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Republic of El Salvador Country Procurement Assessment Report

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ACRONYMS and ABBREVIATIONS

ACODES	Asociación de Consultores de El Salvador (Consultants Association of El Salvador)
ANDA	Administración Nacional De Acueductos y Alcantarillado (National Administration of Aqueducts and Sewage)
IDB	Inter-American Development Bank
CAFTA	Central American Free Trade Agreement
CASALCO	Cámara Salvadoreña de la Construcción (Salvadorian Chamber of Construction)
CCR	Corte de Cuentas de la Republica (Court of Accounts of the Republic)
CFAA	Country Financial Accountability Assessment
CNT.I	Contraloría Interna (Office of the Internal Comptroller)
COMURES	Corporación de Municipalidades de la Republica de El Salvador (Corporation of Municipalities of the Republic of El Salvador)
CPAR	Country Procurement Assessment Review
DR-CAFTA	Tratado de Libre Comercio con la Republica Dominicana y Centroamerica (Dominican Republic and Central American Free Trade Agreement)
FISDL	Fondo de Inversión Social para el Desarrollo Local (Social Investment Fund for Local Development)
FODES	Fondo de Desarrollo Económico y Social (Economic and Social Development Fund)
FTA	Acuerdo de Libre Comercio (Free Trade Agreement)
IDF	Fondo de Desarrollo Institucional (Institutional Development Fund)
ISDEM	Instituto de Desarrollo Municipal (Institute of Municipal Development)
ISS	Instituto de Seguro Social (Social Security Institute)
LACAP	Ley de Adquisiciones y Contrataciones de la Administración Pública (Law on Public Administration Procurement and Contracting)
MARN	Ministerio de Medio Ambiente y Recursos Naturales (Ministry of Environment and Natural Resources)
MH	Ministerio de Hacienda (Finance Ministry)
MOP	Ministerio de Obras Publicas (Ministry of Public Works)
FOVIAL	Fondo Vial (Road Fund)
PIB	Producto Interno Bruto (Gross Domestic Product, GDP)
PRISM	Procurement Report Information System

SAFI	Sistema de Administración Financiera Integrado (Comprehensive Financial Administration System)
SIAC	Sistema de Adquisiciones y Contrataciones de la Administración Pública (Public Administration Procurement and Contracting System)
SINIMA	Sistema Nacional de Gestión del Medio Ambiente (National System of Environmental Management)
STP	Secretaría Técnica de la Presidencia (Technical Secretariat of the Presidency)
TLC	Tratado de Libre Comercio con los Estados Unidos (Free Trade Agreement with the United States)
TLCCA	Tratado de Libre Comercio Centroamericano (Central American Free Trade Treaty, CAFTA)
UACI	Unidad de Adquisiciones y Contrataciones Institucional (Institutional Unit for Procurement and Contracting)
UFI	Unidad Financiera Institucional (Institutional Financial Unit)
UNAC	Unidad Normativa de Adquisiciones y Contrataciones (Regulatory Unit for Procurement and Contracting)
UNDP	Programa de Naciones Unidas para el Desarrollo (United Nations Development Program)

