



AUDIT OF
THE PROCUREMENT ACTIVITIES
IN
SELECTED PUBLIC SECTOR ENTITIES
FOR THE PERIOD
JANUARY TO OCTOBER 2015



Transmittal Letter

August 5, 2016

Honourable Chernor Bah,
Deputy Speaker of Parliament,
Sierra Leone House of Parliament,
Tower Hill,
Freetown,
Sierra Leone

Dear Sir:

SUBMISSION OF SPECIAL REPORT ON THE AUDIT OF PROCUREMENT ACTIVITIES IN SELECTED PUBLIC SECTOR ENTITIES

In accordance with Section 66(4) of the Government Budgeting and Accountability Act, 2005, I have the pleasure to submit my special report on the Audit of Procurement Activities in Public Sector Entities.

Yours faithfully,

Lara Taylor-Pearce (Mrs.) FCCA FCA (SL)
Auditor General of Sierra Leone

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Foreword



In recent meetings between myself, senior members of my office and the Public Accounts Committee members they expressed a wish that we bring matters to their attention in a more succinct form and more frequently than my statutory Annual Report permits. That consideration, as well as the critical importance of procurement as a function of government expenditure – it is 70% of the annual total budgeted expenditure – and my often expressed concern with the minimal level of inaction on the recommendations made by my office, give rise to this special report.

By their very nature special reports concern matters of particular significance. For years my office has been reporting an array of issues regarding procurement and seen little evidence of progress in addressing them. We have made recommendations time and time again across the full procurement cycle in many MDAs and other entities. In 2013 we devoted a full chapter in my Annual Report to a government-wide study of procurement. We found it wanting then as we do now.

The present audit went into more detail than that of 2013. This time we selected five major audit entities and examined a sample of 72 major contracts in-depth as well as related procurement control activities. We were able to build on the knowledge acquired in 2013 and use procurement and forensic audit skills acquired from training received by selected staff in South Africa and at customised specialised audit workshops we held at IPAM in 2015. The OECD Baseline Indicator Tool for Public Procurement, used by the World Bank and MoFED in a 2012 study, was used by us and the NPPA in 2013 and now again in the present audit. This time we added an examination through the filter of possible fraud and corruption indicators. The result is not pretty. It is our view that the procurement is in an even more parlous state now than ever before.

Our report is especially timely coming as it does on the heels of the 2016 Anti-Corruption Summit just held in London in May, the proceedings of which have informed our work. The audit findings suggest that while the enabling procurement legislation is part of our rule-of-law regime in Sierra Leone it is close to being ignored in practice at ground level.

There are profound cultural, training and governance issues in need of addressing by the all levels of the public sector. We formulate an approach to this in our recommendations. It amounts to a paradigm shift in governance for public procurement. Nothing less is likely to work.

A handwritten signature in blue ink, which appears to read 'Lara Taylor-Pearce'.

Lara Taylor-Pearce (Mrs.) FCCA FCA (SL)

Auditor General of Sierra Leone

Table of Acronyms

AFROSAI-E	African Organisation of Supreme Audit Institutions - English
AG	Auditor General
ASSL	Audit Service Sierra Leone
CIP	Carriage and Insurance paid
CPO	Chief Procurement Officer
FMR	Financial Management Regulations
GOSL	Government of Sierra Leone
IPAM	Institute of Public Administration and Management
IPRP	Independent Procurement Review Panel
IRR	Interim Rules and Regulations
ISAT	International Security Advisory Team
ISSAI	International Standards of Supreme Audit Institutions
MAFFS	Ministry of Agriculture, Forestry and Food Protection
MDAs	Ministries, Departments and Agencies
MoD	Ministry of Defence
NPPA	National Public Procurement Authority
OECD	Organisation for Economic Cooperation and Development
PFMRP	Public Financial Management Reform Programme
PPA	Public Procurement Act
UNDP	United Nations Development Program
WARDC	Western Area Rural District Council
WB	World Bank

Executive Summary

What we examined

We conducted audits of procurement activities and a selection of specific contracts in five audit entities. The entities chosen were the ministries of Defence, Education, Agriculture, Sierra Leone Police and Western Area Rural District Council (WARDC) covering the period 1st January to 31st October, 2015. The primary legal basis for conducting the audits is set out in many laws and regulations. The Constitution of Sierra Leone, Section 119(2), the Audit Service Act, Section 11(2)(b) and the Government Budgeting and Accountability Act, 2005, Section 66(4) collectively provide legal framework for ASSL to conduct this audit as well as the Public Procurement Act and Regulations, the Anti-Corruption Act 2008 and the Government Budgeting and Accountability Act, 2005.

Why it is important

The integrity of public procurement is a critical element of the rule of law and sound public financial management in any country. Sierra Leone is no exception.

Procurement is by far the largest non-payroll expenditure of the government. By reputation among citizens it is thought to be a major source for fraud and corrupt practices and goes towards our placing in the top quartile of Transparency International's Corruption Perceptions Index placing us at 119th out of 168 countries.

The entities selected for audit are also important. They are considered to be very significant both in terms of the nature of their activities and the size of their annual budgeted expenditure. Their total actual expenditure (excluding salaries and wages) for 2015 was Le427.4 billion, representing approximately 24.2% of national expenditure.

Previous audit work on procurement reported as Chapter 5 of our 2013 Annual Report concluded that:

“... the legislative framework for the conduct of public procurement in Sierra Leone has been reasonably well crafted but its implementation in MDAs and other entities is incomplete. It has not yet gained traction with the result that value-for-money is not being achieved.”

In view of all these matters it seemed both timely and appropriate to see if things had improved especially at the operational level. To do this we choose a representative sample of 72 procurement contracts for examination.

The Procurement Regime

In Sierra Leone procurement at all levels of government is decentralised to the procuring entities but subject to monitoring by the National Public Procurement Authority (NPPA), a regulatory body with oversight responsibilities in public procurement matters. Development of the current procurement regime stems from the activities of a tender board established in 2002 to oversee public procurement activities and has evolved into the comprehensive Public Procurement Act, 2006.

As if to emphasise the degree of decentralised responsibility to the MDA and municipal level, PPA, Section 19(1) specifies that, in addition to establishing a procurement committee, a procurement unit shall be established in each procuring entity, “... *with adequate staffing and resources* ...”, including persons trained and knowledgeable in procurement and charged with carrying out, on an ongoing basis, functions related to procurement. PPA Section 19(1) sets out procurement unit functions – see Table 2 below.

Table 2 - PPA Section 19(1) Procurement Unit Functions	
<ul style="list-style-type: none"> ▪ Planning and Preparation of bid documents 	<ul style="list-style-type: none"> ▪ Managing advisers to evaluate bids
<ul style="list-style-type: none"> ▪ Publication and Distribution of invitations to bid 	<ul style="list-style-type: none"> ▪ Performance of secretarial services
<ul style="list-style-type: none"> ▪ Receiving and safeguarding bids 	<ul style="list-style-type: none"> ▪ Administering the implementation and monitoring of contracts
<ul style="list-style-type: none"> ▪ Conducting bid opening procedures 	<ul style="list-style-type: none"> ▪ Profiling of all suppliers, contractors and consultants
<ul style="list-style-type: none"> ▪ Evaluation of bids 	<ul style="list-style-type: none"> ▪ Maintenance of a supplier database
<ul style="list-style-type: none"> ▪ Management of technical evaluation committees 	<ul style="list-style-type: none"> ▪ Any other function as conferred

In short, the MDA procurement unit conducts the full procurement cycle as well as administrative functions.

Our audit objectives and criteria

The objective of the audit was to determine, for the period 1st January to October 31st 2015, the nature and extent of compliance with the Public Procurement Act, 2004 and the Public Procurement Regulations 2006, was to reach an informed view on whether procurement practices and procedures are likely free from incidence of fraud and corruption.

On the question of fraud and corruption as auditors we are guided by ISSAI 1240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*, which makes it clear that there is no expectation that the auditor is *responsible* for detecting fraud. That responsibility, along with the prevention, rests with management. However, like all citizens we do have a responsibility to report instances or *possible* instances of fraud to competent authorities set down in the Anti-Corruption Act, 2008, Section 77(1).

Audit criteria are objective measures against which we filter our findings. In this instance they are what we might reasonably expect to find in well-functioning procurement systems and procedures. The audit criteria were largely derived from the PPA and its associated Regulations, the *NPPA Public Procurement Manual* and generally accepted standards of good practice in public procurement from international sources.

Our approach and methodology in reaching conclusions

This audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAI). These standards require that in conducting our work we perform a risk assessment to focus resources on the areas of greatest audit risk.

We used the OECD Baseline Indicator Tool (BLI) to form a view on procurement in GoSL in our 2013 Annual Report, Chapter 5. This time we updated our views using the same tool.

We also mapped our findings against globally recognized red flags for the possible presence of instances of corruption and fraud. The indicators are summarized in *Appendix 2, Procurement Fraud Indicators*, which were derived from US Department of Defense and other sources.

In addition, using various data sources, published academic research and media reports we consider the state of procurement controls and outcomes in Sierra Leone compared to the other jurisdictions.

Individual management letters, sent to each audited entity, contain detailed recommendations which we hope will be acted upon. The present document does not repeat those specific recommendations. Rather it focuses on more global conclusions with respect to the state of procurement compliance at the operational level in MDAs and WARDC.

What we found

Overall findings

Based on the findings from the examination of procurement contracts and taking account of procurement observations reported in MLs and our Annual Report for 2014 it is our considered judgement there has been a deterioration in the quality of compliance with the Procurement Act and Regulations since we reviewed it in 2013.

Our overall scoring using the OECD Baseline Indicator tool showed a score of 1.4 on the 4.0 scale (versus 1.8 in 2013) a deterioration of 22%. With the exception Pillars I (Legislative and Regulatory Framework) all remaining pillars scored lower.

Based on our findings we have to conclude that the Act and Regulations are in effect being ignored or, where considered were done in a very passive “tick-the-box” manner that disregards the intent and spirit of the law.

We found red flags for the possible presence of fraud and corruption in the entities examined. Fraud indicators are not conclusive but merely indicative of an urgent need to conduct forensic investigation.

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... we have to conclude that the ACT and Regulations are in effect being ignored

There are appallingly poor internal controls such as: inadequate segregation of duties, poorly trained procurement staff, weak record-keeping to mention a few. When internal controls are weak there is an open door for things to go wrong either through error, carelessness or deliberate illegal acts made easier by the poor control environment.

The collective responsibility of procurement committees and individual civil servants serving on them is not being exercised with due regard to either the PPA, its regulations or the GBAA.

Among the red flag indicators, we encountered were:

- restrictive bid criteria
- unfair application of criteria
- excessive price variations
- apparent unreasonable ignoring of the lowest bidder
- excessive use of restricted bidding/sole source
- incomplete and/or unavailable documentation
- ignoring independent technical advice
- poor needs assessments
- specifications tailored towards a predetermine provider/supplier
- permitting unexplained ‘contingencies’
- ignoring some selection criteria (e.g. prior experience and equipment)
- non-submission of bid documents or erosion of audit trail
- financial guarantees/bonds misdated
- failure to obtain certificates/licenses

However, and this is important, the mere presence of a fraud indicator does not mean *ipso facto* that fraud or corruption has occurred.

