power and political interference in the appointment of government officials and in decision making, as well as the payment of bribes to obtain access to services, influence decisions, win contracts, etc. are common features in public administration. Although there are rules and regulations designed to prevent and penalize corrupt practices, they are not enforced. Prosecuting corruption cases is difficult, costly and has little chance of success. Moreover there is no reward or protection mechanism for whistle blowers. Public officials are not accountable and are not even subject to a code of ethics.

16. A national response to corruption was the establishment in the year 2000 of the National Integrity Plan (PNI), with Bank and IADB support. The PNI aims to provide the Government with modern means of technology to combat corruption; and to facilitate the participation of civil society in the fight against corruption. Implementation of the PNI is the responsibility of the Counsel to Promote the National Integrity System (CISNI), which is made up of representatives of all branches of government and of civil society. The PNI focuses on three government functions: (a) the Customs Service; (b) the Judiciary; and (c) public procurement. On procurement, it states specific goals, which are generally consistent with the findings and recommendations of this report.

17. The CISNI sponsored several workshops and seminars designed to promote participation and elicit input for the new procurement law. It also organized in cooperation with Transparency Paraguay and the MH, two procurement workshops that provided input to and discussed the findings and recommendations of this report. An executive summary of the first of the two workshops is in Appendix 1. It is expected that the CISNI, will play a key role on the monitoring and evaluation of the procurement modernization program, for which additional technical assistance and financial resources from international donors will be needed. Furthermore, the CISNI could help to promote the involvement of NGOs on the oversight of the procurement process itself taking advantage of successful experiences in other countries.

### ***Contract Management Performance***

18. There is no set of standard conditions of contract used throughout government agencies, except for contracts financed by the IADB and the Bank. For locally financed contracts most agencies have developed their own conditions of contract frequently modeled from outdated documentation modified to meet the requirements of national regulations. Thus, standard conditions of contract based on modern international practices should be developed made part of standard bid documents.

19. Contract implementation is frequently delayed (one to six months are common) due to a variety of reasons including deficient and incomplete designs, unrealistic completion periods, delayed access to the construction site, uncertain funding and payment delays. Common problematic features in contract implementation are variation orders and cost overruns. Because of the lack of clear procedures, the processing of variation orders and other contractual decisions follow a protracted process that involves approval by several departments within the contracting agency, and usually takes a long time. There is also presumption of over billing, which apparently is at times used to compensate contractors for payment delays, or as a means to ensure that budget allocations are used within the year. In some instances over billing is outright fraud. However, cost overruns are not always unjustified. Frequently they are due to incomplete designs and incorrect contract estimates at the time of bidding.

20. Establishing a reasonable legal framework and modernizing procurement procedures to improve efficiency and prevent corruption will not be sufficient. Similar action should be taken in respect of contract management, which is where a substantive part of abuse takes place. Specifically internal arrangements for contract management should be streamlined by defining a clear chain of command and responsibility and accountability free of overlaps and gaps. It is also imperative to train staff on contract management. Finally, the supervision function should be entrusted to competent and trustworthy consulting firms selected on the basis of qualifications and experience. Contract management modernization is outside the scope of GOP/IADB procurement modernization project. Therefore additional ways and means for modernization of this activities should be explored. As the government is overwhelmed with the whole menu

of modernization activities, consideration should be given to promoting and assisting the involvement of civil society on this endeavor.

#### *Performance on Bank Assisted Projects*

21. Primarily because of increased supervision effort the quality of the portfolio has improved, but procurement performance and contract management under Bank financed projects is mixed. In general, implementing agencies adhere to Bank procurement policies, procedures and make use of SBDs, but there are considerable shortcomings on their application and interpretation, which have generally resulted in problems and delays. While not frequent and not well substantiated, there have been allegations of corrupt procurement practices and misappropriation of funds in Bank financed projects.

22. Project implementation, including procurement, is closely related to the organization structure and staffing of the PIUs. Common problems facing PIUs are the high turn over of staff, their lack of familiarity with the Bank's guidelines and SBDs, and their almost exclusive experience in local shopping procedures. Also, more than in other countries, in light of the weak implementation capacity, project implementation quality is closely linked to the quality and expertise of Bank supervision and assistance.

#### *General Risk Assessment/Supervision Plan*

23. In view of the general country environment highly prone to corruption, and the existing shortcomings, the procurement risk in Paraguay is assessed as high. As these facts are likely to prevail, at least in the medium term, the quality and effectiveness of Bank supervision and technical support are more critical to project success than in most other LAC countries, which is clearly reflected in recent implementation completion reports. Thus the following is recommended for project preparation and implementation: (a) carry out high quality agency capacity assessments and develop realistic action plans that include the use and strengthening of the UOCs in the executing agencies, instead of setting up project procurement units for each project; (b) carry out intensive training of procurement staff on Bank policies and procedures; (c) develop and require strict implementation of, and if necessary finance, filing and monitoring procedures using modern tools; (d) promote and support development of internet based procurement information systems at agency level; (e) maintain the current ICB and NCB procurement thresholds; (f) streamline procedures for hiring of individual consultants; (g) carry out close procurement supervision and technical support including on average two missions per year; (h) include in project agreements special procurement conditions that bypass local procurement rules and practices inconsistent with the Bank's procurement Guidelines; and (i) develop jointly with the IADB standard bid documents and procedures for national competitive bidding.

#### *Recommended Action Plan*

24. The findings of this report confirm the need for modernization of the public procurement function in Paraguay, and it includes recommendations to achieve that

objective. The new public procurement law provides an adequate framework for modernization. The IADB-FOMIN Grant for “Developing a System of Public Procurement” provides the technical financial resources consistent with the recommendations of this report. However, modernization of public procurement should not be approached in isolation from other state modernization initiatives. On the contrary, an important part of procurement modernization is contingent on the successful implementation of other reform initiatives such as financial management, civil service, government structure, etc. To a certain extent Paraguay is overwhelmed by parallel technical assistance operations competing for government attention and resources. The challenge is to achieve an effective coordination of the various modernization initiatives making use of and enhancing the limited pool of national resources, and bringing in different external views and expertise. Additional technical and financial support should focus on promoting participation of civil society in the monitoring of the procurement modernization program and of the procurement process itself, and on the development and implementation of training programs on contract management. The goals and pace of reform should be consistent with the country’s limited technical and financial absorptive capacity.

25. State reform in general and public procurement in particular should not focus on regulatory and procedural matters only. Its effectiveness is closely linked to the alleviation of social and economic issues, as well as cultural changes. It would entail a concerted and decisive effort by all branches of government and civil society. On the Government side, the MO should play a very active leadership role in the implementation of the modernization program in progress. Its main challenge is to achieve a successful establishment of a strong and capable UCNT, for which increased attention should be given to the implementation of the IADB grant. The CSNI should continue to play its role as a catalyst and conveyor of the views of civil society. Moreover, it is recommended that CISNI, in conjunction with NGOs, play an active role on the monitoring and evaluation of the proposed action plan, for which additional technical and financial assistance should be provided. The Bank and the IADB should increase their efforts to ensure consistency among the various reform initiatives and, in particular, increase their technical input on quality control of the technical assistance that they finance.

26. Within the above framework the proposed strategy focuses on:

- Promulgation of a good and comprehensive regulatory decree, which builds on the strengths of the new law and overcomes to the extent possible the shortcomings therein.
- Design and development to full strength of a Central Procurement Policy and Technical Unit, with responsibilities and size consistent with the country’s limited absorptive capacity.
- Development of operational manuals and standard procurement manual and bid documents.
- Design and implementation of models for agency procurement offices, including staffing, streamlined procedures, electronic record management, etc.

- Design and implementation of a career stream within the civil service, and a human resources development plan for public procurement.
- Design and implementation of a public procurement information system and a phased electronic procurement program.
- Development and dissemination of best practices and training of staff on contract management with the participation of civil society.

27. GOP, the IADB and the Bank should develop an implementation schedule for the above action plan, which very likely will span over period of about two years. The scope and implementation schedule of the FOMIN/IADB technical assistance grant may have to be adjusted accordingly.

**PARAGUAY**  
**COUNTRY PROCUREMENT ASSESSMENT REPORT**

**A - Background**

**The Economy and Public Procurement**

1. The Paraguayan economy is one of the smallest in the Latin America and Caribbean region. Total government expenditures in 2001 were about US\$ 2.4 B equivalent or about 70% of the authorized budget. About 86% of that amount was spent by the central ministries (52.7%) and state commercial companies (33.4%). The balance was spent by the provinces (*departamentos*), and autonomous agencies. A substantial portion of the budget is spent on operating expenditures, particularly by the central administration. About, US\$ 0.8 B or 32% correspond to expenditures on goods and services (US\$ 0.6 B or 23.5%) and capital investments (US\$ 0.2 B or 8.5%), which are subject to procurement. However the bulk of procurement is carried out by a few agencies. The Public Works, Agriculture, and Health and Defense ministries, the National Electricity Administration (*Administración Nacional de Electricidad -ANDE*) and the Social Security Institute (*Instituto de Provision Social – IPS*) carry out most public procurement. At the other end of the spectrum, a large number of national and local agencies procure services and small quantities of consumable goods through shopping or of-the-shelf procedures.. The Ministry of Public Works and Communications is the agency with the largest volume of public procurement. While the figures on public procurement are relatively small by Regional standards, they represent an important portion of the national budget. Improved efficiency and containment of corruption could yield significant savings. For example, a 10% nation wide reduction in procurement costs would be equivalent to the aggregate capital investments by state commercial companies in 2001.

**Bank Portfolio**

2. Bank operations in Paraguay have been very limited in the recent past due to poor portfolio performance (high staff turnover, lack of counterpart funds and slow procurement), non-compliance with Government commitments regarding Yacyreta, and absence of meaningful state reform. The average project implementation period has increased from 4.5 years in FY99 to 5.3 years in FY02. Four Bank operations were completed within the period FY01-FY 02. A Community Development Project was approved in FY02. Counting that project, there are only five projects under implementation at a fairly slow pace. The total value of Bank loans supporting those projects is \$ 153.3 million, of which some \$ 75.0 million or about 49% had been disbursed by June 30, 2002. Project implementation and macroeconomic performance improved during the past 18 months, and there were positive signs for increased Bank involvement in Paraguay. But, the current economic crisis and the decision to reverse the privatization process in June 2002, brings serious doubts about the Government capacity and leadership to carry out a more ambitious agenda. There are currently four projects in the pipeline for the period FY 03-FY05. The emphasis is being given to education, rural

infrastructure, banking sector reform, natural resources management and pension reform. An assessment of procurement performance under Bank projects is given later in this report.