FOREWORD

1. Preparation of this Country Procurement Assessment Report (CPAR) was agreed between the Government of El Salvador and the IDB and WB managements, to serve as a dialogue instrument between the Government and the Banks to help strengthen the reform of the public sector procurement and contracting system that the Salvadoran Government is carrying out. This CPAR was prepared on the basis of an Initial Concept Paper dated December 16, 2003 and the instructions for CPAR preparation dated May 23, 2002.
2. This report is based on an initial draft document on public procurement prepared by the IDB, the information received in the country by IDB and IBRD officials working on the report, as well as on discussions held between the Banks and Salvadorian officials from both public and private sectors. IDB staff in San Salvador and Washington and IBRD staff in Washington provided valuable comments to this report. Preparatory work for this report included: (i) a review of current legislation and regulations on public procurement and contracting practices; (ii) the IBRD country assistance strategy paper; (iii) review of a preliminary draft prepared by the IDB; and (iv) three visits to the field by IDB and IBRD experts that included numerous meetings and discussions with said experts and officials from approximately 15 public institutions and executives from a similar number of private companies.
3. The official counterparts for the Government were the Technical Secretariat of the Presidency of the Republic and the Finance Ministry. The national coordinating office of the reform component of the procurement and contracting sector of the aforementioned Technical Secretariat and the Finance Ministry's Regulatory Unit for Procurement and Contracting (UNAC) played very important roles in the work accomplished by these counterparts.
4. The team that worked on the report was made up of Messieurs Hugo Betancor and Roberto Camblor (IDB operation specialists); Vladimir T. Jadrijevic (IBRD procurement specialist – task manager); and Enrique Pinilla (Consultant). The following persons served as peer reviewers: Messieurs Rafael Rodríguez-Balza (IDB Coordinator for El Salvador); Joel Branski (IDB procurement specialist and deputy representative in San Salvador); Nicolette Bowyer (IBDR country officer); and Mario Sanjinez (IBRD specialist in public sector administration). Country-related matters were led by Mrs. Jane Armitage (Director for El Salvador), and were coordinated by Mrs. Bowyer. Mr. Bernard Becq (Regional Procurement Manager) was in charge of the quality assurance review.
5. The field work for this report was completed in November 2004. While the CPAR was undergoing consolidation and approval, progress was being made in the institutional framework and procurement processes in El Salvador. Because of this, **a final chapter on updating**, written in May 2006, is being included, which describes the main changes made and a few recommendations that were agreed upon to consolidate these changes. The work team for the updating effort was made up of Messrs. Enzo De Laurentiis (World Bank Regional Manager for Procurement); Diomedes Berroa (World Bank Procurement Coordinator for Central America and Panama); and Jorge E. Vargas (consultant).

EL SALVADOR
PROCUREMENT SYSTEM ASSESSMENT

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EXECUTIVE SUMMARY

Update

This report includes a final chapter on updating that was considered necessary because significant changes and progress was made during the period between the initial gathering of information in the field and the consolidation and approval process of the CPAR. Chapter VIII on updating, written in May 2006, reports on the principal changes that were made. Since the original recommendations were complied with, the chapter on updating offers new recommendations.

Country Background

1. El Salvador is the smallest country in Central America and it is also one of the most densely populated in the western hemisphere, with 21,000 square kilometers of land, 6.5 million inhabitants, and a GDP per capita of US\$ 2,200. Government expenditures for procurement of goods, services and public works, reached a peak of about US\$1.3 billion in 2003, equivalent to 9% of the GDP. During the 2001 - 2003 period, most of the investments in the construction sector (one third of total expenditures) were for roads, hospitals, schools, housing, potable water and electric power infrastructure. There are 368 Government agencies in El Salvador, 262 of which are municipalities and the other 106 are ministries, decentralized entities and public utility companies. Given the importance of public sector investments, the need to utilize the scarce resources more efficiently, and the need to make the legal framework for public procurement compatible with international standards and the requirements of regional free trade agreements, in the year 1996 the Government launched a plan to reform the existing legal framework.

The Legal Framework

2. The adoption in May 2002 of the Law on Public Administration Procurement and Contracting (LACAP) has been one of the most important reform actions carried out in El Salvador during the past decade. The LACAP represents a significant improvement over the previous procurement law, since it standardizes in a comprehensive manner the regulations on public sector procurement and promotes competition in an open and transparent manner. In this direction, the LACAP promoted the establishment of the Public Administration Procurement and Contracting System known as SIAC.