Summary of Finding by Audit Entity

The following findings and observations, drawn from later sections in this report, is summarised from individual management letters arising from the audits conducted in each entity. The letters were provided to the management of each entity who responded with comments where, in their view, it was considered appropriate.

Official's Responses have been included in the detailed report that follows together with the Auditor's Comment. However, for the most part it is the auditor's view that these sometimes lengthy official comments are largely non-responsive to the audit findings raised.

Ministry of Defence

We found overpricing costing the citizens over \$12.5 million as well as possible mis-procurement in construction contracts. There was a failure to provide documents for audit to support compliance with the Solicitor General's advice that a contract for the supply of arms and ammunition in the amount of \$45.9 million had a performance bond in place throughout the contract period.

Ministry of Education, Science and Technology

We found excessive and inappropriate use of restricted bidding practices in the acquisition of teaching and learning materials; as well as similar practices for the construction of water well/hand pumps. For two out of eight school supply contracts there was no evidence of delivery.

Ministry of Agriculture, Forestry and Food Security

There was clear evidence of using only particular suppliers for fertiliser contracts valued at over \$2.1 million. In addition, irregular prices resulted in unnecessary expenditure of at least \$774,000. Similar irregularities in the acquisition of cashew seedlings were found. We also found errors in the manner in which consulting services were contracted resulting the potential misuse of government funds.

Sierra Leone Police Department

We noted the inappropriate use of sole source method for Kenwood batteries amounting to Le 569 million. There were also breaches of regulations in the extension of contracts for consulting services amounting to Le 247 million. In addition, no documentary evidence was provided to explain why 100 stun guns valued at \$88,000 remain undelivered yet another 100 stun guns were acquired for \$5,750 but appeared unfit for purpose.

Western Area Rural District Council

We found irregularities in both the selection and disqualification processes used to award a series of public works contracts amounting in the aggregate to over Le700 million. We found contracts awarded to suppliers who neither had a license nor provided proof of having the equipment to carry out the work.

Recommendations

Change in institutional culture is required

Tweaking at the edges is unlikely to achieve very much and the old mantra of nothing can be changed has to be defeated. This requires the willpower of all involved in the governance system to bring about social change making honesty, integrity and serving the public good more socially desirable.

Mobilise allies internally and externally

Deepen, strengthen and build a partnership with civil society including the professions and anti-corruption activists. A social contract needs to be created between public sector leaders, competent legal authorities, the media, professions and citizens.

Civil society engagement needs to be planned and strategic using print, electronic and modern social media channels to create an informed citizenry reactive to the desired shift in societal and institutional values.

Reform systems

Corruption occurs in clusters. Despite possibly being systemic and endemic in Sierra Leone some areas are likely better than others. In initiating reforms there needs to be a problem definition phase where the landscape of corruption is mapped to identify the worst offenders and where reform resources will focus. Reform is built from the inside out by addressing both the clusters, where it is most present, and the accountability agents charged with its control and eradication. Accountability agents include MoFED, internal audit throughout the MDAs and parastatals, NPPA, the Anti-Corruption Commission, the judiciary and, yes, Audit Service Sierra Leone. There will be no single one-solution-fits-all approach to the agents of accountability. Each will have to be addressed separately according to its need.

Top-level oversight

In addition, there is a need for top-level oversight of all major contracts to create a coordinated accountability regime combined with excellent technical expertise. Whether this is given to the NPPA or better still created separately in a bespoke body with its representatives from parliament, civil society and the executive is a policy matter outside our remit.

ICT driven electronic procurement

Few areas respond to the use of information technology as well as procurement. Generally referred to as “e-procurement”, many countries can provide excellent examples where web-based technology is used throughout the full procurement cycle. With the improving ICT infrastructure in Sierra Leone such solutions are almost within reach.

Training procurement officers – a massive effort is required

The procurement officer cadre in the civil service has never enjoyed the resourcing and training it needs to be effective. As a matter of national priority education and training needs to be taken up on a massive scale. The savings to be accrued from effective, economic and efficient procurement are enormous as on an annual basis it represents 70% of budgeted expenditure.

Develop competent well-functioning internal audit

ASSL has repeatedly emphasised the weakness of internal audit throughout GoSL. Strengthening it so that internal audits of expenditure in general, as well as procurement in particular would represent a giant step forward in improving systems of internal control.

Adequately resource the NPPA – especially its M&E division

The NPPA needs to be given more resources. An important part of this enhancement would be to adequately fund and train its Monitoring and Evaluation (M&E) division to enable evaluation of contracts throughout the country.

Measure performance

All ministerial performance contracts could include performance expectations for each functional and/or oversight body with any responsibility for procurement.

Incentivise procurement staff

Procurement is a profession, needs to be well remunerated with promotion and other movement within the cadre treated as an exemplary meritocracy. Paying and treating people well is recognised by HR professionals as a tried and tested mechanism for improving performance and reducing incentives for malfeasance.

A Closing Word

In summary, the reform model proposed in this report contains the following elements:

- strong signals that change, including cultural change, is at hand;
- increased engagement with very broadly defined civil society;
- managerial reform and training throughout the system at all levels; and
- adoption of modern e-procurement.

The citizens of Sierra Leone deserve to be served better on the procurement front than they have been these many years. This report is our considered professional view on what needs to be done with the greatest urgency. We respectfully recommend it to you.

Introduction

The Legal and Regulatory Framework for the Audit

The primary legal basis for the audit of procurement activities in the ministries of Defence, Education, Agriculture, Work, Sierra Leone Police and Western Area Rural District Council (WARDC) for the period 1st January to 31st October, 2015 is set out in a number of laws and regulations.

The Constitution of Sierra Leone, Section 119(2), the Audit Service Act, Section 11(2)(b) and the Government Budgeting and Accountability Act, 2005, Section 66(4) collectively provide legal framework for ASSL to conduct this audit as well as the Public Procurement Act 2008 and Regulations, Anti-Corruption Act 2008. The Financial Management Regulations (FMR) provide operational level rules for MDAs and other public sector entities.

The Public Procurement Regulations 2006 provides specific and detailed rules for the structure and operations of Ministries, Departments and Agencies (MDAs) for procurement activities.

More specifically, Section 119(2) of the Constitution mandates the Auditor General (AG) to audit and report on the activities of all public offices, including the courts, the accounts of central and local government administrations, universities, public institutions of like nature, any statutory corporation, company, other body or organization established by an Act of Parliament or statutory instrument or otherwise set up partly or wholly out of Public Funds.

Table 1 – Comparative Size of Entities Audited						
Ministry	Staff Levels			Total Actual Expenditure (Le Billion)		
	2013 ¹	2014	2015	2013	2014	2015
MAFFS	See note 1 below	2,018	1,885	23.5	36.2	41.4
Defence		8,048	7,780	67.3	129.3	86.8
Education, Science and Technology ²		35,425	35,306	146.5	98.7	170.0
Sierra Leone Police		12,371	11,894	66.45	75.4	92.8
WARDC		13	12	90.6	27.6	36.4
Sample Total		57,875	56,877	394.5	367.2	427.4
Total				1,133	1,361	1,765
% of State Expenditure				34.8%	26.9%	24.2%

Entities selected for audit

The selected MDAs are considered to be very significant both in terms of the nature of their activities and the size of their annual budgeted expenditure. Total actual expenditure (excluding salaries and wages) for 2015 as shown in Table 1 – Comparative Size, was Le 427.4 billion thus emphasising their relative significance as they represent approximately 24.2% of national expenditure

The 2013 Annual Report of the Auditor General contained a government-wide study of procurement³ which, among other things, concluded overall

¹ The data for 2013 headcount is not available. We were informed that the Accountant General but rather it was with the IT department of MoFED. ICT have not responded to our request for information.

² Education numbers include teachers (2014 - 35,107 and 2015 – 35,037)

³ *Procurement: A Government-wide Study 2010-2013*, Annual Report, Chapter 5

that:

“... the legislative framework for the conduct of public procurement in Sierra Leone has been reasonably well crafted but its implementation in MDAs and other entities is incomplete. It has not yet gained traction with the result that value for money is not being achieved.”

In view of this it seemed both timely and appropriate to see if matters had improved at the field level. To do this a representative sample of 72 procurement contracts in major audit entities was examined. We were also motivated because selected staff had, in April 2015, attended a forensic audit workshop organized by AFROSAI-E in South Africa as well as other donor-funded expert-led specialised audit training at IPAM. It was an opportunity to apply lessons learned.

Procurement in Sierra Leone

In Sierra Leone procurement at all levels of government is decentralised to the procuring entities but subject to monitoring by the National Public Procurement Authority (NPPA), a regulatory body with oversight responsibilities in public procurement matters. Development of the current procurement regime stems from the activities of a tender board established in 2002 to oversee public procurement activities.

Good public procurement systems contribute to the fight against fraud and corruption and improve governance while introducing efficiency and transparency into public financial management. Recognising this, as well as the widespread public perception of corrupt practices and inefficiencies, the government, in consultation with its development partners, proceeded to develop our system to enable the public to place trust and confidence in public procurement.

It is against this background that in December 2002, the Government of Sierra Leone, with the assistance of the United Nations Development Programme (UNDP) and World Bank (WB), launched a two-phased reform programme.

The first phase of this programme focused on key aspects of procurement management and an overhaul of the existing regulatory framework.

The second phase followed the enactment by Parliament of the Public Procurement Bill and its signing into law on 7th December 2004. This phase dealt with the implementation of the new procurement law, the new institutional structure, capacity development and improving the procurement processes and tools. The National Public Procurement Authority (NPPA) was established as a regulatory body with oversight responsibilities in public procurement. The NPPA is responsible for the overall regulation, monitoring and development of procurement policies, practices, procedures, as well as development. It comprises a Governing Board approved by Parliament, and an Executive Secretariat headed by the Chief Executive.

Independent Procurement Review Panel

In addition, the Independent Procurement Review Panel (IPRP) was established as a complaints handling body by Section 20 of the same Act. The IPRP, though supported by the Executive Secretariat of the NPPA, is intended to be an independent body with administrative review functions that adjudicates procurement complaints from aggrieved bidders as well as the general public. Members of the IPRP are appointed by the Minister of Finance.

NPPA governance

The NPPA is governed by a Board of Directors appointed by the President. The members of the Board are persons of high probity, charged with the responsibility of providing such policy guidance and advice that will secure the efficient implementation of the functions of the Authority and enhance the overall performance of the Authority.

Organisation of Procurement in Procuring Entities

The PPA 2004 is highly prescriptive as to the responsibilities and organisation of procuring entities such as MDAs.