### **Government Plans For Procurement Reform/IADB Grant**

3. Paraguay is the recipient of considerable financial resources for technical assistance for state modernization, including public procurement. In March 2001 Paraguay received from the *Fondo Multilateral de Inversiones* (FOMIN) of the IADB a technical assistance grant aimed at “Developing a System of Public Procurement”. The objectives of the grant are: (a) modernization of the legal framework; (b) institutional strengthening, including the establishment of a Procurement Policy and Regulatory Entity; and (c) increased civil society participation in the improvement of internal controls through the development of a public procurement information system. Implementation of the Grant has been very slow due to a large extent to the lack of continuity on the leadership of the project, which until December 2002 was under the responsibility of the *Secretaria Nacional de Reforma del Estado* (SNRE) (National Department of State Reform). Thus far the only activity under the grant has been technical assistance for drafting of a procurement law. In January 2003 implementation of the Grant was transferred to MH.

### **National Integrity Plan**

4. Another effort underway is the National Integrity Plan (*Plan Nacional de Integridad*, PNI), which was launched in 2000 with Bank and IADB support. The PNI is a joint program undertaken by the Government, Civil Society and international donors to fight corruption and to strengthen civil society participation in that effort. The PNI identifies public procurement as critical, and is currently preparing a Risk Map for Public Procurement.

## **B - Legal and Regulatory Framework**

### **Current Status**

5. Public procurement in Paraguay was until December 2002 ruled by an outdated, rigid and cumbersome legislation that did not allow the use of innovative practices and techniques, such as electronic procurement. Basic procurement regulations were contained in articles 192 to 221 of Law 22 of 1909 on Administrative Organization and other two statutes that amended it in 1991. The general principals of Law 22 governed procurement by the central and local governments and autonomous agencies. However, Law 1294 of 1978 and specific bylaws of autonomous entities allowed them to develop their own procurement procedures based on the general principles stated in Law 22.

6. On the other hand, the Public Works Law 1533 of 2000 (PWL), established a separate regime for the procurement of civil works construction and related consulting services and materials by all government agencies. A salient feature of the PWL was the establishment of the *Dirección Nacional de Obras Públicas*, DINOP (National

Directorate of Public Works) in the Ministry of Public Works and Communications (MOPC). The DINOP was a hybrid department made up of representatives of MOPC, MH, the Paraguayan Chamber of Construction Industry (CAPACO), Paraguayan Chamber of Highway Contractors (CAVIALPA). The DINOP was given overall responsibility for the oversight and approval of procurement of all public works related state contracts. Specifically, in respect of those contracts the DINOP was responsible for: (a) the review and approval of bidding documents; (b) keeping a registry and classification of individuals and firms; (c) certification of individuals and firms on the basis of the registry; and (d) approving price adjustment indexes.

### **Public Procurement Law 2051 of 2002**

7. In response to internal and external demand for modernization and transparency, the Government undertook with IADB funded technical assistance the preparation of a comprehensive public procurement law in 1998. After a long process, which included consultations with the civil society and donors, the Public Procurement Law 2051 was enacted in December 2002. Bank staff provided extensive comments and recommendations to enhance the draft. Regrettably not all of them were considered.

8. The new law unifies in a single statute all public procurement legislation. It abolishes a substantial portion of the public works law related to the procurement process itself. Law 2051 goes into considerable detail on certain matters identified as a frequent source of corrupt practices, but is almost silent on others. For example, the law enumerates a long list of items (not all relevant) to be included in the invitations to bid and in the content of bidding documents. On the other hand it is quite general on prequalification of contractors and suppliers and on the employment of consultants.

9. Nevertheless, the Law contains very positive features including: (i) the statement of public procurement principles of: economy and efficiency, open participation, transparency and publicity, public opening of bids, simplification and modernization, and decentralization of responsibilities; (ii) the mandatory preparation and dissemination of annual procurement plans as a prerequisite for bidding; (iii) the unification of public procurement procedures for civil works, goods and services; (iv) the establishment of a Central Policy and Technical Unit for procurement (*Unidad Central Normativa y Técnica, UCNT*) in the Ministry of Finance (MH), and of Procurement Operational Units (*Unidades Operativas de Contratación*) in each state entity; (v) the abolition of DINOP's supervisory responsibility for procurement carried out by state agencies, and of the mandatory registry of contractors; (vi) the establishment of specific conditions for the justification of exceptions to competitive procurement methods defined by the same law; (vii) the establishment of an on-line Public Procurement Information System (*Sistema de Información de las Contrataciones Públicas, SICP*); (ix) establishment of special procedures for procurement of consulting services; and (x) establishment of a complaint mechanism for procurement.

10. The new Law is a considerable improvement over the existing legislation. However, as further discussed in the relevant section of this report, it contains several

provisos that are not consistent with modern procurement practices, or are vague, or incomplete and therefore open to misinterpretation or abuse. Some of those provisos can only be changed through an amendment to the law, but others may be overcome through a good regulatory decree. Following are the provisos that should be either amended or improved through regulation:

11. Provisos in Law 2051 that should be amended:

(a) Article 18, b, 3 that allows international competitive bidding (ICB) only in the event that local bidders cannot supply the goods or services requested (Art 18,b,3)<sup>1</sup>. reduces competition and invites collusion among bidders, thus increasing prices; ICB should be carried out when the size and nature of the services makes it more economic than national competitive bidding (NCB);

(b) Article 53 should be amended to specifically establish that the selection of consultants is carried out on the basis of a request for proposals to a limited number of qualified firms, and not on the basis of open competition. Likewise the consultants selection methods specified in Article 54 are not clear and should be properly redefined.

(c) Article 67 making the UCNT responsible for certification of “electronic identification” goes beyond the expected responsibilities and capacity of the unit. And it is likely to strain its operation. Therefore, this responsibility should be eventually transferred to the Ministry of Commerce or other specialized agency;

(d) Article 85 places to some extent on third “affected” parties the burden to respond to complaints on the bidding process, and requires from them counter guarantees for lifting a suspension of the bidding process requested by the complainants. This provisos are inconvenient as they relinquish the state responsibility to resolve complaints on their own merits, and should therefore be abolished.

(e) Article 86 assigning to the UCNT the role of conciliator in the resolution of contract disputes should be abrogated because it entails a potential conflict of interest and will strain the operating capacity of the UCNT; that role should be performed by independent third parties.

12. Provisos in Law 2051 that require careful regulation:

(a) Article 5 places the UCNT under supervision of the Undersecretary of Financial Management, which does not guarantee the independence required of the Unit. Thus, to foster such independence and authority the Regulatory Decree should provide that the head of the UCNT meets minimal qualifications and experience in public management and procurement, is selected on a competitive basis, and serves for a fixed term of at least four years;

(b) Article 17 foresees the use of prequalification, two-stage procurement and other procedures. The Regulatory Decree should develop specific guidelines for implementation of those provisos.

(c) for transparency, the date and time of bid opening should be the made same as the deadline for receipt of bids (Art. 20, c);

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<sup>1</sup> The allows ICB when required under international agreements or legal agreements with international multilateral organisms.

(d) regulation should provide for more than four the minimum number of days prior to the deadline for submission of bids for making amendments to the bidding documents, because in some cases it may not give bidders sufficient time to adjust their bids, particularly when the amendments entail changes of a technical nature. The minimum number of days should be determined taking into consideration the nature and complexity of the amendment to the bidding documents. An extensions to the deadline for submission of bids should be given when the nature of the amendments so warrants. Regulation should also specifically establish the right of bidders to request clarification or amendments to the bidding document outside pre bidding conferences (Arts. 22 and 23);

(e) the definitions of “technical and emergency reasons” considered in Art 33, (g) as reasons for the use of exceptional procurement procedures should be narrowed down in the Regulatory Decree to minimize the misuse and abuse of such proviso simply to avoid competitive procurement;

13. It is highly recommended that, for the drafting of the regulatory decree, expert advice be sought from local and international specialists with practical experience on public procurement in Paraguay and in other countries. Otherwise, there is a considerable risk that the decree may end up as an instrument that endorses the use of outdated and/or undesirable procedures and practices.

### **C - Procedures and Practices**

14. The lack of clarity and specificity of the old legal framework resulted in diverse interpretations of the statutes and the proliferation of diverse and cumbersome procedures and practices, many of them developed by the agencies to suit their individual needs. This is particularly true of decentralized agencies, which by law are allowed to establish their own procurement procedures. It is also reported that in some agencies procurement procedures and bidding documents are tailored to favor a limited number of favorite contractors. The diversity of procedures and practices make it difficult for contractors and suppliers to bid for contracts across government agencies. Their preference, therefore, is to specialize in bidding for a reduced number of entities, which results in limited competition and the possible establishment of cartels.

### **The Procurement Process**

15. With the exception of the contracts financed by the IADB, the Bank and other donors, the large majority of contracts are awarded on the basis of limited bidding (*Concurso de Precios*) or shopping (*Contratación Directa*). This may be due in part to the nature and relatively small size of the goods and services required by state agencies, which is particularly evident in the case of a large majority of municipalities. However, the use of these methods is also due to the considerable degree of discretionary power exercised by the authorities to breakup contracts in order to avoid competitive and more transparent methods and to the fact that public bidding takes longer than other procurement methods.. The new law addresses those issues.

16. An attempt was made by the CPAR team to develop case studies for the analysis of the procurement process, with disappointing results. State agencies appeared reluctant to provide the information required or did not have it. However, from the limited information received, it was concluded that competitive bidding requires between 15 to 28 recorded steps, and between 270 and 550 days from the day that the authorization to bid is made until a contract is signed and/or a purchase order is issued. Although many of the steps in the process and their duration are reasonable, some are repetitive or take an excessive amount of time to complete. Also, in addition to the formal steps, there are a number of unrecorded bureaucratic requirements, which contribute to a lengthy process. Limited bidding and shopping are considerably more expeditious; it takes only between 15 and 106 days to complete the process, which explains why state agencies prefer those methods of procurement to public bidding.