3. Since the procurement law was approved and began to be implemented, the Government has demonstrated its commitment to the reform process and the Technical Secretariat of the Presidency (STP) successfully carried out a training and capacity-building program to disseminate the new law throughout government agencies and the private sector, and to strengthen the new procurement system. For its part, the Regulatory Unit for Procurement and Contracting (UNAC) has provided technical assistance to government agencies on matters related to enforcement of the law. In spite of all these efforts, consolidation of the procurement processes established by the law has not been accomplished to the same degree at all public agencies, particularly in certain municipalities and other offices, as a result of the technical weakness of the people in

charge of implementation. Additionally, there is a need for strong leadership and a strategic implementation plan to consolidate modernization of the public procurement process in a coordinated and effective manner. Since the law's implementing regulations have not yet been issued, this has led to different interpretations of certain procedural details and to inconsistent enforcement practices.

The Institutional Framework

4. The UNAC, which was created by LACAP as a functional and technically autonomous entity that is administratively dependent on the Finance Ministry, is a relatively young organization with clear objectives. Even though it is carrying out its assigned mission with enthusiasm, it is still rather weak. To date (November 2004) it has not yet achieved the necessary credibility with government agencies and has not been able to exercise effective leadership in policy development or to perform its functions satisfactorily due to weak capacity. Since it was created, the UNAC has endured frequent management changes. Furthermore, the UNAC has internal organization problems stemming from a shortage of qualified technical personnel and the lack of an information system as well as a monitoring and evaluation tool that would allow measurement of the performance of the procurement reform process that, in turn, would provide feedback for the policy-making process.

5. The SIAC includes the Institutional Units of Procurement and Contracting (UACIs) in each government agency (106 units) and municipality (262 units), which have substantially different technical capabilities. With assistance from UNAC and the STP, some of the UACIs have greatly improved their capacity to carry out their functions according to the new law. Overall, public servants carrying out procurement responsibilities are poorly paid and in many cases are frequently reassigned. Poor planning capacity and methodologies are a common problem, which affects the efficiency of the procurement system. On the other hand, there has been significant improvement in the area of contract administration and payments to contractors, particularly with respect to works carried out by the Ministry of Public Works – an area in which these improvements have increased operational efficiency and generated substantial savings.

6. Some of the UACIs that carry out major projects have a good budget and are technically solid (i.e. the Public Works Ministry and the Road Conservation Fund), but other UACIs are very weak, have very limited resources, and in general lack adequately-trained personnel. The capacity of the Municipalities' UACIs is particularly weak as most do not fully understand the new law and have problems implementing the procurement system. Just like in the majority of UACIs, the staff at the municipalities need technical training and assistance in an ongoing and systematic manner to be able to implement simple procurement procedures compatible with their needs.

The Control and Legal Compliance Framework

7. The control and legal compliance mechanisms of matters related to public procurement are handled by the Court of Accounts of the Republic (CCR), the independent auditing institution that reports to Congress. Despite its efforts and the dedication of its technical staff – which has a good reputation – the CCR has not attained the prestige and leadership that an independent institution of this nature should enjoy. The law that regulates CCR activities is not fully adequate to ensure the independence of internal audits in government agencies and external audits, as well as coordination between the two. As a result of this, the results of the work of an institution as important as this one are limited with regard to measuring the impact of Government policies and the achievement of proposed objectives. Furthermore, the Prosecutor General of the Republic (FGR) – which represents the state in contracts to purchase any real or movable property subject to public bid – has to sign all contracts as the legal representative of the state. The office of the FGR is carrying out a merely legalistic function that creates a conflict of interests for the Prosecutor General, whose mandate is to represent the state in everything that has to do with public contracts, including investigations into non-fulfillment of contracts that the Prosecutor General himself has previously approved. In addition, civil society is not organized enough to effectively shoulder its responsibilities, and has a limited role with regard to monitoring the transparency of public contracting processes. A few joint actions have been successfully carried out between the government, civil society and the municipalities.