Spending money and using trained and qualified persons' rests with procuring entity (the MDA) whereas NPPA merely sets the norms for qualification and training. Thus, there is clear separation of regulatory authority and actual operations; which is as it should be, NPPA is arms-length from the procuring entities.

The law under Section 18(1) also requires that a procurement committee be established "... *by the head of the procuring entity* ..." and goes on under Section 18(2) through (13) to provide *inter alia* for creating procurement units, delegation of authority as well as detailing its composition to include vote controllers (as chair), the head of finance, the head of the procurement unit, an end-user representative, someone with legal or business skills and one other senior official. It sets out in clear and considerable detail the duties of the committee.

As if to emphasise the degree of responsibility for the MDA, Section 19(1) specifies that, in addition to the committee, a procurement unit shall be established in each procuring entity, "... *with adequate staffing and resources* ...", including persons trained and knowledgeable in procurement and charged with carrying out functions related to procurement. PPA Section 19(1) sets out procurement unit functions – see Table 2 below.

Table 2 - PPA Section 19(1) Procurement Unit Functions	
▪ Planning and Preparation of bid documents	▪ Managing advisers to evaluate bids
▪ Publication and Distribution of invitations to bid	▪ Performance of secretarial services
▪ Receiving and safeguarding bids	▪ Administering the implementation and monitoring of contracts
▪ Conducting bid opening procedures	▪ Profiling of all suppliers, contractors and consultants
▪ Evaluation of bids	▪ Maintenance of a supplier database
▪ Management of technical evaluation committees	▪ Any other function as conferred

In short, the MDA procurement unit conducts the full procurement cycle as well as administrative functions.

Appointment of staff to procurement units is subject to certification and approval requirements that may be instituted by the NPPA and may be linked to continuing professional education requirements. Here again focus is on the NPPA as the regulatory authority.

Auditors Responsibility in Relation to Fraud

The role and responsibility of the auditor in relation to fraud and corruption is addressed by professional standard ISSAI 1240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*, paragraph 5 states:

"An auditor conducting an audit in accordance with ISAs is responsible for obtaining reasonable assurance that the financial statements taken as a whole are free from material misstatement, whether caused by fraud or error. *Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial statements may not be detected (emphasis added)*, even though the audit is properly planned and performed in accordance with the ISAs."

Thus the standard makes it clear that there is no absolute expectation that the auditor is *responsible* for detecting fraud.

With respect to reporting possible transgressions that may be found, the Anti-Corruption Act 2008 of Sierra Leone in Section 77(1) states:

“Where a public officer suspects that an act constituting an offence under Part IV has been committed or is about to be committed within or in relation to a public body, he shall forthwith make a written report to the Commission.”

Clearly the latter applies not just to auditors but to public officers including civil servants at all levels as well as to senior management and anyone charged with aspects of institutional governance by virtue of board membership or being a commissioner.

A critical distinction needs must be drawn between prevention, detection and reporting of fraud and where responsibility lies in these areas.

Within an entity prevention of fraud is the responsibility of all employees and especially management. The latter has the duty to assess areas of risk, to implement systems of internal control, to manage business risks and processes in an efficient, economical manner and, through these, to minimise the likelihood of fraud. The prevention and detection of fraud therefore is the responsibility of management, not external auditors.

Notwithstanding the foregoing, there is a widely held view that an auditor's duties include an obligation to detect fraud. This is not the view of the auditing profession and is referred to in the literature as the “auditor expectation gap”⁴.

In summary, external audit procedures are primarily designed to evaluate compliance with laws, accounting rules, together with the reporting and disclosure of results. In designing an audit procedure, the professional auditor conducts a risk assessment, gains an understanding of the business affairs and processes of the entity and focuses the limited audit resources on areas of the highest audit risk. Tests of sampled transaction are made to obtain a reasonable level of audit assurance for the areas and transactions under review. The primary objective of audit procedures then is to permit rendering an opinion, based on a reasonable level of assurance, on financial statements or on legal compliance for a defined population of transactions. Detection of fraud may occur but it is at best a secondary objective.

Audit Criteria – What We Expected to Find

The audit criteria were largely derived from the Public Procurement Act 2004 and its associated Regulations, the *NPPA Public Procurement Manual* and generally accepted standards of good practice in public procurement from international sources⁵. We therefore expected to find the following:

- the requirements of the NPPA and its associated Regulations are respected;
- consistent application of the provisions and procedures of the NPPA Manual throughout MDAs to achieve improved efficiency, transparency, uniformity of documents and decisions, and reduced costs of procurement for the Government⁶;
- procurement plans with analysis of different options for projects, with competition and transparency being the norm;

⁴ The expectation gap is defined as the “difference between what users expect from the auditor and the financial statement audit, and the reality of what an audit is”. – AICPA, IAASB consultation paper 2011.

⁵ Derived from *OECD Principles for Integrity in Public Procurement* (2009) and *Principles and Practices of Public Procurement* (2013), the latter published under a partnership between *The Institute for Public Procurement* and the *Chartered Institute for Purchasing and Supply*. We also reviewed the 2007 European Union publication *Guide on Dealing with Innovative Solutions in Public Procurement: 10 Elements of Good Practice*.

⁶ NPPA Public Procurement Manual, page 9

- well-formulated risk management policies and evidence of risk analysis of the internal and external environment using an accepted structured methodological approach;
- monitoring of overall supplier compliance and evaluation against the terms and conditions of the procurement contract; and
- corrective action taken for issues identified in external and internal audit reports and monitoring and evaluation reports as needed.

We viewed these criteria as a minimum expectation based on the governing legislation, regulations, good practice and applied common sense.

Audit Scope, Methodology and Approach

Scope

The scope of the audit covered the period 1st January to 31st October 2015. It focused on the procurement activities in each of the selected audit entities.

Objectives

The objective of the audits was to determine the nature and extent of compliance with the Public Procurement Act, 2004 and the Public Procurement Regulation 2006, and to reach an informed view on whether procurement practices and procedures are likely free from incidence of fraud and corruption.

Audit Approach

This audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAI). These standards require that in conducting our work we perform a risk assessment to focus resources on the areas of greatest audit risk. During these engagements we:

- held discussions with key members of the audit entity staff;
- reviewed key documents;
- tested key controls; and
- performed tests of procurement activities on a sample basis.

Findings and Observations

The following findings and observations are derived from individual management letters arising from the audits conducted in each entity. The letters were provided to the management of each entity who responded with comments where, in their view, it was considered appropriate. Under Section 64(3) of the Government Budgeting and Accountability Act, 2005 which is produced hereunder.

“Every query or observation under subsection (2) received by the Accountant General or any other person shall, within 30 days after its receipt by that person, be returned by him with the necessary reply to the Auditor General”.

Where an observation made in the management letter is mentioned in this report we have, in the interest of balanced reporting, reproduced that response made under GBAA Section 64(3) and given our view on its responsiveness to the matter raised.

Ministry of Defence

The following is a summary of issues highlighted in our separate management letter to the Ministry.

Procurement of “G1098” stores items – overpricing

As a guiding principle for the evaluation of bids, market surveys are normally carried out to enable a reserve price to be set, which then serves as a benchmark to compare with bid prices submitted by potential suppliers. The International Security Advisory Team (ISAT) and the MOD Military Adviser provided an estimated cost of \$3,584,460 and \$3,906,473, respectively. Both including a profit margin of 20%, and intended to serve as benchmark prices. Based on the procurement committee minutes, the advice given by both advisors was ignored and the Ministry selected Sentano General Supplies at \$16,442,822 which resulted in an overpricing of \$12,536,349.

The procurement process was skewed to deliberately allow for incurring additional costs, thereby preventing transparent, competitive, economical and cost effective procurement. In short, Ministry officials cost the public purse an unnecessary \$12.5 million at a time when the government is desperately seeking cash to meet its basic obligations to the citizens of Sierra Leone.

Residence rehabilitation and guest house construction - irregularities

Included in the total contract sums for the rehabilitation of Hill Cut military residence and the construction of a guest house were contingencies of Le94,114,630 and Le272,866,820 respectively. The contracts were fixed price and the procurement documents contained no clause defining which events might give rise to a ‘contingency’. It would appear that the ‘contingencies’ were included merely to increase the government’s cost in delivering such projects.

An award letter, dated 30th September 2015, was issued to Franko General Merchandise for this rehabilitation work. However, the contract bid security expired on 17th November 2015, before the contract was signed and in force.

The procurement document criteria for the construction of the guest house required the submission of a Freetown City Council certificate. This requirement unfairly deterred international firms submitting bids as the document could only be provided by national companies.

A bid criterion for the guest house contract was inconsistently applied to bidders. The lowest competitive bidder, Yorma Enterprises, was disqualified for failure to submit the Freetown City Council Certificate. However, the contract was awarded to Samgus Investment who also did not submit the certificate. The Yorma Enterprise’s bid price was Le2,882,086,375 lower than that of Samgus by Le122,110,617 and ‘contingencies’ of Le272,866,820 were included in the contract price.

Award of lubricants contract

It was observed that the most responsive bidder in the National Competitive Bidding process for the procurement of lubricants was not awarded the contract as the procurement process was abandoned. Rather, procurement of a smaller quantity was done from another supplier for Le325,100,000 without any compliance to the PPA and Regulations.

Solicitor General contract review and advice

As part of the procurement process, draft contract agreements are to be submitted to the Solicitor-General for vetting and advice. In respect of a contract for the supply of arms and ammunition in the amount of \$45,898,250 the Solicitor-General advised that "... the Performance Bond to be provided by the contractor should have a validity period covering the entire contract period". However, we were

unable to determine whether the advice was heeded, as the performance bond was not provided for audit examination.

Official's Response received too late for consideration

The Ministry's response pursuant to Section 64(3) of the Government Budgeting and Accountability Act, 2005 was not received within the thirty (30) days permitted by law and consequently was too late for consideration in finalising the management letter.

Ministry of Education, Science and Technology

Excessive use of restricted bidding

The restricted bidding method was used for the award of 27 contracts, totaling Le14.6 billion, for the construction of 496 water-well hand-pumps across the country. Eight contracts for teaching and learning materials, totaling Le26.1 billion were awarded. With respect to the timing and use of restricted bidding for these items the procurement committee minutes of 20th February 2015 said the following:

For the water well pumps:

- (i) “the construction of safe protected water well/hand pumps and toilets are best done in the month of March/April;
- (ii) they are of the case of extreme urgency with presidential pronouncement of the reopening of schools in March 2015.

For the teaching and learning materials:

- (iii) the time and cost of considering a large number of bids for the teaching and learning materials is disproportionate to the estimated value of the procurement; and
- (iv) the prescribed teaching and learning materials are only available from a limited number of bidders.”

These conditions were not met as the contracts were awarded and executed far beyond the anticipated dates.

- The contracts for the construction of hand-dug wells were signed in August, 2015 with a start date of January 2016 (9 months after the reopening of schools).
- The contracts for the supply of teaching and learning materials were signed in July 2015 more than four months after the decision was reached to use restricted bidding.