17. Among the steps notable for the considerable time that they take to complete are: the issuance of separate decrees or municipal resolutions approving the bidding process and contract award (30 to 40 days per decree); preparation of bidding documents (30 to 60 days); Bank and IADB clearance of bidding documents (up to 20 days); formation of bid evaluation committees and preparation of bid evaluation reports (up to 90 days); and formation of the audit committee after the contract is awarded (30 to 40 days). The Public Works Law added an additional 60 days to the process for the review of bidding documents by DINOP. The new procurement law removes the need for decrees and the review of bidding documents by the DINOP, which should reduce the length of the public bidding process considerably. However, the process should be streamlined, limiting it to the necessary steps and avoiding overlapping or repetitive procedures. It will also be necessary to establish service standards and electronic distribution of documents in order to reduce delays further.

#### Planning and Budgeting

18. Uncertainty about budgets and lengthy procedures for budget releases disrupt project and procurement planning and implementation. Inclusion of expenditures in the annual budget does not guarantee availability of funds. Final authorizations to commit funds or invite bids are subject to approval by MH on the basis of monthly cash flow plans. On the other hand, budget funds must be committed before the end of the year, and payments must be made within the three first months of the subsequent year. As a result, state agencies tend to slice contracts and use abbreviated procedures, which compromise project efficiency and transparency. Also, multi-year budget allocations are not permitted, which leads to financial uncertainty for contracts spanning a longer period. The *Ley 1535 de Administración Financiera* (Financial Management Law) of 2000 provides the framework for improved public financial management, but its impact can only be achieved when the institutional set up and management tools foreseen in the Law are fully developed and established. Development of such mechanisms is supported by an IADB technical assistance grant, which is expected to result in visible improvements. However, a greater awareness of planning as a tool to prioritize and implement investments is needed if the budget process itself and project and procurement implementation are to be improved. On the other hand, it cannot be denied that the fiscal

and financial crisis facing Paraguay is also a key factor limiting the management of state budgets.

### **Procurement Manuals and National Bidding Documents**

19. With the exception of projects financed by international institutions that require the adoption of implementation manuals and the use of standard bidding documents for ICB, such documents are not generally available in Paraguay. Procedures are developed and established on the basis of precedent. Bidding documents are drafted by cutting and pasting from previous documents, often disregarding the specifics and nature of each type of contract. The participants in the CPAR highlighted the lack of manuals and standard documents as major shortcoming that should be addressed. The lack of manuals and documents results in inconsistent procedures and bidding requirements that make it difficult for interested contractors and suppliers to diversify their activities among state agencies, thereby limiting competition. This is a shortcoming that should be addressed under the procurement modernization program.

### **Invitations to Bid and other Procurement Information**

20. Invitations to bid are generally advertised in the National Gazette and local newspapers as required by law. However, some newspapers are not willing to carry government ads due to payment delays. The larger agencies such as SENASA are gradually developing their web pages and beginning to advertise invitations to bid, and information on contract awards. ANDE is advertising limited information about ongoing procurement processes. This trend should spread over to other entities, and the size and quality of information provided is expected to increase. The new procurement law established a centralized Public Procurement Information System that would make available to the public agency procurement plans, invitations to bid, contract awards, etc., and would provide the basis for e-procurement. However, the use of the internet is not generalized among state agencies, and may take time to reach small municipalities with limited technical and financial resources.

### **Registration and Qualification of Bidders**

21. Currently there are two formal registries in Paraguay: the Registry of State Contractors and Suppliers (*Registro de Proveedores y Contratistas del Estado, RPCE*), which is kept by the MH, and the National Registry of Engineering Professionals, Consultants and Construction Firms (*Registro Nacional de Profesionales y Empresas de Construcción y Consultoría, RNPECC*), which is managed by the DINOP. State agencies such as ANDE, SENASA and the Municipality of Asuncion also maintain informal registries of contractors and suppliers. The main objective of the RPCE is to maintain information for tax collection and legal eligibility to contract with the state. It is also likely that this registry will be turned into a database of contractors and suppliers for limited bidding and shopping. Eventually it should be integrated with the proposed Public Procurement Information System.

22. When this review was carried out the RNPECC was still in the process of organization with a wider objective than the RPEC. Its legal mandate was to collect and analyze legal, technical and financial data about firms and individuals, classify them and issue annual certificates of eligibility to bid for publicly advertised contracts for public works, which in fact is a mechanism of prequalification. Applicants to the registry were required to submit and up date annually a long list of documents. As has been the case in other countries the sustainability and effectiveness of this registry is highly questionable. It places a considerable burden on contractors, consultants and suppliers, particularly because of the requirement that some key documents must be issued or certified by third parties. Furthermore, the efficient operation of the registry requires considerable and qualified staff, which the DINOP has been unable to recruit. The new procurement law eliminated this registry.

23. Contract specific prequalification of bidders is generally not practiced in Paraguay, except for large civil works contracts financed by the Bank and the IADB. In fact, pre-qualification is commonly associated with the RNPECC. The new law allows for prequalification as a special procurement method, but is not at all specific about its purpose, applicability and methodology. Thus the regulatory decree should develop this subject in accordance with modern prequalification practices. It should also make clear that prequalification of bidders for specific contracts is different from qualification through a registry.

#### Complaints During the Bidding Process

24. The new law establishes a mechanism for resolution of complaints under the responsibility of the UCNT. However, it does not specify a time limit for resolving the complaint, requires that the complaint be passed on for rebuttal to potentially affected bidders, allows the suspension of the process at the request of the complainant, subject to payment of punitive damages if its complaint is denied, and gives the Auditor General the authority to intervene. Those provisos introduce considerable uncertainty into the bidding process and may very well negate the positive impact of a complaint mechanism. They would open the door for abuse by disgruntled bidders and cause considerable delays and even cancellation of procurement processes because of groundless protests. The law should be amended to streamline the complaint process and make it efficient and speedy.

#### Submission of Bids

25. The legal framework is not specific about this subject, but the basic principles for presentation, handling and public opening of bids are generally observed in Paraguay. There are however questionable customary or legally binding practices, such as, the two-envelope system and rejection of bids at the opening ceremony, which the new law would abolish. On the hand the draft law should be amended to require that the date and hour of bid opening coincide with the deadline for submission of bids. Otherwise if a gap is allowed between the deadline and bid opening the transparency of the process could be compromised.

## **Bid Evaluation and Contract Award**

26. The new law includes specific provisos for the review of formal documentation at bid opening and a detailed qualitative evaluation by bid evaluation committees. It allows for the correction of good faith mathematical errors and others of a non-substantive nature. It precludes the use of points systems or similar subjective evaluations, except for certain unidentified services, presumably consulting services. Contract award is to the bidder who submitted the lowest responsive bid (*Propuesta Solvente*) and has the capacity to perform the contract. The new law also requires disclosure of bid evaluation reports, which is positive.

27. The above provisos are generally consistent with good practices but some elaboration is needed to avoid ambiguity. First, the regulatory decree should state that the verification of documentation at bid opening should be for information only and that actual evaluation should be the responsibility of evaluation committees. It should also specifically forbid the disqualification of bids at bid opening. In addition, the decree should include provisos that clearly differentiate between the concepts of lowest responsive bid, and bidder qualifications. The two concepts should be linked but not combined in mathematical expressions for the award of goods and works contracts.

## **Employment of Consultants**

28. No formal procedures were in place for the selection and employment of consultants, except for internationally financed contracts. Law 2051 prescribes that the contracting of services of intellectual nature should be carried out on the basis of qualifications and experience, but it does consider quality as a key parameter for the evaluation of proposals. Further, the law does not specifically allow for confining competition to a limited number of qualified consultants (short-list). On the other hand, the draft law stipulates several methods for selecting consultants that are in substance the same as those included in the Bank's guidelines, although the wording of Article 54 on the subject is confusing, and should be thoroughly revised. For example, it should be made clear that under the "quality based selection method" the price is zero for evaluation purposes, but that the proposals should meet minimum quality requirements in the same way as required under other selection methods.

## **Records Management**

29. Record keeping and file management vary considerably from agency to agency. Generally, the agencies do not have centralized files for procurement. Procurement documents are dispersed in the various departments that participate in the process, and the integrity of files is doubtful. The Comptroller's Office reports that key documents are frequently missing at the time of auditing. This is an issue not specifically addressed in the procurement legislation that should be considered by the regulatory decree. In addition, the modernization of public administration in general, and procurement in particular, should include extended use of inter office electronic mail as a communication tool as reliable as paper.

## D - Organization and Resources

### Current Institutional Set Up.

30. The organization, resources and performance of the procurement function follow the same pattern of the overall public sector in Paraguay. The strengths and weaknesses observed in procurement are a reflection of those in the public sector. Specific structural, functional and operational improvements to the procurement function are needed and possible, but their viability and sustainability is closely linked to the implementation of other state modernization initiatives. For example, public service reform is linked to the restructuring of the executive branch. For the implementation of these reforms very special consideration should be given to the political commitment of the authorities and the relatively limited absorptive capacity of the country. External financial resources and technical assistance alone do not guarantee results.

31. In Paraguay each government agency, whether from the Central Administration or autonomous entities or territorial administrations, carries out its own procurement. There is no central tenders board or similar organization centralizing procurement.

32. Procurement within each agency has generally the responsibility of the Management and Finance Department. Within those departments public bidding (*Licitaciones*) and shopping (*Adquisiciones*) are managed by two completely independent sections, with no apparent links or communication. In fact a unique feature of government operations in Paraguay appears to be the limited sharing of information among line departments, as there is considerable concern and caution about straying onto others' turf. In addition, with some noticeable exceptions as discussed below, it is common practice to establish independent procurement teams within project management units (PIUs) responsible for the implementation of internationally financed projects. This practice further fragments the procurement function and is not conducive to institution building.

### The Central Policy and Technical Unit

33. A necessary condition for the success of public procurement reform in Paraguay is the establishment of a capable and independent body to lead the implementation process. The new law took a first positive step in that direction by creating the UCNT (Central Policy and Technical Unit) and the UOCs (Operational Procurement Units). The UCNT was placed in the Undersecretariat of Financial Management of the Ministry of Finance. The effectiveness and authority of the UCNT will depend on its independence, clear definition of responsibilities, good operational capacity and efficiency. To bolster independence and isolate it from political interference, the head of the UCNT should be competitively selected on the basis of proven qualifications and experience in public sector management, and should be appointed for a fixed period of service. Unfortunately, placing the UCNT at the third level of authority in MHF casts doubt on its expected independence and authority to develop and implement the procurement modernization agenda and take care of day-to-day business.