External Drivers for Change

8. In addition to internal pressures to continue with the reform and improvements to the public procurement system, the negotiations for a Central American Free Trade Treaty (TLCCA) are an important incentive for further improvement of the public procurement and contracting system. TLCCA negotiations were concluded in December 2003, and even though the treaty has preference over the law and in general its public procurement requirements are consistent with LACAP, there are still some technical details that it is advisable to revise in LACAP to make it totally compatible with the treaty.

Objectives of the Country Procurement Assessment Review (CPAR)

9. This CPAR was prepared jointly by the World Bank and the Inter-American Development Bank in coordination with the also jointly prepared Country Financial Accountability Assessment and the World Bank's Public Expenditure Review. Its goal is to serve as a tool for dialogue with the Government of El Salvador on the topic of policy and governance, as a basis for the banks to draw up their assistance strategies for the country.

10. In general, procurement financed by the two banks are satisfactory and the risk they imply in the two banks' portfolios is not high. Any improvements made in the public procurement and contracting system will heighten the efficiency of public spending, help

to increase the country's capacity for sound economic governance, and better align public sector performance with the demands of a modern and private sector-driven economy. In addition, such improvements will help to increase the use of national systems to implement donor-financed projects and enhance the effectiveness of Government programs in all sectors, including those that are financed by external sources.

Recommendations

11. In order to move forward with the ongoing public procurement modernization programs in an effective and coordinated manner there is, first of all, a need for strong leadership and commitment at the highest possible level of Government. The current approach to public procurement modernization reforms must be re-assessed, with the goal of updating the strategy to disseminate the new regulatory framework, build political consensus with the support of all the main stakeholders, and involve civil society in a more effective manner.

12. It is necessary to join efforts to ensure that the UNAC has the authority, resources and capacity required to carry out its functions and play a major role in the public procurement modernization program. A comprehensive institutional strengthening and strategic training plan must be developed and implemented with the support of the IDB and the World Bank, including a loan to modernize the public sector and a World Bank IDF grant for modernization of the public procurement sector.

13. In addition, all UACI's and the control and auditing institutions should be strengthened, while public institutions and their managers should be made more accountable for their decisions. In this regard, it is vitally important to coordinate public procurement reforms with the planned improvements in civil service administration to make the public procurement and contracting function more professional and ensure that selection and promotion decisions for procurement specialists are based on objective criteria. In general, it is essential that all public procurement reform actions taken be consistent with reforms to the civil service system and any other reforms for modernization of the public sector.

14. Furthermore, it is necessary to adopt a policy and a strategy to fight corruption and which, in turn, will help to define the functions, enhance the capacity, and provide greater independence to all institutions involved. It also is necessary to adopt a code of ethics for public sector employees involved in government procurement activities.

15. As part of its recently-launched e-government strategy, the Government should develop an e-procurement strategy to be implemented in well-defined stages. From the outset it has to place special emphasis on transparency, setting up an information management system to capture the complete range of public procurement information, and adopting a monitoring and evaluation system that will allow it to determine up to what degree the reform is producing the desired results and if the system is helping the state procure goods, works and services in an efficient and economic manner.

16. Finally, it is very important for implementing legislation for the law to be enacted and adopted as soon as possible. Over the long term there might be a need to review the

LACAP for updating purposes, including in the regulations certain details that are in the law and to improve it in certain aspects, such as: the use of direct contracting, purchases by quotations, requirements for guarantees of the seriousness of bids and fulfillment of contract, procedures for protests, bid evaluation criteria, penalties and payments to contractors, and the inclusion of alternative methods for the resolution of disputes.