As at the time of writing this report, with respect to the water wells, there was no evidence that the work had been completed even though the completion date was set for March, 2016.

With respect to the contracts for teaching and learning materials eight separate contracts were signed more than four months after the procurement committee decision to use restricted bidding.

Official's Response

Request to use restricted bidding method was a unanimous decision by the Procurement Committee for the supply of Teaching and Learning Materials. The decision was adopted on the 20th February, 2015. A request for a “no objection” to use restricted bidding was made to NPPA on 23rd February, 2015 and a response was received on the 27th February, 2015.

The use of restricted bidding procedure does not imply the immediate award of contract or signing of contract. Section 42(3) of the Public Procurement Act 2004 requires entities to follow the bidding procedures set forth in Part V. After receiving the “no objection” from NPPA the Procurement Officer in the Ministry of Education was requested to put the bidding documents together in May and the draft bidding document submitted to the Procurement Committee for vetting on the 6th May, 2015. The necessary corrections were effected in

the bidding documents and the finalized bidding documents were issued out to shortlisted bidders on the 8th May, 2015 to guide them in the preparation of their respective bids. Bids were opened on the 13th May, 2015. Evaluation of bids started on 14th May, 2015 and it ended on the 25th May, 2015.

Request to vet the evaluation report was sent to NPPA on the 26th May, 2015 and a response was received on the 9th June, 2015. A request was made to the Solicitor General on the 27th May, 2015 for their legal opinion on the content of the draft documents by attaching a copy of the evaluation response from NPPA together with the draft contract document, a response was received on 5th June, 2015.

Referencing Section 30(1) of the GBAA, 2005 a request was made on 1st June, 2015 to the Financial Secretary seeking for financial clearance to award contracts to the successful bidders. Response to award the contracts dated 5th August, 2015 was received on the 7th August, 2015. Financial clearance was received three months after the request was made by MEST. The final contract documents were compiled and submitted on the 14th August, 2015 for signing by the various parties.

Auditor's Comment:

The comments are non-responsive and the audit observations therefore remains unresolved. The responses do not address the issues raised in the report. It is also worth noting that performance bonds for 18 out of 27 contracts awarded for the construction of hand dug wells had expired. Also, even NPPA in their support for a no objection for the use of restricted bidding, made it emphatically clear that they would only endeavour to support the use of this method if the process were completed within a period of three weeks.

Verification of supplier addresses and delivery

Perhaps of even greater concern the NPPA had indicated in writing to the Ministry that in attempting verification of the addresses of Namisa Enterprise and Two Boy Enterprise the companies could not be located. Despite this the Ministry went ahead and awarded contracts to supply exercise books for Le4,272,110,967 and for pens and pencils for Le770,904,000 to Namisa Enterprise and Two Boy Enterprise, respectively. Evidence of delivery was submitted for only 3 out of the 8 learning and teaching material contracts.

Official's Response

Request to use restricted bidding method was a unanimous decision by the Procurement Committee for the supply of Teaching and Learning Materials. The decision was adopted on the 20th February, 2015. A request for "a no objection" to use restricted bidding was made to NPPA on 23rd February, 2015 and a response was received on the 27th February, 2015.

The use of restricted bidding procedure does not imply the immediate award of contract or signing of contract. Section 42(2) of the Public Procurement Act 2004 requires entities to follow the bidding procedures set forth in Part V. After receiving the "no objection" from NPPA, bidding documents for the eight lots were developed and draft submitted to the Procurement Committee for vetting on the 18th March, 2015. The necessary corrections were effected in the bidding documents and the finalized bidding documents were issued out to shortlisted bidders on the 20th March, 2015 to guide them in the preparation of their respective bids. Bids were opened on the 26th March, 2015. Evaluation of bids stated n 30th March, 2015 and it ended on the 6th April, 2015.

Request to vet the evaluation report was sent to NPPA on the 8th April, 2015 and a response was received on the 17th April, 2015. A request was made to the Solicitor General on the 24th April, 2015 for their legal opinion on the content of the draft contract document and a copy of the evaluation response from NPPA was attached to the draft contract document for ease of reference. A response dated 7th May, 2015 was collected in the 26th May, 2015. Referencing Section 30(1) of the GBAA, 2005 a request was made on 1st June, 2015 to the Financial Secretary seeking for financial clearance to award contracts to the successful bidders. Response to award the contracts dated 30th June 2015 was received on the 1st July, 2015. The final contract documents were compiled and submitted on the 13th July, 2015 for signing by the various parties. Worthy to note is the fact that Saturday's and Documentary evidences are attached for ease of reference.

Deliveries. Out of the remaining five contractors, three of them (Eddie K. Enterprise, Namisa Enterprise and Twoboy Enterprise) have delivered their supplies to the 19 local Councils. For ease of reference, photocopies of deliveries for three contractors are enclosed. The remaining two contractors (Royal International and West Stars) were not allowed to deliver their supplies because of misspecification (use of wrong inscription on the cover page.)

Auditor's Comment

The comments are non-responsive and the audit observations therefore remains unresolved.

Management's responses are noted. The responses however do not address the issues raised in the report. This is further enhanced by the fact that even NPPA in their support for a no objection for the use of restricted bidding made it emphatically clear that they would only endeavour to support the use of this method if the process were completed within a period of three weeks. The Ministry however took more than four months before the contracts were awarded.

Evidence of deliveries of teaching and learning materials to the various local councils for 3 out of the 5 remaining suppliers were submitted and verified. The issue is partially resolved.

Ministry of Agriculture, Forestry and Food Security

Procurement procedures were not fully adhered to. We have serious reservation regarding the manner in which procurement procedures were executed. The following is a summary of issues highlighted in a separate management letter to the Ministry.

Irregularities in the acquisition of fertiliser

Amended prices and quantities.

Royal International was awarded the contract at a price of \$2,142,000 but the quantity was reduced from 21,000 bags to 18,000 bags in order to maintain it as the supplier.

The contract price of Royal International was adjusted upward by 33%. However, it was stated in the evaluation report that "... there were no errors found in any of the bids".

Had the ministry placed value-for-money at the centre of its decision-making process and considered Premier Logistic, a net Le 3.0 billion of public funds would have been saved – see *Table 3, Calculation of Potential Savings*.

Table 3 - Calculation of Potential Saving	
The estimated potential savings are determined as follows:	
Budget as per Procurement Plan	Le 11,032 Billion
Premier Logistic Price for 21,000 bags	<u>Le 10,276 Billion</u>
	<u>Le 756 Billion</u>
Royal International Price for 18,000 bags	\$2,142,000
Premier Logistic price for 18,000 bags	<u>1,706,400</u>
	<u>\$ 435,600</u>
	<u>Le 3.0 Billion</u>
MAFFs budgeted Le 11.03 Billion for the purchase of 21,000 bags of fertilizer as stated in its procurement plan. Had the ministry awarded the contract to Premier Logistic at a price of Le 10.28 Billion, a potential saving of Le 756 Million could have been made. In addition, it could have cost the ministry \$1,706,400 to purchase 18,000 bags of fertiliser from Premier Logistic. When compared to \$2,142,000 cost incurred buying 18,000 from Royal International, it could have led to an additional saving of \$435,600 (\$2,142,000 – 1,706,000) equivalent to Le 2.25Billion. Total Potential Savings: Le 756,000,000 + Le 2,247,000,000 = Le 3,003,000,000.	

Unfair Criteria. Some terms and conditions were unfair and seem to favour selection of a pre-determined supplier. The value of the fertiliser contracts was \$2,142,000.

For example, one of the terms and conditions imposed the need for three years of consecutive experience for the supply of fertilisers. Premier Logistic had bid \$1,992,000 and bid security as Royal International (RI). Royal, who had made an initial bid of \$1,890,000, (which was 'adjusted' by 33% to \$2,523,000) for the supply of 21,000 bags. The Premier Logistics bid was deemed non-compliant with the three years' experience criterion and ignored. However, from the 2010 and 2011 expense analysis it appears that the Ministry had previously engaged the services of Premier Logistics for the delivery of fertiliser; so the notion of inexperience should not have prevailed.

Official's Response

Criteria

The criteria for the three years' experience for the supply of fertilizer and other similar high value procurement was set by the Procurement Committee following the experience the Ministry had with Zaina Business Enterprise in 2010 wherein the bidder having quoted a low price for the supply and delivery of Fertilizers abandoned the contract after the initial 30% advance payment was made because of the unpredictability of the price of Fertilizer in the International Market. The fertilizer required by the ministry is agricultural fertilizer and it a specialized requirement considering its peculiar nature in respect of its usage, efficacy, macronutrients required, packaging and its detailed technical conformance specifications.

Agricultural Fertilizers are neither general stores nor common items, they are rather technical agricultural inputs that are critical and are time bound to the activities of the ministry in all the thirteen districts all over the country.

Because of the encounter faced with Zaina Business Enterprise it was crucial for management of the Ministry to place premium on recent past performance among other qualification criteria in an effort not to expose the Ministry to unnecessary risks.

This is not the first time the Ministry has set recent past performance as criteria for high value performance. This is evident in the invitation to bid documents for other procurement activities undertaken in FY 2015 by the Ministry (for e.g. supply and delivery of ICT Equipment and Materials, supply and delivery of Cashew Seedlings).

This criteria, for recent past performance, was also set in accordance with section 21(1c) of the Public Procurement Act 2004 which provides that a bidder must qualify for award of contract by meeting the criteria of 'past performance'. This is further modified in Section 106 (2bin) of the Public Procurement Regulation 2006 which provides that 'instruction on any documents required to be submitted with the quotation, which shall include a minimum of a list of recent Government contracts performed'.

It is of the above and the instability of macro-economic variable in the economy that the Ministry limits the experience of recent past performance or recent supply of similar good or a high value government contracts performed to three years. The above criteria (recent government contract performed or supply of similar goods) was also reflected in the invitation to bid document issued to bidders.

Furthermore, had it not been the Ministry taken into consideration the past performance qualification criteria (The bidder must have experience with evidences in manufacturing or supplying similar goods for the last three (3) years. Evidence of delivery of previous contracts undertaken for the last 3 years) in evaluating the bids, similar situation to that of Zaina Business Enterprise mentioned above could have occurred as the supplier Premier Logistics and Supply Ltd. On a letter dated 20th October, 2015 requested for a price adjustment for an amount of USD 2,628,000 if his bid is recommended for award contract. This amount is way above the amount quoted by Royal International Supplies (the recommended bidder for the award of contract) by \$105,000.

The letter of request and price schedule received from Premier Logistics and Supply Ltd. is available for audit inspection.

Secondly, an arithmetical error was found in the bidder's (Royal International Supplies) and the error rectified and the bidder notified in accordance with section 53(6) of the PPACT 2004.