34. Also, given the relatively limited capacity of the Paraguayan public administration and the scarce financial resources, the responsibilities of the UCNT should be limited and their implementation should be phased in a gradual manner. Functions such as mediation of disputes during contract implementation, and the certification of digital identification, should not be the responsibility of the UCNT. In the short term the UCNT should focus on its own establishment and on the establishment of the UOCs, the development of manuals and standard documentation. This should be achieved primarily through external technical assistance provided by resident experienced consultants that are involved in day-to-day operational responsibilities, while providing on the job training to UCNT staff.

### **Human Resources, Procurement Career Stream**

35. The qualifications, capacity and conditions of employment of procurement staff in Paraguay follow the pattern of the overall civil service. A procurement career stream does not exist. Job descriptions, staff profiles, training and performance evaluation mechanisms are lacking. Recruitment is largely based on political quotas. Therefore, staff turn over is high. Due to the lack of a structured compensation package, there is a wide range of salaries among jobs of similar responsibilities; High level employees receive “supplements”, overtime, representation and other payments that can double their nominal salaries, further distorting the salary structure. Salaries of mid level professionals are low when compared to those in the private sector. As a result, is not uncommon that some of those individuals hold two or more jobs with the government or elsewhere.

36. The government has expressed its commitment to civil service reform. The Bank recently awarded to Paraguay an IDF grant for that purpose, but implementation has not yet started. A commission responsible for “Management Rationalization”, as mandated by the law, is in operation. It has recommended the abolishment of 3000 vacancies and firing of another 8,000 individuals, as well as suspension of the practice of allowing a single individual to hold multiple positions. However, implementation of the Law has encountered considerable opposition from certain quarters, to the extent that some of the Law’s provisions are being contested in the Courts.

37. The procurement function should not be given preferential treatment over other public functions, but it should be recognized and given the status that it deserves. The on going reforms should, therefore, consider the establishment within the civil service of a procurement career stream that responds to the responsibilities derived from the new procurement law. The design and implementation of the career stream should depart from a comprehensive survey that measures the medium term quantitative and qualitative demand for services by the proposed UCNT and UOCs. The design should define the institutional structure of those units, job descriptions, staff profiles, and salary structure equivalent to similar positions in the private sector. A priority task for the UCNT is to make the case for the proposed career stream before the National Secretariat for Public Administration (*Secretaria Nacional de la Administracion Pública, SNAP*).

## Procurement Knowledge and Learning

38. The above considerations notwithstanding, a large majority of staff handling procurement, particularly of public works, are engineers, architects, accountants and lawyers who have been exposed to basic procurement courses at school, and have acquired on the job the knowledge needed to carry out their responsibilities in accordance with local practice. However, there is practically no formal training, and in many instances staff knowledge appears to be confined to the specific functions they perform. There is in particular little knowledge of planning and public bidding, as a considerable amount of procurement is carried out through shopping. A few individuals have been involved and are familiar with international procurement under internationally financed projects, but many of them work as consultants, not as civil servants.

39. Thus, there is a perceived need to develop and implement, in tandem with the procurement career stream, a learning program suited to the short- and medium term needs of the country. A basic feature of the program should be the establishment and enforcement of certification mechanisms based on the successful completion of a curriculum tailored to the responsibilities of the various jobs. At the start, the program should focus on short local and external courses on the new law and modern procurement practices, in particular e-procurement. In the medium term the emphasis should be on promoting and supporting the modernization of existing basic courses and the development of advanced ones among local universities and other learning institutions. If the demand exists, and it should be determined from the survey, consideration should also be given to promoting the development of post graduate degrees on public procurement in local universities. This is another critical activity that should be led by the UCNT.

## E - Internal Control, Audit, and Anti Corruption Measures

### Internal Control and Audit

40. As mandated by the 1909 Constitution and the Financial Management Law 1535 of 1999 (FML) external control is the responsibility of the *Contraloria General de La Republica*, (CGR - Office of the Controller General. The FML also rules over the *Auditorias Internas Institucionales*, (AII - Internal Audit Offices) and the *Auditoria General del Poder Ejecutivo* (AGPE - Office of the Auditor General) which is responsible for oversight and regulation of the AIIs. The law also mandates that the AGPE will carry out audits, but it does not define what type of audits. The AGPE and AIIs are still in the painful process of being established, but progress has been very slow. Their institutional structures and functions are not yet defined, particularly in respect of the oversight role of the AGPE. Most agencies still do not have an AII. In addition, the *Tribunal de Cuentas* (Court of Audits) is responsible for the approval of the State's accounts on behalf of the Judiciary Branch.

41. It is apparent that the financial management function suffers from the same general weaknesses that affect public administration in Paraguay. While the FML provides an adequate legal framework for control, the absence of detailed regulations,

guidelines and procedures, an insufficient number of qualified staff, political interference, cultural constraints, and corrupt practices are issues that affect the transparency and accountability of the control framework. A common view is that the focus of CGR auditors is almost entirely on legal formalities and numbers, with no attention to the evaluation of results. In respect of procurement, audit officers are not familiar with relevant regulation or the legal documents governing the Bank and IADB financed operations, which is a source of problems in the implementation of those operations. This suggests that training in procurement regulation should be made available to audit and CGR officers.

42. The CGR carries out procurement audit work through the Directorate of Contract Bidding and Public Works., which is staffed with 50 professionals. The CGR is constrained by limited financial resources particularly for operating expenses. Judging from its budgets, it would appear that the Executive and Legislative branches, which propose and approve them, have little interest in the audit function. Consequently, the CGR is unable to develop and implement institutional or functional annual audit programs. A considerable portion of its operations are investigations of fraud and corruption. Also, while the CGR review should be ex-post, by regulation and custom it is frequently required to carry out ex-ante reviews, which makes it a co-manager with the executive branch, and poses a potential conflict with its external control responsibility. For example, the Public Works law requires that the CGR review bidding documents that have not been approved by the DINOP. The IADB is currently processing a technical assistance grant aiming at the modernization of the CGR.

43. Another critical issue, which affects efficiency of the audit function, is the overlapping of responsibilities between the CGR and the Court of Audits. Their respective statutes define their responsibilities and jurisdiction. However, interpretations of the statute differ, which is a cause of confusion. The audited agencies reportedly take advantage of this situation. When the CGR requests accounts for review, these are sent to the Court of Audits or vice-versa, depending on where the audited agency expects to receive a more benign treatment. This is further aggravated by the fact that the Court is not incorporated into the SLAF (Integrated Financial Management System). Its reviews are, therefore, carried out “manually”, which takes a considerable time. Moreover, all documents have to be reviewed at the Court’s headquarters, which entails considerable paper storage. This duplication of responsibility is an issue that engenders an important turf battle that spans to all branches of government and is, therefore, difficult to resolve in the confusing political environment. Nonetheless it requires urgent attention as part of the ongoing State modernization effort.

### **Anti-Corruption Measures**

44. Corruption is deeply entrenched in Paraguayan society. Its origins can be traced back to the authoritarian Strossner regime, which made no distinction between public and private sector interests, and was free of any control mechanisms. Today the democratic institutions have been reestablished but the same cultural habits still prevail. The abuse of power and political interference in the appointment of government officials and in

decision making, as well as the payment of bribes to obtain access to services, influence decisions, win contracts, etc. are common features in public administration. Several studies and surveys document the causes and incidence of corruption in Paraguay. Not surprisingly, the customs agency and procurement are identified as the main culprits.

45. Although there are rules and regulations designed to prevent and penalize corrupt practices, they are not enforced. Prosecuting corruption cases is difficult, costly, and has little chance of success. Moreover there is no reward or protection mechanism for whistle blowers. Public officials are not accountable and are not even subject to a code of ethics.

46. A growing concern with the prevailing corruption has brought about a healthy reaction from civil society, government and international organizations to combat the problem. As a result, with Bank assistance Paraguay adopted in the year 2000 the *Plan Nacional de Integridad*, PNI. The PNI articulates a strategy of providing the Government with modern means of technology to combat corruption; and facilitating the participation of civil society in the fight against corruption. Implementation of the PNI is the responsibility of the *Consejo Impulsor del Sistema Nacional de Integridad*, CISNI (Counsel to Promote the National Integrity System) with IADB support. CISNI is made up of equal numbers of representatives of the government and of civil society.

47. The PNI was developed on the basis of a series of surveys of 4,500 individuals regarding the performance of 75 public agencies. The survey revealed that corruption was less prevalent in agencies with higher degrees of organization and performance, such as ANDE. At the other end of the spectrum Customs, MH, MOA, the Chamber of Deputies, the Judiciary and the CGR were ranked high on corruption. In respect of procurement, the survey revealed that contractors and suppliers that do not do business with the state gave as a reasons : (i) the demand for bribes by public officials; (62%); (ii) the complexity of the procurement process (47%); (iii) the lack of government contacts needed to win a contract (37%); and (iv) the high cost of participation (33%). Those results coincide with the perception that the general public have of public procurement in Paraguay.

48. The PNI action plan focuses on three government functions: (a) the Customs Service; (b) the Judiciary; and (c) public procurement. On procurement it states in Chapter V a set of specific objectives that are summarized in Box 1. Those objectives are generally consistent with the findings and recommendations of this report, except in respect of making the CGR responsible for ex-ante reviews of government actions, which would make it a co-manager of those functions. Likewise adding control procedures may increase instead of reduce corruption. Therefore, the emphasis should be on streamlining procedures on the basis of clearly assigned responsibilities and accountability.

**Box 1. National Integrity Plan, PNI**  
**Summary of Objectives for Improving Public Procurement**

1. Strengthen controlling institutions, including the improvement or coordination among the agencies concerned
2. Develop procurement manuals and standard bidding documents
3. Establish of a public procurement coordination body.
4. Establish a single registry of contractors and suppliers
5. Establish performance evaluation mechanisms.
6. Carry out comparative studies of specific procurements across agencies
7. Explore the possibility of aggregating and centrally procuring goods and services required by state agencies.
8. Establish a price data base for reference purposes
9. Establish an internet based procurement information system that allows downloading of bid documents and advertising of contract awards.
10. Give third parties the right to question and complain about bidding documents.
11. Include standard conditions of contract in the bidding documents.
12. Development and implementation of a human resources plan for procurement.