17. Below is a summary of the report's main recommendations. The details are provided in the proposed action plan in chapter VI of the report:

- prepare a comprehensive plan for implementation of the Public Administration Procurement and Contracting System.
- approve the regulations for the LACAP and begin to use it as soon as possible.
- take concrete actions to consolidate the mandate, organization and management of the UNAC.
- prepare a government policy and strategy paper and an action plan to tackle corruption.
- develop and implement a strategy for specialization in public contracts.
- develop and systematically implement training programs to strengthen the capacities of the UNAC and UACIs.
- develop, establish and maintain an electronic procurement system, as part of the e-Government strategy, beginning with a module to provide information to the public and gradually moving toward an electronic public bidding system.
- develop, for use by all government agencies, bidding and contract documents that have been harmonized (with the requirements of international organizations and the LACAP).
- strengthen the CCR with regard to its independence, autonomy, and impartiality.
- revise and strengthen the internal control system of the government agencies.

ASSESSMENT OF THE PROCUREMENT SYSTEM

I. THE PUBLIC SECTOR

A. Background

The public sector purchases and the economy

1. El Salvador is the smallest country in Central America and it is also one of the most densely populated in the western hemisphere. With 21,000 square kilometers of land it has 6.5 millions of inhabitants. Since 1991, when the civil war ended, El Salvador has made significant advances in its economy and on its political and social fronts. Over the last decade, economic growth and price stability superseded economic recession and inflation. Its current GDP per capita is US\$ 2,200.

2. The Government has made an effort to increase investments to help rebuild the infrastructure damaged by several earthquakes in 2001. Public sector investments during the 2001 - 2003 period reached an average of close to US\$ 600 million per year. The major portion of these investments was used in the construction of roads, hospitals, schools, houses, potable water and electric power infrastructure, and so on. The Ministry of Public Works and the Road Fund (MOP / FOVIAL) execute approximately a third of the investment, followed by the Ministry of Education (13%) and the Social Investment Fund for Local Development (FISDL) (8%).

3. The Government spends approximately US\$ 1.3 billion annually in the procurement of goods, services and public works, equivalent to about 9% of GDP. There are 368 Government Agencies involved in public procurement, of which 262 are municipal mayoralties and the other 106 are ministries, decentralized entities and public utility companies. The legal framework is defined by the Law on Public Administration Procurement and Contracting (LACAP) enacted by Decree 868 of May 15, 2000, while the Regulatory Unit for Procurement and Contracting, UNAC – which comes under the Ministry of Finance (MH) – is the regulatory entity responsible for the operation and coordination of the Public Administration Procurement and Contracting System (SIAC), and also provides advice to the various agencies on procurement-related functions.

Assistance strategies from the IDB and the World Bank

4. The IDB strategy for the 2000 – 2003 period focused on helping the Government maximize its efforts to maintain economic and social development in the country by means of: (i) economic reactivation with regard to development, stability and competitiveness; (ii) poverty reduction and development of human capital; and (iii) modernization and governance of the State.

5. As of July 2003, the IDB portfolio consisted of 18 projects with a total loan amount of US\$ 869 million; 30 non-reimbursable technical assistance operations for close to US\$ 12.5 million; another 30 technical assistance operations using FOMIN funds; and five loans for a social enterprises program totaling US\$2.4 million. The total disbursement of the portfolio was close to 52%.

6. As a consequence of the January – February 2001 earthquakes, the Government was forced to adapt its public investment program to meet the most urgent reconstruction needs. The World Bank strategy for the 2002 – 2004 period, spelled out in its November 2, 2001 Country Assistance Strategy report (CAS), supports the Government program through three objectives: (i) reducing poverty and promoting social development; (ii) speeding up economic growth and creating new opportunities; and (iii) enhancing the role of the public sector.

7. The World Bank portfolio consists of eight projects under execution backed by a total loan amount of US\$ 483.6 million. The two most important projects of this portfolio are a US\$142.0 million project for reconstruction of the damages of the earthquakes and for public health, and two education projects totaling US\$ 146.0 million. In addition, Bank financing is provided for modernization of the public sector, services related to the environment, development of rural communities, management of real estate, and judicial reform.