The source documents for the preparation of the evaluation report are the individual signed evaluation forms of the Technical Evaluation Committee. The clause "there were no errors found in any of the bids" was erroneously a typo in the evaluation report as you would also note that the financial examination sheet in the same evaluation report indicates Leones instead of United States dollars which was also erroneous.

The raw data of individual evaluation forms of the Technical Evaluation Committee members from which the entire bid evaluation report is prepared are available for audit inspection. The affected page where there was an error and the error corrected with a letter sent to bidder notifying and acknowledging the corrections respectively, are available for audit inspection.

The fertilizer delivered on the 18th January, 2016 was a result of a contract signed on the 16th December, 2014 a year lapse on the side of Government failing to meets its obligation to pay an initial 30% advance to the supplier as per signed contract agreement between the Ministry and the supplier. This has led to the delay.

Taking into considering the protracted nature of the procurement method used, that is International Competitive Bidding and its lead time for execution and seeking approval from other key stakeholders of Governance and the bureaucracy involved, it is obvious that if the current contract is not executed the availability of fertilizer for the 2017 planting season cannot be guaranteed.

The recent supply is for 2016 planting season.

Amended Prices

The Ministry has always upheld the values of fairness in all its procurement proceedings.

As you may be aware, the entire procurement process is not an insular one that is in entirety with the Ministry alone, but an inclusive participation of all key stakeholders and external approving entities. External approving authorities have looked through the process and have given approvals respectively to proceed with the said contract.

Arithmetical error was found in the bidder's bid and the error rectified and the bidder notified in accordance with section 53(6) of the PPACT 2004.

The source documents for the preparation of the evaluation report are the individual signed evaluation forms of the Technical Evaluation Committee. The clause "there were no errors found in any of the bids" was erroneously a typo in the evaluation report as you would also note that the financial examination sheet in the same evaluation report indicates Leones instead of United States dollars which was also erroneous.

The raw data of individual evaluation forms of the Technical Evaluation Committee members from which the entire bid evaluation report is prepared are available for audit inspection.

The affected page where there was an error and the error corrected with a letter sent to bidder notifying and acknowledging the corrections respectively, are available for audit inspection. The concern raised by NPPA was given due consideration that is why the Procurement Committee had to invite the supplier for negotiation which eventually led to a reduction in the scope to reflect a reduction of the contract price in accordance with Section 55(2b) of the Public Act 2004.

The inconsistency was erroneous and ASSL recommendation noted.

Auditor's Comment:

The comments are non-responsive and the audit observations therefore remains unresolved.

The fundamental reason for which Premier Logistic was declared non-responsive was the years' experience criteria is unacceptable, as it still holds that Premier Logistic had successfully delivered fertilizer to the ministry in the past.

During the verification process we noted the supplier Royal International who was awarded the contract appeared to have misled the ministry by understating his bid price in order to appear as the lowest bidder. Management did not disqualify the bidder but rather informed the supplier about the error in his bid price and then carried out the necessary price adjustment. Management in their effort to further explain why Premier Logistic was declared non-responsive, submitted a Price Adjustment Request from Premier Logistic dated after the procurement committee had already reached a decision on who the most responsive bidder was.

The Procurement Officer stated during verification that there was no correction in the bid prices but rather an adjustment was done to the bid price of Royal International because of arithmetical error. The issue is still outstanding because the said adjustment equates to an error correction.

Due diligence and actual needs

Proceeding with the contract was likely uneconomical and wasteful for an additional reason. In 2014 the Ministry had entered into a contract with Okar Agency for the supply of 18,000 bags of fertilizer. However, it was only delivered to the Mechanical Stores in Kissy on the 18th January 2016. Considering due diligence and actual needs the new contract with Royal International on 7th January, 2016 for the supply of a similar quantity of 18,000 bags appears unnecessary so soon after the arrival of the previous shipment because the Ministry had sufficient quantities to meet the needs of current planting season.

Overpricing

NPPA also expressed concern in writing about price adjustments. Procurement committee minutes' state that:

"The market Price for fertilisers in Europe and China on CIP terms for one ton is between \$1,000 - \$1,500 but when compared with the price quoted for a ton by the lowest evaluated responsive bidder, his price was twice the average market value/rate."

Using the unit cost of \$118 (Urea 46% - the cheapest). The CIP price quoted by Royal International per ton was \$2,360. This is \$860 in excess of the higher market price per ton mentioned in the referenced minutes. Hence there is an overpricing of \$774,000 (equivalent to Le 992,911,200).

Official's Response

The Procurement Committee did further investigate the market price by requesting the supplier to submit a breakdown of price submitted per bag for fertilizer. This was further compared to the price paid for Fertilizers in FY 2014 which serve as a baseline. On the basis of the above, it was noted that the contract value for fertilizer in FY 2014 was \$2,184,500 for using the contract value for FY 2014 as a benchmark, the Procurement Committee cited that the contract value for FY 2015 was reasonable with a savings of \$42,500. Taking into consideration the requested price adjustment of Premier Logistics for an amount of \$2,682,000 if its bid was accepted, the cost per bag of Fertilizer would have been \$127.71. This is higher than the bid price per bag submitted by the recommended bidder for ward of contract of \$118, with difference of \$9.71 per bag. This further justify that not always the lowest quoted bidder can be the most responsive bid especially for complex or high value procurement like Fertilizer. The issue of overpricing if eminent all external approval authorities would not have granted approval to the Ministry to proceed with the contract.

An instance is the supply and delivery of Four (4) units Station Wagon a contract in 2011 of which the NPPA rejected giving approval because of overpricing or exorbitant prices. See attached letter from NPPA dated 3rd March, 2011 rejecting giving approval sought by the Ministry when the NPPA identified that the cost of the vehicles was exorbitant and way above prevailing market prices. Another correspondence from the NPPA dated 8th March, 2011 requesting all MDA's to submit contract documents before awarding a bid to check for value for money in all procurement activities.

NPPA's correspondence is available for audit inspection.

Auditor's Comment:

The comment is non-responsive and the audit observations therefore remains unresolved. Management did not provide any justification for the overpricing of the fertilizer. The issue therefore remained unresolved.

Unfair criteria for cashew seedling contracts

Unfair criteria. As with fertiliser described above, one of the selection criteria for the supply of cashew seedling to the Ministry was "... three years of experience in the supply of similar items". Considering the nature of the supply in question it suggests a bias towards selecting a predetermined supplier, thus making the basis of selection unfair.

In this instance, Royal International, provided the lowest bid of Le1,750,000,000 with a delivery period between 6-8 weeks for the supply of cashew seeds. The bid was deemed non-compliant because the supplier had less than the three year required experience. The contract was awarded to Kamcashew with a bid of Le2,250,000,000 and delivery period of 10-12 weeks. This is Le500,000,000 in excess of the lowest bidder. The excess amount could have been saved had officials of the Ministry also considered value-for-money.

Official's Response

The criteria for the three years' experience for the supply and delivery of Cashew Seedlings in all MAFS sixty-six (66) block extension supervision areas all over the country and other similar high value procurement was set by the Procurement Committee following the experience the Ministry had with Zaina Business Enterprise in 2010 wherein the bidder having quoted a low price for the supply and delivery of Fertilizers abandoned the contract after the initial 30% advance payment was made because of the unpredictability of the price of Fertilizer in the International Market which affected his quoted price and subsequently ran away out of the country and abandoned the contract with the 30% advance payment made to him.

For a requirement such as Cashew Seedlings considering its technically quoting a low price is not sufficient to determine that a bidder has the capacity to fulfil the obligations of the contract.

According to the newspaper adverts and issued bidding document available for audit inspection, the Ministry required: Cashew seedlings and not Cashew seeds. Cashew seedlings are pre-germinated, actually young plants already sprouted and are to be nursed, transplanted and transported all over the country.

Cashew Seedling are not readily available in the market but have to be nursed for a period of sixty days, and are to be transplanted and distributed all over the country to meet the farming or planting season. The delivery period specified in the advert and approved bidding document is 10-12 weeks which is set in line with the technical advice of the end user division since the seedlings had to be nursed and transplanted before handed over to the Ministry.

This is not the first time the Ministry has set past performance as criteria for high value procurement. This is evidence in the invitation to bid documents for other procurement activity undertaken in FY 2015 by the Ministry (for e.g. supply and delivery of ICT Equipment and Materials). This criteria was also set in accordance with section 21(1c) of the Public Procurement Act 2004 which provides that a bidder must qualify for award of contract by meeting the criteria of "past performance". This is further modified in Section 106 (2biv) of the Public Procurement Regulation 2006 which provides that 'instruction on any documents required to be submitted with the quotation, which shall include a minimum of a list of recent Government contracts performed'.

The commodity is specialized considering the technicalities involved as follows:

The requirements are seedlings and not seeds. These are pre-germinated actually young plants already sprouted and are to be transplanted and transported all over the country.

Adverts, standard bidding document with detailed description of the requirements is available for audit inspection.

The core requirement is for nursing and transplanting of the pre-germinated seedlings at identified locations all over the country. The issued approved bid document is available for inspection. This further justify that not always the lowest quoted bidder can be the most responsive bid especially for complex or high value procurement like Fertilizer. The bidder royal international supply bid was not selected because the bidder in his bid submission had no evidence of experience of similar goods which entails the nursing or raising seedlings. Cashew seedlings are neither general stores nor common items, they are rather seedlings that are already sprouted plants or pre-germinated, and are critical, time bound to the activities of the ministry in all the thirteen districts all over the country.

As you may be aware, the entire procurement process is not an insular one that is in entirely with the Ministry alone, but an inclusive participation of all key stakeholders and external approving entities. External approving authorities have looked through the process and have given approvals respectively to proceed with the said contract.

The issue of value for money if not present in a given procurement activity all external approval authorities would not grant approval to the Ministry to proceed with such contracts. An instance is the supply and delivery of four units Station Wagon a contract in 2011 of which the NPPA rejected giving approval because of overpricing or exorbitant prices. See attached letter from NPPA dated 3rd March, 2011 rejecting giving approval sought by the Ministry when the NPPA identified that the cost of the Another correspondence form the NPPA dated 8th March, 2011 requesting all MDA's to submit contract NPPA's correspondences are available for audit inspection.

Auditor's Comment:

The comment is non-responsive and the audit observations therefore remains unresolved.

The criteria prescribed within the Procurement Act are not a must but rather a may which is not binding. The Ministry should have taken value for money into consideration in awarding such a contract at a time the government is in need of cash. This could have saved the government Le 500,000,000.

It is also evident that the lowest bidder (Royal International) was someone the ministry considered highly as suggested in the award of the fertilizer contract.

Contract procedures and documents

Procurement activities worth Le1,221,901,425 were carried out by the Ministry without compliance to procurement procedures. In addition, adequate documents to support the expenditures were not maintained. Such actions of the Ministry violated the fundamental requirements of the Public Procurement Act 2004 and the Public Procurement Regulation 2006.