49. The CISNI has sponsored several workshops and seminars designed to promote participation and elicit input for the new procurement law. It organized in cooperation with Transparency Paraguay and the MH a procurement workshop that provided input to this report. An executive summary of the findings and recommendations of that workshop are in Appendix 1. It is expected that the CISNI will play a key role in the monitoring and evaluation of the procurement modernization program. Additional technical assistance and financial resources from international donors will be needed for this work. Furthermore, the CISNI could help to promote the involvement of NGOs in the oversight of the procurement process itself taking advantage of successful experiences in other countries.

## **F - Contract Management Performance**

### **General Conditions of Contract**

50. This review focuses on civil works construction contracts, which are the most complex in to administer. However, issues related to risk assignment, payments, and completion periods in goods and services contracts are similar to those found in construction. There is no set of standard conditions of contract used throughout government agencies. For IADB and IBRD financed contracts the agencies use their SBDs for ICB and in many instances for NCB. For locally financed contracts most agencies have developed their own conditions of contract, frequently modeled on outdated documentation modified to meet the requirements of national regulation. For example, the MOPC's general conditions of contract were probably developed from an early seventies version of the US Bureau of Public Works' conditions. The conditions of contract of all agencies include common features based on civil law. In particular the conditions of contract assign a prominent role to the contracting agency (employer) in

contract administration and interpretation. The role of the employer's representative (known as *fiscal* in Paraguay) is limited.

51. Like the bidding documents the general conditions of contract need updating to reflect modern international practices; in fact they should be made part of the standard bidding documents. Some of the main issues to be reviewed include:

- i. The instructions to bidders are part of the contract;
- ii. A large number of the general conditions are included in the "form of agreement" which is a source of inconsistencies;
- iii. Insurance requirements are unrealistic;
- iv. Contract securities and insurance requirements are the same for all contracts regardless of their nature, scope or complexity;
- v. There is an uneven distribution of risk among the parties;
- vi. The conditions of contract assign a large share of the risk to the contractor, which in the end results in higher cost.

### Contract Implementation

52. At implementation the contract document is seen more as a legal record of a transaction than a management tool to deliver the goods or services contracted. Generally the contract document has little value, as personal relations and political pressure are more powerful tools to achieve results. Thus, there is an attitude of mutual permissiveness between the parties. Clauses on completion dates, liquidated damages, timely payment and interest for delay are seldom enforced.

53. Contract implementation is frequently delayed (six months are common) due to a variety of reasons including deficient and incomplete designs, unrealistic completion periods, delayed access to the construction site, uncertain funding and payment delays. By law, payments are due within 30 days of invoicing and interest penalties are to be applied for late payment. If the government does not comply the contractor may stop work, which they sometimes do.

54. A common problematic feature in contract implementation is variation orders, because there are no clear instructions about their definition, manner and timing for processing. Therefore, the processing of variation orders and other contractual decisions are subject to a protracted process that involves approval by several departments within the contracting agency, which can take a long time. For example in the MOPC variation orders require approval by not less than six managers and take between three and six months.

55. Cost overruns are frequent events. While their source is difficult to assess, they are generally regarded as a fraudulent practice. As contract conditions allow for an extension of up to 30% of the original contract value, that allowance is generally taken as a license to pay automatically for the extra value. On the other hand, works are left incomplete because the value of the contract and the 30% extension are still not sufficient to pay fully for the works contracted. There is evidence of over billing, which apparently

is at times used to compensate contractors for payment delays, or as a means to ensure that budget allocations are used within the year, or for outright fraud. However, cost overruns are not always unjustified. Frequently they are due to incomplete designs and incorrect contract estimates at the time of bidding that have to be adjusted during contract implementation.

### **Contract Supervision**

56. Responsibility for contract supervision is split between the employer itself and its representative (*fiscal*). Because of the strong presence of the employer in contract management, the role of the *fiscal* is limited. In practice it is an assistance to the employer who ultimately makes all decisions. The *fiscal* has primary responsibility for quality control, measurements and certification of payments. However, even with that limited responsibility the performance of *fiscals* leaves much to be desired. On the other hand, the decision making authority at the agency level is not always well defined, and managers often do not have the technical capacity to exercise their power. In the end this results in a dilution of responsibility.

57. In conclusion, establishing a reasonable legal framework and modernizing procurement procedures should improve efficiency and prevent corruption, but will not be sufficient without parallel improvements in contract management, where a substantial part of the abuse takes place. Specifically, internal arrangements for contract management should be streamlined by defining a clear chain of command and responsibility and accountability, free of overlaps and gaps. It is also imperative to train staff on contract management. Finally, the *fiscal* function should be entrusted to qualified consulting firms selected on the basis of qualifications and experience. Modernization of contract management is outside the scope of the GOP/IADB procurement modernization project. Therefore, additional ways and means for modernization of these activities should be explored. As the government is overwhelmed with the whole menu of modernization activities, consideration should be given to promoting and assisting the involvement of civil society on this endeavor.

### **Dispute Resolution**

58. Under the existing legal framework, the only venue for conflict resolution in contracts is arbitration under the Civil Code. However, arbitration is used very seldom in ICB, even for contracts financed by international finance institutions. State agencies are reluctant to resort to arbitration because of the cost and time that the legal process entails. Further, amicable resolution of disputes by third parties, i.e. dispute resolution boards and conciliators, is not practiced, even under Bank financed contracts. In practice most conflicts are resolved by direct negotiation among the parties. On paper the state would appear to have the upper hand, but in practice conflicts are resolved through back door agreements reached by high level officials, resulting in solutions that are not always fair to the state.

59. The new procurement law introduced a mediation mechanism that will be facilitated by the UCNT. Introduction of such a mechanism is an excellent proposal, but involving the UCNT is inconvenient and undesirable. Above all, mediation should be carried out by independent third parties. As a state office, the UCNT would not have the required independence. Second, the mediation function will divert the procurement unit from its primary responsibility of setting public procurement policy and facilitating its implementation. Finally, it will require endowing the UCNT with an expertise that it may not be able to afford with the limited resources that it is likely to have available.

#### G. Performance on Bank Assisted Projects

##### Overview

60. Primarily because of increased supervision effort, the quality of the portfolio has improved. However, the pace of project implementation has slowed considerably due to the economic crises and weak implementation capacity. During the period FY99-FY02, an average of \$24.9 M per year worth of contracts subject to prior review were awarded per year. In FY02 that figure came down to a low \$ 8.1 M. Current ICB thresholds for works and goods are US\$ 3.0 M and \$ 250,000 respectively; and for NCB \$ 250,000 and \$ 50,000 respectively. As a general rule only ICB and QCBS procured contracts are subject to prior review.

61. Over the period FY99 to FY02 all ICB procured civil works contracts, the largest of which was \$ 3.6 M, were awarded to local firms. This reflects the lack of interest by foreign construction firms to bid in Paraguay because of the small contract values. However, it may also be due to the legal and procedural restrictions imposed on foreigners interested in bidding. Also, a large share of Bank financed works are for small water and sewer systems, and school buildings, which are constructed through contracts awarded on the basis of NCB and price quotations. With the exception of two large contracts for procurement of text books and radio communications equipment, ICB procured contracts for supply of goods were under \$ 1.0 M. In contrast to works, about one third of those contracts were awarded to foreign bidders. Similarly, a large share of consulting services contracts were also awarded to foreign firms on the basis of the QCBS method. On the other hand, a large number of local individuals are hired for the provision of project implementation services, including PIU staff and supervision of small works. The procedures for hiring individuals are not transparent and subject to political interference.

62. A common feature in procurement of works and goods and consulting services was that a considerable number of contracts falling below the mandatory thresholds were awarded on the basis of ICB or QCBS. Likewise a considerable number of contracts come for Bank review, regardless of the prior review requirements of the relevant loan agreements. These practices reflect both lack of confidence by task managers in local procedures, and the reluctance by government officials to make decisions.

63. Four ICRs, two IPRs and one agency capacity assessment completed in FY02, as well as recent supervision reports, show that procurement performance and contract

management under Bank financed projects is mixed. In general, implementing agencies adhere to Bank procurement policies and procedures and make use of SBDs, but there are significant shortcomings in their application and interpretation, which have generally resulted in delays. There have been allegations of corrupt procurement practices and misappropriation of funds, which in some cases have required Bank and Government action. Recently the Bank debarred a consulting firm and its owner and issued a letter of reprimand to a second firm for fraudulent practices.

## **Issues**

64. Overall, while performance is considerably better, procurement under Bank projects shows the same strengths and weakness discussed elsewhere in this report. Following are specific issues:

65. **Weak Implementation Capacity.** Project implementation, including procurement, is closely related to the organization, structure and staffing of the PIU. For example, the Eighth Highways Project was affected by the absence of an operational manual, which resulted in vaguely defined roles and responsibilities. This, along with the lack of training on procurement, resettlement and land compensation issues, inadequate office space and equipment, caused a twenty four-month delay in the completion of the project. On the other hand, a well established PIU and clear implementation procedures were very important factors for the success of the Secondary Education Improvement Project. Another important feature under this project was the integration and coordination between the PIU and agency line-units. Specifically, procurement was carried out by the procurement departments of the participating agencies, which contributed to capacity building in those departments. This practice should be encouraged. Common problems facing PIUs are the high turnover of staff, their lack of familiarity or experience with the Bank's guidelines, and the fact that their local experience is almost exclusively in local shopping procedures.

66. **Quality of Bank Supervision.** More than in other countries, in light of the weak implementation capacity, project implementation quality is closely linked to the quality and expertise of Bank supervision and assistance. For example, the lack of engineering staff in task teams has led to considerable implementation problems. On the other hand, frequent and well staffed supervision work have resulted in improved procurement performance of projects.