8. Following their respective strategies, the two banks are financing two technical assistance projects aimed at reinforcing the Government's capacity to implement its public sector modernization program, including actions to improve transparency and competitiveness in public sector procurement. These two loans (US\$ 24.0 and 31.0 million from the WB and the IDB respectively) and a recently-awarded IDF grant from the WB for US\$ 0.5 million, approved in January 2003, are helping the Government with implementation of the LACAP, the strengthening of institutions, and training of staff at the UNAC and the Institutional Units of Procurement and Contracting (IACIs) at Government agencies and municipalities. In addition, the banks' assistance provides for the development of an Integrated Financial Administration System (SAFI), as well as the strengthening of the Court of Accounts, which is an independent body in charge of controlling Government activities.

Government efforts to strengthen procurement activities

9. The country adopted several reform programs during the last decade. The most important of these reforms is approval of the LACAP on April 5, 2000. The LACAP superseded the Supply Law of the General Supply Office of the Republic in effect since 1946, and the supply laws for the public works and public health sectors in effect since 1953 and 1982, respectively. Approval of the LACAP unified the legal framework for procurement and contracting for the entire public sector. However, in addition to the regulations, the legal framework must be complemented with homogenous processes to amend and implement said regulations, as well as capable public institutions manned with trained personnel who can live up to the citizens' expectations. The Government is aware of these needs and has developed certain initiatives, including the following:

- Establishment of the UNAC, whose main responsibility is to propose general policies and guidelines for the design, establishment, operation and coordination of the SIAC.
- Establishment of the UACIs, which are responsible for procurement activities in each public sector institution, including the municipalities.

- As part of the Program for Modernization of the Public Sector, dissemination of the law and capacity-building programs aimed at both public officials and the private sector, through the Technical Secretariat of the Presidency and with IDB support.
- Support to the UACIs on current and institutional matters, through the Technical Secretariat of the Presidency and the UNAC.

10. Despite all of these efforts, however, as this report went to press it had not yet been possible to establish a standard procurement process at all public agencies, and the SIAC lacks a firm and unified program that consolidates the procurement modernization process in a conscientious and effective manner. The main challenges for consolidation of the SIAC are: approval of the LACAP regulations, the strengthening of public institutions, and the training of staff.

Purposes of this Country Procurement Assessment Report (CPAR)

11. Just like the Banks' other non-financial products, the CPAR is an analytical tool used to diagnose the status of a country's procurement and contracting system, and at the same time to promote a dialogue with the government to bring about any reform actions needed. The previous CPAR for El Salvador was completed by the WB in 1991. The main purpose of a CPAR is to identify the actions needed to improve a country's procurement and contracting system, and to agree on an action plan with the Government to implement such actions. The main purposes of this CPAR are the following:

- To carry out a comprehensive analysis of the country's procurement system, from the viewpoint of its legal framework, including the organization and management of the institutions involved their responsibilities and control mechanisms, and current procedures and practices.
- To assess certain situations that might crop up in public institutions, such as corruption, a lack of transparency, and other existing risks that interfere with both public and private procurement and contracting processes.
- To assess private sector business practices, in particular those having to do with Government procurement and contracts.
- To strengthen the action plan that supports modernization of the procurement and contracting system to attain improvements in public institutions.
- Central America-US Free Trade Treaty (TLCCA)

12. Since the early 1990's, El Salvador and the entire Central American region have recognized the importance of integrating their economies with those of the rest of the world, and along these lines the strategy of international economic insertion adopted by El Salvador is based, among other things, on a reciprocal opening of markets negotiated on the international level by means of the subscription of Free Trade Treaties (TLC). In this regard, El Salvador has treaties in effect with Mexico, Dominican Republic, Chile and Panama; good progress has been achieved in negotiations with Canada; and negotiations with the United States were completed on December 17, 2003. The TLCCA includes a chapter (Chapter 9 and Annex 9.1) on public procurement, which develops

norms aimed at ensuring guarantees for transparency and due process, as well as the conditions under which a Party can gain access to the public contracts market (above certain thresholds established in the treaty)¹ of the other Party. Regarding transparency, the TLCCA specifies a legal framework that ensures the principle of transparency in the enforcement of treaty provisions, as well as the disciplines that will guarantee the fight against corruption in trade between the parties.