Contracting for consultant services

The Ministry engaged consultants for services amounting to Le911,159,210 without following procurement procedures that governs the use of consultants. This is a violation of Section 59 of the Public Procurement Act 2004 'Request for the services of consultant'. Ministry officials indicated the payments were for "contract staff" rather than consultants. However, even if this was the case it was not dealt with correctly as the staff were paid out of Recurrence Expenditure, rather than Personnel Emolument, and 5% withholding Taxes (which are applicable to consultancy work) were deducted from their payments instead of PAYE (which is applicable to contract staff).

Official's Response

Payments for some of the expenditures queried were not received during the period under review. Documents were submitted to the ASSL Audit Team during the financial audit 2015 for some of the payments queried except for an amount Le35,000,000 which documents are available for verification.

Auditor's Comment:

The comment is non-responsive and the audit observations therefore remains unresolved.

We were informed during verification that payments for the procurements in question were not yet effected with the exception of Le 35,000,000. The issue is about procurement procedures not being followed and not payments being made. Therefore, the issue still remained unresolved as procedures were not followed.

Sierra Leone Police Department

Procurement procedures were not fully adhered to. The following is a summary of issues highlighted in a separate management letter to the Ministry.

Use of sole source procedures

The Department's use of the sole source method for the purchase of Kenwood batteries in the amount of Le569 million did not fully conform to the conditions contained in Section 46 (1a) and (1d) of the Public Procurement Act, 2004.

Department's Response

The procurement of Kenwood hand held communication batteries was done in an emergency situation, during the fight of the Ebola epidemic, there were concerns over inadequate and effective communication sets for police formation and personnel engaged in providing security at quarantine homes, Epic centres and other Ebola management/ security response situations. The issue of the life span of the batteries was observed to be affected due to the increase of talk time and frequent use and charging of the sets, so the rate of depreciation increased and it became necessary as a quick fix to the problem to procure Kenwood hand held communication batteries using sole sourcing method after approval has been sought from the Procurement Committee and the National Public Procurement Authority (NPPA) in order to cover the wide range of services needed. Also note that, during this period there was a Public Health state of Emergency declared by His Excellency the President, flights were not regularly coming to Sierra Leone and these items were not available in the local market at the time so this was done to address the situation in a timely manner.

Auditor's Comment:

The comment is non-responsive and the audit observations therefore remains unresolved. The explanation provided by the SLP for the use of the Sole Source method is unacceptable. The conditions prescribed in Section 46(1d) of the Public Procurement Act 2004 were not met.

Acquisition of Stun guns



Figure 1 - Stun guns acquired

different prices for essentially the same items – even if one was sub-specification – were entered into.

No documentary evidence was provided to explain why 100 stun guns priced at \$88,000 (Le 342.9 million) remain undelivered by the supplier. In addition, another set of 100 stun guns at a cost of Le23 million (\$5,750) were purchased. However, these appear not fit for purpose and their use could endanger the officers on duty. Documents to explain the differences in specification of the two set of stun guns were not provided. It is equally unclear why two contracts with significantly

Official's Response

The SLP has noted your recommendations and has written a letter to the supplier (North Star Enterprises as a reminder, requesting him to provide an explanation for the delay in the Supply of the 100 Stun Guns. The supplier's in his response highlighted that as at the date when his company received the complete 30% down payment, the 160 days as delivery period has not elapsed. On receipt of his response, we critically assessed it and we observed that the delivery period has not elapsed. However, from further discussions with the supplier he had assured the SLP that once he fully recovered from his illness, he will ensure the delivery of 100 Stun Guns. The Audit Service will be informed promptly upon receipt of the supply of the 100 Stun Guns for the purpose of Physical verification in case of any failure necessary actions will be taken accordingly. Furthermore, as in the case of the differences between the Stun Guns to be supplied and those found at the Police Stores Kingdom; the former is typically a gun which is effective from a distance while the latter at the Main Store is a flash light model only effective upon physical contact.

Auditor's Comment

The comment is non-responsive and the audit observations therefore remains unresolved. The difference between the stun guns in the original contract and the stun guns purchased from another supplier was explained and documents provided. However, there is no evidence to suggest that the supplier accepted the decision of the SLP to immediately cancel the stun guns' part of the contract (one of the option suggested by the supplier). Until such, the issue of the undelivered stun guns remained unresolved.

Western Area Rural District Council

Procurement procedures were not fully adhered to. The following is a summary of issues highlighted in a separate management letter the Council.

Contracting for consultant services

Procurement procedures were not followed for the award of consultancy contracts. For example, documents like request for quotation, evaluation reports, contract agreements and terms of reference for consultancy contracts worth Le785,740,000 were not maintained by the Council.

Irregularities in awarding public works contracts

A series of contracts for public works, valued at Le2,233,968,000 were awarded without compliance to procurement procedures.

- Selection process in some cases appeared to be unfair. For example, of three bids submitted only one was evaluated.

- There was clear evidence of a lack of procurement planning. For example, a contract for the rehabilitation of staff quarters was awarded but was unplanned contrary to section 29(1) of the PPA.
- Disqualification of some bidders seemed somewhat arbitrary. In one case a bidder was disqualified for not providing accurate bid security but another was not disqualified at the technical evaluation stage despite failing to provide evidence of possession of equipment, critical to doing the work. The amount of this contract was Le273,054,960.
- Other similar instances were also noted and in many cases the disqualified bid was lower than the successful one.
- Instances were noted where a contract was awarded despite the absence of a license certificate or evidence of equipment to carry out the work.

In many cases where disqualification decisions appeared somewhat arbitrary we were unable to examine the bid documents.

Official's Response

Management want to inform you that three bidder's purchase the standard bidding documents but in the final analysis only one Bidder submitted and the only one that submitted the bid was the most responsive for evaluation. In terms of date on the Contract Agreement, it was the wrong document that was submitted for verification. ...The eight (8) furniture that was not in good conditions upon delivery was replaced by the provider. All of these documents are ready for verification.

Auditors' Comment

A number of matters raised in the management letter were resolved upon verification and have been removed from the management letter and this report. However, in many respects on some issues as noted below the Official's comments are non-responsive and the audit observations therefore remains unresolved. For example, we were unable to confirm replacement of the damaged furniture because a delivery note to support management's claim that the damage furniture was replaced was not submitted.

With respect to rehabilitation and routine maintenance work matters pertaining to Lots 3, 4 and 6 remain unresolved as follows:

- *Lot 3 (Rogberey to Gbonkayalay) - The Vote Controller did not provide the bid document of Northern Engineer or evidence to support whether Yaps Enterprise had previous experience in handling such volume of work.*
- *Lot 4 (Rokel Junction to John Thorpe)- The bid documents of Abcosol were not submitted during verification. We were also not provided access to verify the work on site.*
- *Lot 6 (Jui Junction to Fisheries) - We were however unable to confirm whether Kobangs, who won the contract, has a licence certificate and equipment to carry out such volume of work. The issue is therefore unresolved.*

Conclusions and Recommendations

General Approach

Individual management letters, sent to each audited entity, contain detailed recommendations which we hope will be acted upon. The present document does not repeat those specific recommendations. Rather this report focuses on more global conclusions with respect to the overall state of procurement compliance at the operational level and, by implication throughout GoSL.

In this report we make recommendations for the procurement system as a whole that supplement those made in the detailed management letters sent to the management of individual entities. These may require addressing by parliament, the executive and ultimately perhaps the judiciary, as well as individual MDAs and other entities.

Conclusions

Our approach to reaching conclusions

In our 2013 Annual Report, Chapter 5, we used the OECD Baseline Indicator Tool (BLI) to form a view on procurement in GoSL. This time we updated our views using the same tool.

The BLI is based on Four Pillars as follows:

- Pillar I – The Legislative and Regulatory Framework
- Pillar II – Institutional Framework and Management Capacity
- Pillar III – Procurement Operations and Market Practices
- Pillar IV – Integrity and Transparency in the Public Procurement System

The BLI is fully described in *Appendix 3, OECD Baseline Indicator Tool*.

We also mapped our findings against globally recognized red flags for the possible presence of instances of corruption and fraud. The indicators are summarized in *Appendix 2, Procurement Fraud Indicators*, which were derived from US Department of Defense and other sources.

In addition, using various data sources, published academic research and media reports we consider the state of procurement controls and outcomes in Sierra Leone compared to the other jurisdictions.

The OECD Baseline Indicator

Table 4, Summary Reported Baseline Indicator Analysis, below shows the original 2012 WB assessment, the assessments by ASSL and NPPA done in 2013, and in the column headed ASSL Scores 2015 our latest professional judgement.

Table 4 – SUMMARY REPORTED BASELINE INDICATOR ANALYSIS						
Pillar/Indicator	ASSL Scores 2014		WB/GoSL CPAR Score 2012		ASSL Scores 2015	
	Average Indicator Score	Average Pillar Score	Average Indicator Score	Average Pillar Score	Average Indicator Score	Average Pillar Score
Pillar I – Legislative and Regulatory Framework						
Indicator 1 –Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations	3.0	2.8	2.0	2.4	3.0	2.4
Indicator 2- Implementing regulations that provide defined processes and procedures not included in higher-level legislation	2.5		2.8		1.0	
Pillar II – Institutional Framework and Management Capacity						
Indicator 3 – The public procurement system is mainstreamed and well integrated into the public sector governance system.	0.75	1.2	2.0	1.7	0.5	1.0
Indicator 4 – The country has a functional normative/regulatory body.	1.75		1.75		1.75	
Indicator 5 – Existence of institutional development capacity.	1.0		1.25		0.75	
Pillar III – Procurement Operations and Market Practices						
Indicator 6 – The country's procurement operations and practices are efficient	1.0	1.4	1.4	1.1	0.5	0.6
Indicator 7 – Functionality of the public procurement market	1.25		1.7		0.75	
Indicator 8 – Existence of contract administration and dispute resolution provisions.	2.0		0.3		.75	
Pillar IV – Integrity and transparency of the Public Procurement System						
Indicator 9 – The country has effective control and audit systems	1.0	1.9	1.2	1.9	2.0	1.4
Indicator 10 – Efficiency of appeals mechanism	2.0		1.6		1.0	
Indicator 11 – Degree of access to information	2.0		2.0		1.0	
Indicator 12 – The country has ethics and anticorruption measures in place.	2.5		2.9		1.5	
Overall Aggregate Average Score		1.8		1.8		1.4

Based on the findings from the sampled contracts and taking account of procurement observations reported in MLs and our Annual Report for 2014 it is our considered judgement there has been a

... there has been a deterioration in the quality of compliance with the Act and Regulations since our 2013 review

deterioration in the quality of compliance with procurement procedures and regulations since we reviewed it in 2013. We have scored 2015 in Table 3 above and in our view while Pillar I remains unchanged it is our judgement that Pillars II, III and IV have deteriorated resulting in an overall aggregate score of 1.4. In short, things have not improved; if anything, they're worse.

Possible Fraud and Corruption

In the entities examined there are potential indications of possible fraud or, at the very least, levels of error reaching

appalling proportions showing incompetence in the five selected entities. The presence of certain conditions constitutes red flags for the possible presence of fraud and corruption. We comment on this further below.