67. **Use of Bank Standard Bidding Documents/Procedures.** The introduction of SBDs for ICB procurement of goods and works, and the standard request for proposals for consulting services was difficult due to local regulations, but they are now widely used in those sectors where the Bank is present. However, lack of staff familiarity with the documents and the concepts therein is problematic. Likewise, documents for NCB contain provisos and practices inconsistent with the Bank's Guidelines. Major problems arise in relation to restrictive practices that tend to favor participation of certain construction companies, including: inadequate packaging of contracts, biased bidder qualification requirements, limited time for acquisition of bidding documents, limited and

erratic dissemination of procurement information on web sites, last minute changes to bidding conditions.

68. **Outside Interference and Corruption.** The use of Bank procedures and SBDs notwithstanding, procurement under Bank projects is subject to considerable outside interference and political pressure. In some agencies construction contracts are awarded to a very limited number of contractors, which suggests the possibility of collusion. Bid evaluation reports, particularly for consulting services, are frequently biased, making it necessary to commission independent assessments.

69. **Variation Orders.** A frequent feature in civil works contracts is the use of variation orders, which are to a large extent due to insufficient project preparation and inadequate engineering designs. In the Eighth Highways Project, premature bidding with incomplete designs led to significant problems under construction works contracts, and eventual cancellation of contracts.

70. **Filing and Information Systems.** With some notable exceptions, inadequate filing and dispersed storage of documents have been identified by IPRs and agency capacity assessments as common problems. Likewise, the absence of procurement information systems makes procurement planning and monitoring very difficult.

71. **Contract Securities.** A permanent source of complaints is the Bank's requirement of bank guarantees for performance of goods supply contracts, and for reimbursement of advance payments. In a tight financial environment bank guarantees are difficult to obtain, and when obtained, the counter-guarantees required freeze financial assets for an equivalent amount to that of the guarantees. On the one hand, this denies small contractors the opportunity to bid, and on the other, it seriously affects contractors' cash flow. The *Cámara Paraguaya de la Industria de la Construcción* –CAPACO– has repeatedly requested that the Bank revise this policy. This subject is under review as a matter of general policy.

72. **Delays in Land Acquisition for Works** is a major problem because expropriation is not always possible. The government can only take over land upon agreeing a price with and paying it to the owner, which is fair. However, in the absence of a well established land pricing system, landowners take advantage of the urgency and raise prices.

73. **Payments to Nationals in Foreign Currency.** In several Bank financed projects the contracts with national individuals hired as consultants are priced and paid in US Dollars. In both appearance and in practice this establishes a preferential treatment for those individuals over the civil service, and distorts the local market.

74. **Price Adjustment Mechanism in Civil Works Contracts.** Some government agencies and contractors have complained that the Bank does not accept price adjustment mechanisms in short duration contracts. This is a misinterpretation of the Bank requirement that contracts with duration of 18 months or more should include price

adjustment mechanisms. That requirement does not deny the possibility of introducing such mechanisms in contracts of shorter duration. On the contrary, price adjustment mechanisms should be considered as a matter of course in countries with high rates of inflation like Paraguay.

## **H - General Risk Assessment/Supervision Plan**

75. In view of the general country environment that is highly prone to corruption, and the specific shortcomings mentioned above, the procurement risk in Paraguay is assessed as high. The Public Procurement Law 2051 sets the legal framework for improved transparency in the procurement process. However, the high-risk situation is likely to continue, at least in the medium term. Therefore, the quality and effectiveness of Bank supervision and technical support are more critical to project success than in other LAC countries, which is clearly reflected in the ICRs reviewed. Thus, the following is recommended to reduce the level of risk for project preparation and implementation:

- a. Carry out high quality agency capacity assessments and develop realistic action plans that include the use and strengthening of agency line departments for project procurement on behalf of the PIUs. Carry out intensive training of local staff on Bank policies and procedures. Develop and require strict implementation of, and if necessary finance, filing and monitoring procedures using modern tools.
- b. As long as the current mix of simple infrastructure works and standard goods is likely to continue under the projects in the pipeline, the current thresholds for ICB and NCB procurement should be maintained. Likewise the maximum contract value for short-lists made up exclusively of local consulting firms should be maintained at \$ 200,000, and prior review thresholds at \$ 100,000. However, the threshold for prior review of civil works contracts should be fixed at \$ 500,000 to ensure transparency. At the same time, qualification and eligibility requirements for contractors and suppliers, as well as contract packaging, should be carefully scrutinized to ensure wide participation of capable national firms, and to prevent the exclusion of foreigners.
- c. Procedures for hiring of individuals should be streamlined to ensure adequate advertising, competition and continuity of work free of political interference. Consulting services provided by national individuals should be priced and paid in Guaranies.
- d. Procurement supervision and technical support should include on average two missions per year, complemented with IPRs. The Bank should maintain a strong presence in day-to-day activities in order to ensure project sustainability and implementation of its recommendations.
- e. New operations should include special procurement conditions designed to neutralize local procurement rules and practices inconsistent with the Bank's procurement and consultant Guidelines. Such special conditions should de

developed on the basis of paragraphs 11 and 12 above and the Regulatory Decree there from.

- f. Develop jointly with the IADB standard bidding documents for national competitive bidding.

## I. Private Sector Performance

### Competitiveness and Participation of the Private Sector

76. The construction sector accounts for most of the procurement activity, when compared with other sectors of the economy, and the government plays a dominant role in generating the demand for construction. This is particularly true at this time of economic recession when many private investors have reduced their capital investment in construction works. Private contractors carry out the great bulk of civil engineering work, including new construction as well as repair and maintenance work on roads, irrigation, and supply of water and sanitation. In addition to the construction industry, the supply side of the sector includes the activities of engineering consulting firms, insurance companies and commercial banks.

### The Construction Industry

77. The local construction industry seems to have enough capacity to meet the market's normal demand and should be able to compete on equal terms with foreign contractors willing to enter the Paraguayan market. However, the Paraguayan construction market is well protected from international competition. The systemic restrictions, imposed by the law and by the gridlock of government requirements, as well as the strong market control of local contractors, make it very difficult for foreign contractors to penetrate the market, except when international competitive bidding has been agreed with international financiers. Also, there is questionable competition between local contractors; pressures from lobbies to manipulate the pre-qualification criteria for individual operations may distort decisions and destroy fair competition. Furthermore, collusive practices among contractors are reported to be common. Improvements in the industry should come from within, but with five to ten firms controlling a substantial portion of the market, competition is threatened and incentives are lacking.

78. With an output of about \$200m per year, construction (excluding power generation works) represents just 2% of the nation's GDP, a level similar to that in 1970. The industry is polarized, with a small number of large firms picking up the major contracts and a substantial portion of the total work load at one end of the spectrum, and many small to medium firms at the other end, carrying out the remaining work load. The largest 10 firms account for 40% of output. There is an excess capacity of about 25%, which may be largely explained by the influence of the present economic recession.

79. Two separate commercial chambers represent contractors. CAPACO (*Cámara Paraguaya de Contratistas*), the oldest of the two, was established in the sixties and looks after the interests of some 200 builders and main contractors who are active in the

industry. CAVIALPA (*Cámara Vial del Paraguay*), the other chamber, was formed in the mid nineties to represent some 30 heavy construction contractors that control about half of the construction market (in value). Both chambers are very influential. As members of DINOP by law, they participated in the regulation and enforcement of the public works law, including the clearance of bidding documents submitted by the contracting agencies. They also acted as conciliators between bidders and owners, and approve the price adjustment indexes. Furthermore, CAPACO is in charge of determining the monthly indices for adjusting contract prices, following procedures agreed with the government. However, there is some friction between the two chambers regarding the pre-qualification requirements that should be specified for the bidders in specific projects. It may be argued that there was a conflict of interest for the chambers when they participate in DINOP's control function or determine price indices, but it also could be considered a reaction by the industry to the government's inability to perform those tasks. In any case, although Law 2051/2002 abolished the DINOP, it is not clear if the participation of the organizations of contractors in the bidding and contract management processes of MOTC public works continues on an informal basis.

80. It is clear that the control of certain strategic positions and the long term relationship with government agencies and legislators has led to a situation where the construction industry controls the market and is the strongest of the parties to a construction contract. It has good political connections and is more motivated than the government agencies or the consultants.

### **Consulting Services**

81. There are some 40 active consulting firms, of which six to eight have 10 to 15 engineers, and about 20 firms with less than five professionals. The remainder are mostly individual engineers. The total annual output of these firms is about \$30m. The golden age of the consulting profession in Paraguay was the period from 1976 to 1984 when demand for consulting work was high because of the construction of the power stations at Itaipu. The Chamber of Consultants that was funded at that time has been inactive for about ten years. It has recently been reactivated mainly to confront the challenges raised by DINOP's activities.

82. Only the largest consulting firms cover several fields; most specialize in the design and construction supervision of roads, water supply and sanitation projects, providing specialized services to the power suppliers and technical assistance to the NGOs. Joint ventures with foreign firms, mainly from Argentina and Uruguay, are established in order to comply with the requirements of financiers and to increase the competitive edge of the local firms, some of which serve only as commercial intermediaries of the foreign firms.

83. Consultants lack the professional stature and independence in which a healthy domestic profession is likely to take root. An example of this condition is the rather modest role the consultant undertakes when he is charged with supervising the construction of a project; his functions as '*fiscal*' are limited to the quality control and certification of work quantities for payment purposes. His primary allegiance in the

construction contract is to the employer, who apparently takes an active role during the execution of the contract and approves, through its heavy bureaucracy, all variations, extensions and payments under the contract. Thus, the consultant as supervisor of the works is the weakest link in the triangular relationship with the employer and the contractor.

84. Consultants should seek ways to improve and enhance their reputation on the basis that the principal advantages of employing a consultant engineer are that his judgment and advice are independent of all outside influences and that he is a specialist spending most of his time in the design and construction of works projects.

### Securities

85. The insurance companies control the Paraguay guarantee and insurance market. Some 38 insurance companies are authorized to operate by the "Insurance Superintendence", under the Central Bank organization, and about 20 of them have surety units in their organization. These surety units control the guarantees market, including bid, advance-payment, and contract performance guarantees. The industry is regulated by law 827/1996 which requires the insurance companies to apply to the superintendence for authorization to perform only in specific risk categories assigned to them, to reinsure with other companies (national and foreign) the amounts in excess of those authorized, and to have a capital of at least \$500,000. The superintendence publishes a rated list of the authorized companies every other month. (Law 827 and its regulation are under review as part of an IADB technical assistant project).