13. Homologation of the LACAP and the TLCCA: The procurement requirements of the LACAP are very much in line with those of the draft TLCCA, in the sense that both promote transparency, free competition and efficiency in the procurement processes. However, the terminology and some technical details in the law differ from the requirements of the TLCCA:

- In the event of a tie in the result of an evaluation of bid proposals for the procurement of goods, the national bid will be given preference (Article 55).
- The requirements that have to be followed for bid invitation announcements are less detailed than those required by the TLCCA (Article 47).
- Minimum timeframe for preparation of bid proposals (Article 44).
- Article 49 of the law requires payment to obtain bidding documents, while the TLCCA specifies that these documents should be provided free of charge.
- The maximum amount allowed for contract change orders (Article 109).
- Detailed justification for direct procurement (Articles 40, 71 and 72).
- Details for the adjustment of prices during execution of the contracts (Article 88).

In practice, these differences should not pose a problem because the LACAP states that the provisions established in international treaties or agreements regarding matters related to public procurement and contracting will prevail over the provisions of the law.

Challenge Posed by the Millennium Account (CM)

14. On March 14, 2003 the US Government announced a 50-percent hike in its basic assistance for developing countries over the course of the next three years, which will result in an increase with regard to the current level of US\$5 billion. These resources, which will go into the Millennium Account to finance any program aimed at improving the countries' economy and living standards, have as their main goal compensating those countries that show, by means of sensible policies, that they are contributing to reduce poverty and promote national economic growth. The CM resources will be distributed as grants among countries that show a serious commitment toward, among other things, good governance – which implies eradication of corruption, respect for human rights, and enforcement of the country's laws. As required, these programs will be closely

¹ Thresholds for procurement of goods, services, and construction works are US\$58,550 and US\$6,725,000 respectively. These will be increased after the third year to US\$117,000 and 8,000,000 respectively.

coordinated with other similar programs financed by the Government as well as by bilateral and multilateral organizations. El Salvador is among the countries that are competing to obtain these funds.

15. From the viewpoint of public procurement and contracting, the use of CM funds as well as the opportunities expected from the TLCCA is very much linked to transparency in the procurement processes and the creation of greater opportunities to participate in these processes, thereby enhancing competition and the good use of public resources. These two initiatives put the Government of El Salvador to test with regard to the efforts that have to be made to successfully implement the LACAP and to define a policy and a strategy to fight against and reduce the levels of corruption.

B. Legal Framework

The Law on Public Administration Procurement and Contracting

16. In El Salvador, the public procurement legal framework is based essentially on the Constitution of 1983 and the LACAP, as well as on the provisions of the Civil Code and the Commercial Code, which were amended in 1993.

17. The LACAP, Decree No. 868 from the Legislative Assembly, is the main legal instrument for public sector procurement. This law was enacted on April 5, 2000, and became effective on May, 15, 2000, when it was published in the Official Gazette. Three amendments to the LACAP were issued to clarify that it applies to the municipalities and to small-purchase procurement activities (D.L. No. 204 dated November 30, 2000; D.L. No. 244 dated December 21, 2000; and D.L. No. 593 dated October 31, 2001). The approval of the law was a big step forward because for the first time ever the country had a procurement law for the entire public sector. After phasing out the General Supply Office and decentralized purchases, all institutions that in the past used their own bidding procedures, terms, and documents set them aside and are now using uniform regulations and procedures. In addition, previously there was no procurement regulatory entity in the Salvadorian Government to provide guidelines in the area of public procurement and contracting.