The collective responsibility of procurement committees and individual civil servants serving on them is not being exercised with due regard to either the PPA, its regulations or the GBAA, nor is there much evidence of any commitment to working in the interest of the State and its citizens. We see little or no dedication to international standards as set out in *Appendix 1, Principles and Practices of Public Procurement*, and even less to economy, efficiency and effectiveness in expending public funds. At this time when the nation is struggling to find sufficient cash and resources to meet the most basic commitments to the people it is clear that these five entities have possibly lost control over at least 24% of the public purse.

Based on our findings we have to conclude that for the five entities involved the Act and Regulations are in effect being ignored or, where considered were done in a very passive “tick-the-box” manner that disregards the intent and spirit of the law.

Indicators encountered for the possible presence of fraud

Fraud is an intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage.

Corruption, its first cousin, is the offering, giving, soliciting or acceptance of an inducement or reward that may influence any person to act inappropriately.

Each is also a failure of individual and institutional accountability that allows public officials to divert public resources from their intended use.

In shaping our conclusions in the report we have been guided by the fraud indicators found in *Appendix 3, Procurement Fraud Indicators*. There are clear indications of possible fraud, corruption and serious deviation from procurement rules and regulations as well as little evidence of good practice or any compliance with international standards. We found plenty of red flag indicators for the possible presence of fraud, including:

- restrictive bid criteria
- unfair application of criteria
- overpricing
- apparent unreasonable ignoring of the lowest bidder
- excessive use of restricted bidding/sole source
- incomplete and/or unavailable documentation
- ignoring independent technical advice
- poor needs assessments
- specifications tailored towards a predetermine provider/supplier
- permitting unexplained ‘contingencies’
- ignoring some selection criteria (e.g. prior experience and equipment)
- non-submission of bid documents or erosion of audit trail
- financial guarantees/bonds expired or misdated
- failure to obtain certificates/licenses

However, and this is important, the mere presence of a fraud indicator does not mean *ipso facto* that fraud or corruption has occurred. An indicator may reflect a legitimate business practice. However, the presence of one or more indicators or a pattern of them, raises a red flag and should not be ignored.

At the very least there are poor internal controls in the audit entities: inadequate segregation of duties, poorly trained procurement staff and weak record-keeping, to mention a few. When internal controls are weak there is an open door for things to go wrong either through error, carelessness or deliberate illegal acts made easier by the poor control environment. The violation may be a circumvention of internal control policy and procedures or it may be simply taking advantage of an absence or lapse of control in an organization. A violation may be attributable to either an individual position or lack of skills or the imposition of improper pressure by authority. We are forced to conclude, based on the frequency and large scale of indicators found, that fraud and corruption is likely present in the entities we audited. Because the fraud indicators are not conclusive but merely indicative, that forensic investigation by competent authorities is urgently required.

Recommendations

Change in institutional culture is required

Tweaking at the edges is unlikely to achieve very much and the old mantra of nothing can be changed has to be defeated. This requires willpower at all levels of the governance system to bring about social change making honesty, integrity and serving the public good more socially desirable. Creating committed strong leadership to reflect the required shift in societal and institutional culture is necessary but difficult as systemic pressures against change inevitably exist.

Mobilise allies internally and externally

Deepen, strengthen and build a partnership with civil society including the professions and anti-corruption activists. A social contract needs to be created between public sector leaders, competent legal authorities, the media, professions and citizens.

Make new institutional leaders free to appoint key people of like mind, to clean house, to break-up cabals, to reshape organisations such that the values of honesty, integrity, serving the public good for its own sake with economy, efficiency and effectiveness become the norm rather than the exception.

The private sector represented by businessmen and women pay bribes not because they want to but because they see it as necessary to do business. It's not because they like it. MDA and public sector leadership generally, while maintaining an appropriate professional and arms-length relationship, need to ally themselves with business leaders similarly armed with the new values and to not fear being seen to despise corruption but to support the new order.

Civil society engagement needs to be both planned and strategic using print, electronic and modern social media channels to create an informed citizenry reactive to the desired shift in societal and institutional values.

Reform systems

“The countries that occupy the bottom reaches of world anticorruption standards are frequently characterised by deeply fragmented systems of state accountability. In such countries the government systems that should prevent corruption are the very systems used to enable it.”⁷

If the systemic nature of corruption is not well understood, where accountability is weak, fragmented or uncoordinated then external fixes or attempts at reform do not work well or for long. Reforms become a game with donors' assistance, received enthusiastically, providing draft legislation, action plans, manuals,

⁷ *Driving Corruption Out of Procurement*, Ashraf Ghani, *Against Corruption: A Collection of Essays*, Anti-Corruption Summit, London May 2016

training and study tours none of which make a dent in the systemic problem because they address symptoms and not the structural drivers.

Corruption occurs in clusters. Despite being systemic and endemic in Sierra Leone some areas are likely better than others. In initiating reforms there needs to be a problem definition phase where the landscape of corruption is mapped to identify the worst offenders where reform resources will focus. Reform is built from the inside out by addressing both the clusters, where it is most present, and the accountability agents charged with its control and eradication. Accountability agents include MoFED, internal audit throughout the MDAs and parastatals, NPPA, the Anti-Corruption Commission, the judiciary and, yes, Audit Service Sierra Leone. There will be no single one-solution-fits-all approach to the agents of accountability. Each must be addressed separately according to its need.

Top-level oversight

In Sierra Leone establishing the NPPA and the PPA were excellent initial reform steps acknowledged by the World Bank, other donors and by ASSL. However, the NPPA needs to be given more resources and legal teeth to enforce regulations.

In addition, top-level oversight of all major contracts to create a coordinated accountability regime combined with excellent technical expertise is required. Whether such top-level oversight is given to the NPPA or combined within a bespoke body with its representatives from parliament, civil society and the executive is a policy matter outside our remit.

ICT Driven/Electronic Procurement

Few areas respond to the use of information technology as well as procurement. Generally referred to as “e-procurement”, many countries can provide excellent examples where web-based technology is used throughout the full procurement cycle with levels of transparency and good governance that manual systems can never achieve. With the improving ICT infrastructure in Sierra Leone, now that the fibre-optic network is expanding, such solutions are almost within reach and need to be planned for centrally.

Training procurement officers – a massive effort required

The procurement officer cadre in the civil service has never enjoyed the resourcing and training it needs to be effective. In fact, it may well be that the need to develop professional capacity was in some instances deliberately resisted to prevent effective internal control over the procurement process. As a matter of national priority education and training needs to be taken up on a massive scale. The saving to be made from effective, economic and efficient procurement are incalculable as on an annual basis public procurement represents 70% of budgeted expenditure.

Develop competent well-functioning internal audit

ASSL has repeatedly emphasised the weakness of internal audit throughout GoSL. Strengthening it so that internal audits of expenditure in general, as well as procurement in particular, would represent a giant step forward in improving systems of internal control.

Adequately resource the NPPA – especially its M&E division

We have already alluded to giving NPPA teeth to enforce the PPA and regulations. An important part of this enhancement of resources would be to adequately fund and train its Monitoring and Evaluation (M&E) division to enable *ex ante* and *ex post* evaluation of contracts throughout the country. In combination with an MDA-based much improved internal audit function and the external audit provided by ASSL the control regime and environment over procurement would well-serve the nation and its citizens.

Measure performance

International standards for procurement state:

“Performance Measurement. Procurement should have a performance measurement system that assesses progress towards achievement of the strategic plan.

and

Performance Metrics. A standard set of metrics that are aligned with strategic goals should be developed and regularly measured by all units within the procurement function.”

All performance contracts could include procurement performance expectations for senior public sector managers and in MDAs and procurement regularity and oversight bodies.

Incentivise procurement staff

Procurement is a profession and needs to be well remunerated with promotion and other movement within the cadre treated as an exemplary meritocracy. Paying and treating people well is recognised by HR professionals as a tried and tested mechanism for improving performance and reducing incentives for malfeasance.

A Closing Word

Public procurement in Sierra Leone is in a parlous condition. It is so poor as to be at risk of eroding the very foundations of our hard-won democracy. We have presented our findings and professional judgment on what is required to improve things.

In summary, the reform model proposed in this report contains the following elements:

- strong signals that change, including cultural change, is at hand;
- increased engagement with very broadly defined civil society;
- managerial reform and training throughout the system at all levels; and
- adoption of modern e-procurement.

The citizens of Sierra Leone deserve better service on the procurement front than they have received these many years. This report is our considered professional view on what needs to be done with the greatest urgency. We respectfully recommend it to you.

APPENDICES

Appendix 1 - Principles and Practices of Public Procurement

The following principles and practice are derived from OECD Principles for Integrity in Public Procurement (2009) and Principles and Practices of Public Procurement (2013), the latter published under a partnership between The Institute for Public Procurement and the UK Chartered Institute for Purchasing and Supply. The full text of each item and additional guidance may be viewed at [www.http://principlesandpractices.org/](http://principlesandpractices.org/) .

Specifications

Public procurement should understand the elements required to accurately define, represent and fully express the requirements of the requestor and should recognize that a specification may form a part of a wider description of requirements. The statement of requirements must establish an accurate description of the need so that the potential suppliers can provide acceptable solutions.

Standard

The placement of procurement should be operationally distinct from other departments and divisions within an entity. The Chief Procurement Officer (CPO) should hold an actual and distinct position at the executive level of management. Regardless of the size or structure of the entity, the CPO should maximize working relationships with other departments including finance, human resources, budget, information technology and legal. The professional expertise of the CPO is critical to the success of the entity and is best leveraged when procurement is involved in the development of the strategic plan of the entity.

Developing Evaluation Criteria

Before issuing the solicitation, procurement professionals and applicable stakeholders must establish the criteria by which the resulting bids or proposals will be evaluated. Once the appropriate procurement method is selected, criteria should be established to evaluate bids or proposals for the most economically advantageous offer for the contracting authority or the lowest price.

Developing a Procurement Policy Manual

Procurement organizations should develop a comprehensive policy manual that clearly defines authority, responsibility and establishes guidelines for organization and the procurement professional to follow when carrying out their responsibilities.

Ethical Procurement

It is essential that public procurement professionals and stakeholders adhere to a well-defined and established code of ethics. The public procurement organization should have an adopted code of ethics and require its employees to uphold the code and seek commitment to it by all those with whom they engage.

Performance Management

Public procurement organizations should develop a performance management program that allows for a continuous cycle of improvement and added value. The performance management program should be integrated across the procurement organization, individual, and supplier levels.

Performance Measurement

Procurement should have a performance measurement system that assesses progress towards achievement of the strategic plan.

Performance Metrics

A standard set of metrics that are aligned with strategic goals should be developed and regularly measured by all units within the procurement function.