86. Banks only provide guarantees to their well-known customers or act as agents for foreign banks that have agreed to issue a guarantee to an international contractor. Banks request, from contractors, a collateral backed by real assets, and even with this backing, they often issue the guarantee for a fraction of the collateral's worth, weakening the contractor case for additional finance. For the advance payment, some agencies request unconditional bank guarantees, as required by the Bank, but given the difficulties to obtain them and the delays in the actual payment of the advance, contractors are considering not asking for the advance-payment. This is a particularly difficult problem for the small contractor. In fact, contractors have repeatedly appealed to the Bank requesting a review of the policy so that advance payment securities issued by insurance companies can be allowed. There is not an easy solution to this issue. Reducing the amount of financing needed by the contractor could reduce the amount of the advance. This could be achieved if the time period between certification and payment is reduced. In addition, a proportion of materials on site but not yet included in the works could be paid.

87. Performance guarantees are normally issued for an amount equivalent to 5 to 10% of the contract value and the contractor has the option to submit a conditional guarantee issued by an insurance company or an unconditional bank guarantee, to the employer's satisfaction. Performance guarantees are requested for all works contracts, independent of their size or complexity, but are seldom enforced. In addition, contracts normally include

a retention clause for about 5% of the progress payments. For small contracts, the agencies may consider eliminating the performance guarantee, and instead reduce the risk associated with contractors' defaults by improving the agencies' pre-qualification requirements and by consistently enforcing the 5% retention.

## **Insurance**

88. About ten of the insurance companies control one half of the insurance market. Unfortunately, most agencies, including their financiers and contractors, have a casual approach to insurance and do not carry out proper risk analysis of their projects. Insurance is a subject not well understood, perceived as one more bureaucratic requirement, and has a low priority. As a result, insufficient thought is given to the matter by employers, contractors and supervisors, the requirements set in the bidding documents, as well as the information given to the insurer to underwrite the risk is inadequate and incomplete. In many cases, it does not consider the scope of the contract or its value. Construction work, by its very nature, is likely to be dangerous and the risks of injury to people and damage to property are high. Thus, it is essential that the responsibilities of the various parties involved in the works with regard to these aspects of the contract are clearly defined and the necessary insurance provisions are incorporated in the conditions of contract.

## **J - Recommended Action Plan**

### **Strategy**

89. The findings of this report confirm the long deeply felt need for modernization of the public procurement and contract management functions in Paraguay. The report recommends specific actions on the legal framework, procedures, organization and resources conducive to achieve that objective. In fact the IADB-FOMIN grant for "Developing a System of Public Procurement" provides a suitable framework and financial resources consistent with the recommendations of this report. However, modernization of public procurement should not be approached in isolation from other state modernization initiatives. On the contrary, the success of procurement modernization is highly contingent on the successful implementation of reform initiatives in other areas such as financial management, civil service, government structure, CGR, etc. To a certain extent Paraguay is overwhelmed by parallel technical assistance operations competing for government attention and resources. The challenge is to achieve an effective coordination of the various modernization initiatives making use of and enhancing the limited pool of national resources, and bringing in different external views and expertise. The goals and pace of reform should be consistent with the country's technical and financial absorptive capacity.

90. State reform in general and public procurement in particular should not focus on regulatory and procedural matters only. Their effectiveness is closely linked to the alleviation of social and economic issues, as well as cultural changes. Reform will entail a concerted and decisive effort by all branches of government and civil society. On the

Government side, the MH should play a more active leadership role in the coordination and implementation of the several reform programs and technical assistance in progress. In particular increased attention to the implementation of the IADB grant for procurement is needed. The CISNI should continue to play its role as a catalyst and conveyor of the views of civil society. In particular, CISNI and NGOs should be involved in the monitoring and evaluation of the proposed action plan. The Bank and the IADB should increase their efforts to ensure consistency among the various reform initiatives and, in particular, increase their technical input on quality control of the technical assistance that they finance. Moreover, consideration should be given to channeling some of the available or new TA assistance resources through CISNI and NGOs for the above proposed monitoring and evaluation activity.

91. On this basis the above, the following action plan is proposed for implementation of a procurement modernization was discussed with the Government. The proposed target dates are indicative and should be updated upon detailed discussion of the action plan between the Government and the IADB. Likewise the Bank may consider ways to assist in the implementation of actions outside the scope of the IADB-FOMIN technical assistance, particularly in respect of monitoring and evaluation of the reform program and the development and implementation of a contract management modernization, and assets management program.

<b>Tentative Action Plan for Public Procurement Modernization</b>		
<b>Action</b>	<b>Responsibility</b>	<b>Deadline (Indicative Dates)</b>
<b>1. Restructuring of Legal Framework</b>		
Promulgation of a sound Public Procurement Law, including the amendments or improvements proposed in this report.	National Congress	12/31/02 Accomplished
Drafting and dissemination of Good Regulatory Decree	MH	03/30/03 In progress
Discussion of the draft regulatory decree with state agencies civil society and other interested parties	MH/CISNI/GOP Agencies/Civil Society/IADB/WB/Other s	04/21/03
Issue regulatory Decree	GOP/MH	05/21/03
<b>2. IADB-FOMIN Technical Assistance</b>		
Up date Implementation Plan in light of procurement law and the recommendations of this CPAR.	MH/IADB	04/30/03
<b>3. Institutional Strengthening</b>		
Appoint Head of the UCNT	MH	03/31/03
Appoint one or two local procurement specialists and support staff to UCNT	MH	03/31/03

<b>Tentative Action Plan for Public Procurement Modernization</b>		
<b>Action</b>	<b>Responsibility</b>	<b>Deadline (Indicative Dates)</b>
Issue TOR and recruit one or two expatriate specialists for eighteen months each to assist with the establishment and initial operation of the UCNT, including on the job training of staff and development of manuals and standard documents.	MH/IADB	04/30/03
Expatriate Specialists begin work	MH	6/30/03
Establishment and full operation of the UCNT.	MH/Expatriate Specialists	04/30/03 to 03/31/04
Develop TORs and Appoint Consultants to carry out: a. Projections of procurement workload by agency b. Survey of existing institutional capacity and staffing, and projection of additional requirements to meet the projected demand. c. Definition of staff positions, number and profiles. Development of job descriptions. Development of procurement career stream d. Development of human resources development plan for public procurement. e. Streamlining of workflows and procedures, electronic filing and management of information and communications f. Development of a UOC institutional and an operational model and plans for development to full strength of at least 10 pilot UOCs g. Development of a strategy and implementation plan for a procurement information system and electronic procurement.	MH/UCNT/Civil service Commission and other relevant agencies/ IADB/WB	05/30/03
Implementation of above assignment	Consulting firm/UCNT/MH	06/30/03 to 12/31/03
Establishment and operation of 10 UOC pilots with emphasis on agencies implementing IADB and Bank projects.	Participating agencies/UCNT	01/01/04 to 12/31/04

<b>Tentative Action Plan for Public Procurement Modernization</b>		
<b>Action</b>	<b>Responsibility</b>	<b>Deadline (Indicative Dates)</b>
Training of private sector and government staff on new law and regulation	Participating agencies/UCNT	03/01/03 to 09/30/03
Overall development of UOCs and staff training.	Participating agencies/UCNT	From 01/06/04
<b>3. Procedures</b>		
Development of Operational manuals	UNTNT and Individual consultants/IADB/WB	06/30/03 to 12/31/03
Development of Standard Bidding Documents	UCNT and Individual consultants/IADB/WB	06/30/03/ to 12/31/03
<b>4. Public Procurement Information System</b>		
Development and implementation of web sites at the agency level focusing on UOCS involved in IADB and Bank financed projects	MH/IADB/Bank/UOCs	From 10/01/31
Implementation of National Procurement Information System	MH/ UCNT/UOCs	10/01/03 to 09/30/04
<b>5. Contract Management Modernization</b>		
Draft Terms of Reference for the review of contract management procedures and training. Secure financing.	MH/MOPC/CISNI/WB	12/31/03
Employ consultant for Contract Management	CSIPN/GOP Agencies	03/31/04
Consultant report and recommendations on contract management and training thereon	Consultant	03/06/04
Issue instructions for contract management	MH	30/09/04
Staff training in contract management	CISNI/MH	Continuous

**Paraguay. Country Procurement Assessment Report  
National Integrity Plan  
Public Procurement Workshop, March 22,2002  
Executive Summary**

**Plan Nacional de Integridad (PNI), Adquisiciones y Contrataciones Públicas – *El Taller de Análisis Especializado sobre Adquisiciones Públicas de Paraguay.***

▪ **Antecedentes:** el *Taller de Adquisiciones Públicas* ha formado parte del programa de acompañamiento que el Plan Nacional de Integridad viene haciendo al proceso de elaboración del referido proyecto de ley desde sus primeras versiones hace más de dos años. Esto, debido a que el sistema de adquisiciones públicas es una de las áreas priorizadas del plan luego de habérsela identificado como una de las más vulnerables a la corrupción.

Con la misión precedente citada y el enfoque de trabajo en **alianzas** del PNI, el taller fue organizado en forma conjunta por el Plan y las instancias que de una u otra manera vienen trabajando por el mejoramiento de los procesos de adquisiciones públicas del país: Transparencia Paraguay, el Ministerio de Hacienda y la Secretaría Nacional de la Reforma del Estado con el apoyo del Banco Mundial y el Banco Interamericano de Desarrollo. Por lo tanto, esta actividad se dio en el contexto de lo acordado por el Gobierno de la República del Paraguay con ambos bancos para realizar una evaluación de las adquisiciones públicas en el Paraguay. Así también, constituyó la efectivización del acuerdo de cooperación firmado entre el PNI y los Ministerios referidos hacia el mejoramiento del Sistema Nacional de Adquisiciones.

Las actividades de acompañamiento desarrolladas a la fecha son:

1. Análisis de sensibilización sobre el Proyecto de Ley de Adquisiciones Públicas, en noviembre de 2001.
2. Llenado del Cuestionario de Evaluación de Adquisiciones Públicas<sup>2</sup>, en marzo de 2000.
3. Entrega de los Resultados Preliminares del Taller, el 11 de abril de 2002.
4. Presentación del Proyecto de Ley de Adquisiciones y Arrendamientos con la presencia del Consultor Internacional Sergio Huacuja Betancourt, el 19 de abril de 2002.