Qualifications-based selection for architectural and engineering services

When contracting for architectural and engineering services procurement is encouraged to use Qualification-based Selection (also called Quality Based Selection)

Risk Management

Procurement should identify risk factors associated with each procurement, analyze the probability of the risk occurring and consider the potential impacts. Risk management plans should then be developed, based on the decision to avoid, assume or transfer the identified risks.

Spend Analysis

Procurement organizations should use spend analysis to leverage buying power, reduce costs, provide better management and oversight of suppliers, and to develop an informed procurement strategy. Spend analysis should include the identification, automated collection, cleansing, grouping, categorization, and analysis of all spend data for the goods and services purchased for the organization.

Strategic Procurement Planning

Public procurement should understand its purpose in relation to the organization and constituency that it serves. The purpose should be clearly stated, in written format, through the development of a Mission, Vision and Values statement that is specific to the procurement function. Procurement should then develop a strategic plan that aligns goals and objectives in accordance with the Mission, Vision and Values, while fulfilling the obligation to meet the needs of the organization and the public. The plan should be reviewed and updated annually.

Sustainable Procurement Practice

An organization practicing sustainable public procurement should consider the three aspects of sustainability (economic, social and environmental) to create a more enduring approach to procuring goods and services that will contribute positively to create a more enduring approach to procuring goods and services to the community and beyond.

Technology in Public Procurement

Procurement professionals should identify and implement technology that aides the procurement process and supports the overall strategy of the organization. The technology should create measureable results including reduced transaction costs, improved process efficiency, a reduction or elimination in “maverick spending”, increased contract compliance, improved transparency, reduced cycle times and improved inventory costs. Technology can also increase supplier access to bid opportunities which can result in increased competition, diversity and inclusion of suppliers.

The Evaluation Process

The receipt, opening, and evaluation of requested documentation from potential suppliers must be carried out by a competent evaluation panel and in accordance with all applicable laws, as well as the principles of impartiality and transparency. Those involved in the process must maintain integrity and professionalism in all aspects of evaluation. All submissions received must be kept secure during the evaluations process. The confidentiality of the submitted documents must also be maintained subject only to applicable freedom of information or public records legislation.

Transparency

Public procurement should to the greatest extent practicable, be transparent in practices, processes, policies and relationships with all stakeholders, while ensuring protection of confidential information.

Appendix 2 - Procurement Fraud Indicators

The procurement cycle may be subjected to error, process manipulation, fraud and corruption at virtually any point. The occurrence of some matters can constitute red flags for the presence of malfeasance which ought to alert management and provoke investigative action.

The following table of procurement fraud indicators is derived from US Department of Defense sources⁸. The list is far from and is not intended to be exhaustive but should be seen as a guide to action. The list is based on experience common to many jurisdictions, and are tried and true.

What exactly are fraud indicators? They are simply signals or clues that something untoward and possibly illegal may be taking place. It is important to keep in mind that the presence of a fraud indicator does not necessarily mean that fraud is afoot. An indicator may reflect a legitimate business practice. However, the presence of one or more indicators raises a red flag, and should not be ignored.

In shaping our conclusions in the Special Report we have been guided by this list of fraud indicators.

The indicators cited below are categorized in two parts: (1) indicators prior to contract award, and (2) indicators after contract award.

Part I – Indicators Prior to Contract Award

1. *Fraud in the needs determination for goods or services*
 - 1.1. Excessive purchase of ‘expendables’.
 - 1.2. Inadequate or vague needs assessment.
 - 1.3. Needs determination seems to be unnecessarily tailored in ways that can only be met by certain contractors.
 - 1.4. Items and services are continually obtained from the same source due to an unwarranted lack of effort to develop a second source.
2. *Fraud in the development of the statement of work and specifications*
 - 2.1. Statements of work and specifications appear to be intentionally written to fit products and capabilities of a single contractor, or specifications are made so restrictive that they effectively exclude competing firms.
 - 2.2. Pre-qualification standards or specifications appear designed to exclude otherwise qualified contractors or their products.
3. *Fraud during the pre-solicitation phase*
 - 3.1. Sole source justifications appear unnecessary or poorly supported.
 - 3.2. Statement justifying sole source or negotiated procurements appear inadequate, incredible or falsified.
 - 3.3. Failure to perform market research to determine evaluation factors, contracting method, and whether commercial items would meet the government’s needs.
 - 3.4. Failure to prepare a government cost estimate.
 - 3.5. Estimate prepared after solicitations are requested.

⁸ *Procurement Fraud Indicators Handbook*, US Air Force Command Law Office, Acquisition Integrity Division, July 2006.

4. *Fraud during the solicitation phase*
 - 4.1. Procurement appears to be processed or restricted to exclude, impede or hamper any qualified contractor.
 - 4.2. Bidders conferences are conducted in a way that apparently invites bid rigging, price fixing, or improper collusion between contractors.
 - 4.3. “Referring” a contractor to a specific subcontractor expert, or source of supply.
5. *Fraud during the submission of bids and proposals*
 - 5.1. Improper acceptance of a late bid.
 - 5.2. Falsification of information concerning contractor qualifications, financial capability, and experience.
 - 5.3. Some contractors bid frequently but never win.
6. *Fraud during the evaluation of bids and proposals*
 - 6.1. Deliberately losing or discarding bids of certain contractors.
 - 6.2. Improperly disqualifying (or qualifying) bids.
 - 6.3. Selecting evaluating factors and sub-factors that unfairly give preference to a particular contractor.
 - 6.4. Evaluating bids against criteria not specified in the solicitation request documents.
 - 6.5. Failure to analyse the cost realism and reasonableness of each proposal.
7. *Fraud in the negotiation of a contract*
 - 7.1. Failure to obtain and rely on price guarantees or bank warranties or the check the validity period specified in the documents.
 - 7.2. “Back-dated” or after-the-fact justifications in the contract file or sign-off by persons without the authority.
8. *Fraud in the award of a contract*
 - 8.1. Award to a contractor who is not the lowest responsible, responsive bidder in a sealed bid acquisition.
 - 8.2. Unrealistic contract price.
 - 8.3. Awards to contractors with a history of poor performance.
 - 8.4. Material changes to the contract at the time of award.
 - 8.5. Awards made to the lowest of a few bidders without consideration of re-advertising.
 - 8.6. Undisclosed contingencies.
 - 8.7. High-percentage of sole source awards (noncompetitive) and/or poor explanations of rationale.
 - 8.8. Extreme differences in winning bid and other bidders.

Part II – Fraud Indicators After Contract Award

9. *Invoicing issues/False invoices*
 - 9.1. Invoices for service not contracted.
 - 9.2. Type-face that differs on an invoice.
 - 9.3. Uncertified progress payments.
 - 9.4. Original documents frequently not available for review or audit.
 - 9.5. Differing supporting documentation for the same items without explanation.
 - 9.6. Duplicate invoices submitted and/or paid.

10. Material Mischarging

- 10.1. Charging inferior materials at full price.
- 10.2. Double-billing of materials.
- 10.3. No reporting of residual/excess materials.
- 10.4. Unreasonable increases in scrap factors

11. Other Red Flags

- 11.1. Weak or a lack of internal controls.
- 11.2. Modification to the scope of the work or prices without contract amendments.
- 11.3. Little evidence of government supervision.
- 11.4. Poor control over government-provided equipment.
- 11.5. Original documents consistently unavailable or delays in providing them for auditor's review
- 11.6. With respect to consulting services no formal signed agreements or contracts, however, large sums paid for "services rendered".
- 11.7. Formal agreements for consulting services exist but are vague as to services and deliverables, trip reports, studies or justification of expenses.
- 11.8. Excessive photocopies where original documents should be present.
- 11.9. Poor quality control and records of testing and inspection of goods provided.
- 11.10. Product substitution.
- 11.11. Repeated pattern of short-shipments.
- 11.12. Lack of management support/encouragement of employees to be acutely aware of potential bribe or kick-back overtures.
- 11.13. Failure to report bribe or kick -back offers or employee solicitation of these.
- 11.14. Failure to hold contractors responsible for meeting delivery or completion dates.
- 11.15. Failure to monitor contract performance or to act on monitoring and evaluation reports by NPPA or reports by internal or external auditors.
- 11.16. Incomplete contract files or missing documents.
- 11.17. Inadequate documentation of contract violations.
- 11.18. Any action that tends to disrupt an audit trail.
- 11.19. Payments authorized without adequate supporting documents.

Appendix 3 – OECD Baseline Indicator Tool for Public Procurement

The World Bank Country Procurement Assessment Report (CPAR) of 2012 was carried out as a joint exercise between the GoSL and the WB. It used the OECD Development Assistance Committee (DAC) methodology for assessing country procurement systems with the OECD Baseline Indicator Tool (BLI Tool).

The main objectives of the 2012 CPAR were to:

- (a) provide a comprehensive analysis of the country's public sector procurement system, including the existing legal framework, organizational responsibilities, control and oversight responsibilities/capabilities, present procedures and practices, and how well these work in practice;
- (b) undertake a general assessment of the institutional, organizational and other risks associated with the procurement process, including identification of procurement practices unacceptable for use in World Bank-financed projects;
- (c) develop a prioritized action plan to bring about institutional improvements; and
- (d) assess the competitiveness and performance of local private industry with regard to participation in public procurement, and the adequacy of commercial practices that relate to public procurement.

The BLI Tool has capacity development as a core objective. The methodology includes numeric rating with defined criteria that provide a qualitative scoring of the country's procurement system. It contributes to the primary objective of supporting capacity development in the area of procurement by helping to more specifically and consistently identify the strengths and weaknesses of the systems assessed and provide the ability to track progress of reform initiatives. The methodology has been designed to enable a country to conduct a self-assessment of its procurement system and to help development agencies carry out joint or external assessments.

The Base Line Indicators (BLIs) present a “snapshot” comparison of the actual system against the international standards that the BLIs represent. They address four pillars:

- a) the existing legal framework that regulates procurement in the country;
- b) the institutional architecture of the system;
- c) the operation of the system and competitiveness of the national market; and
- d) the integrity of the procurement system.

Each pillar has a number of indicators and sub-indicators to be assessed. The application of the BLIs is based on a review of the existing regulatory framework and the institutional and operational arrangements. As part of our 2013 and the current assessment (2016), using the methodology, we independently considered the four pillars and twelve related indicators against the accumulated findings in our audit working paper – see Table 3: Summary Reported Baseline Indicator Analysis on page 21

Overall the implication would appear to be that the implementation of the legislative framework has not yet gained sufficient traction to ensure efficient, effective and economical outcomes from procurement expenditure.

A similar conclusion might be drawn from the 2012 CPAR as it made 109 recommendations⁹. The CPAR summarising the recommendations made 55 or 50% were focused on Pillar I (Legislative Framework) with 17, 14 and 23 for Pillars II, III and IV, respectively. Many of the 55 recommendations made in the CPAR for the Legislative Framework have been incorporated into a draft PPA Bill which we understand is awaiting assent.

⁹ See CPAR, Annex 2, pages 120 to 150 inclusive.