▪ **Acciones futuras – Audiencias Públicas**

El proceso seguirá con Audiencias Públicas sobre el Proyecto de Ley en cuestión. Con la promoción de esta modalidad de participación sobre un proyecto de ley, el PNI buscará potenciar las posibilidades de la participación ciudadana en el debate de sus intereses. Asimismo, con esta práctica estaría apuntando al cumplimiento de la *Convención*

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<sup>2</sup> Fuente: Informe de Evaluación de Adquisiciones de los Países. Banco Mundial.

*Interamericana contra la Corrupción*, que la contempla como un mecanismo de participación por excelencia e incluso establece un marco modelo para su realización.

## EL TALLER DE ADQUISICIONES PÚBLICAS. CONTENIDO

Su objetivo, participantes, metodología aplicada, cronología de trabajo y resultados de la evaluación hecha se encuentran in extenso en la página web del PNI: [www.pni.org.py](http://www.pni.org.py) . Se sintetizan los siguientes aspectos:

1. **Objetivo y marco de evaluación:** se buscó poner en común las diferentes perspectivas sectoriales con respecto al *Sistema de Adquisiciones Públicas* de nuestro país.

2. **Participantes:** de los 53 asistentes, 34 personas han iniciado y concluido el trabajo.

3. **Metodología:** primeramente se evaluó individualmente 59 aspectos, que debían responderse con una escala de 1 a 5 (1: nada, 2: poco, 3: regular, 4: adecuado y 5: mucho). Luego, en grupos de trabajo se han definido las fortalezas y debilidades de las respuestas dadas. El abordaje finalizó con una plenaria por cada marco completado.

4. **Resultados y Conclusiones por marco de trabajo y Método de procesamiento de datos y presentación del resumen**

La mayoría de las respuestas cuantitativas arrojaron como resultado “nada” o “poco”. Esta es la razón por la que se optado por presentar los porcentajes más altos obtenidos de la suma de ambos. *Véanse los resultados cuantitativos in extenso en el Informe*. Las principales conclusiones por cada marco de evaluación han sido mayoritariamente sobre las debilidades y son como sigue:

▫ **Marco Jurídico:** evaluó 10 aspectos, entre ellos la legislación vigente: la propia relativa a las compras y las otras que también regulan partes del proceso. La legislación vigente es caracterizada como rígida, dispersa, poco clara, diversificada e inflexible para incorporar técnicas y prácticas innovadoras. Supervisión y control disperso. Igualmente, se remarca la no existencia de una instancia normativa y técnica única y la necesidad de suprimir los registros de proveedores. Por último, que los conflictos generados no se dirimen en el ámbito de la justicia, citándose, entre otras causas, el hecho de que los procesos son muy largos, costosos y sus resultados poco convincentes.

▫ **Marco Institucional:** examinó 15 aspectos relacionados con la estructura, los recursos humanos y el marco financiero.

▫ La delegación de competencias de una instancia superior y otra ejecutora, en la generalidad de los casos, se percibió como diferenciada normativamente, pero ignorada en la práctica por falta de control o falta de manuales de procedimiento adecuados. Se vio que el proceso es burocrático, lento y que diluye la responsabilidad. Se citó que las funciones de compras, inventarios y otras de carácter interno están descoordinadas.

La falta de preparación técnica, el amiguismo y la fidelidad a la autoridad de turno como criterios preponderantes de admisión y de avance profesional han sido considerados como uno de los mayores déficits. Estos aspectos han sido considerados juntamente con los salarios que son por categoría, no por capacidad y que dependen del organismo al que se pertenece. Igualmente, que las prácticas de integridad de las entidades contratantes se restringen a avisos sin control y que las prédicas de los superiores carecen de ejemplo. La no existencia de un código de ética ha sido un punto bastante citado.

En el marco financiero, unos han argumentado que el presupuesto no refleja la realidad recaudadora del estado por ser un instrumento político, que es un flujo estimativo de ingresos y gastos, que se basa en el gasto, no en la utilidad. Otros, que está escrito pero que no se realiza, que la falta de disponibilidad atrasa o da pie al no cumplimiento de los cronogramas de la ejecución de muchos proyectos. Y finalmente, que la normativa que emite el Ministerio de Hacienda es difícil o imposible de cumplir.

▪ Procedimientos de adquisiciones, adjudicación y administración de contratos: este marco examinó 25 aspectos contemplados bajo los ítems: planificación, preparación de documentos, precalificación, publicidad, adjudicación y entrada en vigor de los contratos y administración de contratos.

Los participantes han comentado:

- ✓ Planificación adecuada solo cuando se trata de compras para proyectos internacionales o concursos públicos, no así a nivel institucional.
- ✓ Burocracia, procedimientos engorrosos, lentos, informes numerosos y meramente formales.
- ✓ Uniformidad de documentos solo en los proyectos internacionales, generalmente copiados de otros sin atender el bien o servicio a adquirir, con imprecisión en la definición de alcances de términos de referencias, la utilización de criterios manifiestamente interesados y parcializados.
- ✓ La información financiera proveída por los oferentes es poco veraz.
- ✓ Dificultad para obtener la calificación cuando se presenta por primera vez.
- ✓ No todos los medios desean publicar pedidos de ofertas por falta de pagos del estado, la publicación en medios no muy calificados o en los de “los amigos”. Inecesariamente oneroso. Falta incorporar medios electrónicos.
- ✓ La comisión de apertura de ofertas, integrada por personas no capacitadas o especializadas que priorizan cuestiones de forma.
- ✓ El tratamiento de aclaraciones distrae al personal durante la ejecución de sus otras actividades. Falta de expertos para consultas y proceso interno del recorrido del documento genera burocracia, lentitud y atrasos. El plazo a licitantes para revisión de sus ofertas es corto por la cantidad de documentos solicitados.
- ✓ La adjudicación de contratos sobre el criterio de mayor conveniencia se presta a diversidad de interpretaciones.
- ✓ El seguimiento es solo hasta la suscripción, faltan criterios y mecanismos unificados y en su mayoría no están informatizados
- ✓ Las variaciones contractuales son rápidas si son cuestiones de forma no así las referentes a puntos de fondo.

- ✓ Las entidades públicas no realizan auditoría externa y las internas son muy esporádicas, solo la hace la Contraloría General de la República. Igualmente, la supervisión del suministro de bienes y servicios es inadecuado y falta control.
- ✓ El sector público es muy unilateral en el tratamiento de las reclamaciones contractuales.
- ✓ Los plazos previstos y precio acordado no son generalmente consistentes. El pago a los proveedores y contratistas es impuntual.
- ✓ El mantenimiento de registros ocupa mucho espacio físico y los registros son más formales que de fondo.
- ✓
- Mecanismos de seguimiento y control para prevenir la corrupción: este marco analizó 6 aspectos. Insuficiente divulgación en el proceso de adjudicaciones, generalmente solo en el llamado a licitación y acceso dificultoso a la información, son las percepciones más comunes con respecto a la publicidad de los actos.

Las formas de impedir actos de corrupción, aunque contempladas en los documentos no son tenidas en cuenta. El cumplimiento de las leyes en casos de soborno está muy limitado, difíciles de comprobar, procedimientos judiciales muy costosos. Estos puntos, además, de la falta de defensa a los denunciantes de casos de corrupción, la impunidad como principal estímulo de la corrupción y la falta de rendición de cuenta de los funcionarios públicos. Y por último, la revisión o apelación de los casos judiciales es considerada, en general, un proceso lento, burocrático, costoso y con muchos obstáculos.

Conclusiones y Recomendaciones Finales: son las relativas a la función que los participantes han otorgado al Sistema de Adquisiciones del Paraguay y las recomendaciones más esenciales para su logro.

- La función otorgada a las Adquisiciones Públicas del Paraguay ha sido resumida en 5 grupos legislación, presupuesto, transparencia, procedimientos y recursos humanos. En cuanto a la legislación, además de su cumplimiento estricto, se requiere unificación, claridad y aplicación para todo el sector público con las especificaciones para cada ente. Igualmente, el principio de centralización normativa y descentralización operativa, y buenos manuales de procedimientos.

Referente al presupuesto, han opinado que la planificación debe ser hecha acuerdo a un plan estratégico, económico y social, sincerado en compras y transferencia de fondos, más eficiente y eficaz con el principio de administración de recursos escasos.

En cuanto a la transparencia, han considerado que la adquisición pública debe ser creíble, honesta, transparente con principios de rendición de cuentas, publicidad, libre competencia e igualdad de condiciones para todos.

Los recursos humanos requeridos son aquellos de mayor nivel profesional con integridad, transparencia y probidad de los responsables.

Relativo a los procedimientos, han manifestado que debe reducirse la burocracia, codificarse el sistema administrativo de contratación, integrado y práctico. Debe incorporarse el sistema electrónico de compras gubernamentales.

▪ **Las recomendaciones más críticas para la función del Sistema de Adquisiciones** son agrupadas en legislación, funcionarios, ciudadanía, gobierno, órganos de control.

▪

**Legislación:** nueva ley, clara, unificada, transparente, igualitaria, ágil, creíble, de alcance nacional, desarrollada dentro del marco de una política de Estado, que contemple sanciones para corruptos, centralización normativa y descentralización operativa.

**Ciudadanía,** conciencia, cambio de valores y actitud: más honestidad; más patriotismo; mucha moral y mejores valores de vida, mejor educación incluida la específica relativa a anticorrupción, participación social en el control.

**Gobierno:** despolitización de las instituciones, precio base de bienes y servicios anual del estado. Adquisición de bienes y servicios al precio más bajo, de calidad y de acuerdo con las necesidades reales. Creación de sistemas adecuados de control. Nuevo diseño organizacional compatible con las necesidades actuales. Manual de procedimiento de adquisición, estandarizado, claro y adecuado a las leyes existentes.

**Funcionarios Públicos:** mayor capacitación, conocimientos técnicos y relativos a la ética y moral, valores de honestidad, decencia y buen criterio, jerarquización, mejores salarios, exigencia de un seguro a los administradores.

**Órganos de control, investigación y juzgamiento:** en el combate ejemplar a la impunidad deben aplicar sanciones establecidas en las leyes y un mayor dinamismo de la Contraloría General de la República en el control de los procesos de compra.





**IMAGING**

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