18. As an essential part of the decree approving the LACAP the Legislative Assembly established the key objectives of the procurement policy in the whereas clause. These are:

- Maintaining the principles of public probity
- Ensuring efficiency in procurement processes, so that they are carried out in a clear, rapid and timely manner
- Ensuring rational use of resources based on the principles of free competition and public bidding.

19. Article 234 of the Constitution of El Salvador states that whenever the State has to enter any contract to build works or acquire movables that requires committing public funds or assets, said works or supplies have to be subjected to a public bid, except in the cases determined by law. Anticipating the requirements of the TLCCA, the LACAP requirements ensure the opening of the market to international competition by means of non-discrimination of foreign suppliers for national procurement. However, the emphasis placed on transparency of the processes caused the LACAP to have considerably detailed rules, which is probably a good thing until the benefits of free competition have been proven and probity has been improved, but later on it might become necessary to review and update the law.

20. Other important virtues of the new Law are: (i) the requirement of an annual procurement and contracting policy for the public sector; (ii) the obligation for all public institutions to prepare an annual procurement and contracting plan that is compatible with the annual procurement policy; (iii) the establishment of a procurement regulatory agency responsible for ensuring compliance with the annual procurement policy; issuing instructions, manuals and standard documents; and advising and training all public agencies to help them attain the objectives of the Law; and (iv) the spirit of openness of the Law, which encourages the participation of suppliers and promotes maximizing competition among them.

21. The LACAP covers all procurement and contracting of works, goods and services by all Salvadorian institutions, including the municipalities, and their offices and auxiliary organizations, as well as institutions and state-owned companies that are autonomous, and any other organization that commits public funds. Only the following items are not covered by the law: procurement and contracting financed with funds coming from other countries (bilateral agreements) or international bodies; those accomplished through agreements between state institutions; and the contracting of personal services by public institutions under the provisions of the Law on Salaries, Contracts and Day Work.

22. In addition to the general provisions on public procurement, some of the most important subjects covered by LACAP are the institutional agreements needed for the proper implementation of the procurement and contracting system, the authority to contract, the probity of public servants, the resolution of conflicts and petitions for review.

23. *Institutional Framework.* Article 6 of the LACAP covers the establishment of a Regulatory Unit for Procurement and Contracting (UNAC) that comes under the Ministry of Finance but is operationally and technically autonomous. In addition, article 9 of the Law requires that each public institution must set up an Institutional Unit for Procurement and Contracting (UACI) that will be responsible for operational decentralization and for carrying out all activities related to the procurement and contracting of works, goods and services.

24. *Procurement Schedule.* As per Article 16 all public institutions have the obligation to draw up an annual program (compatible with the official budget) for the purchase and contracting of goods, works and non-personal services, in accordance with its work plan and budget, which is of a public nature.

25. *Responsibilities.* The competent authority for awarding contracts and approving bidding requirements is the head or the Board/Council of Directors of each institution. The Prosecutor General represents the State in contracts for the procurement of real estate in general and movable property subject to public bidding. For the rest of contracts this responsibility lies with the head of the institution or whoever he or she designates for this purpose. In the case of Municipalities it is the Mayor's responsibility or, in his/her absence, the responsibility of the person designated by the Municipal Council. At all times the head is guilty of negligence in case he/she fails to follow up the actions of his/her subordinates and will be held jointly responsible for their actions in the event of a breach of the obligations established in the law.

26. *Bid Evaluation.* In order to evaluate bids presented in response to public bids or tenders, either national or international, each institution will set up a Commission. The members of the commission will be appointed by the head of the institution in charge. The composition of these commissions can vary depending on the nature of the works, goods or services to be acquired. The commission's evaluation of the bids should be based on technical and economic-financial considerations – with the exception of contracts for consultancy services in which technical considerations will be the determining factor – using the evaluation criteria established in the bases for the bid or tender. If, after fulfilling all technical specifications, there is a tie score in the price and other conditions required in the bid specifications between goods produced in the country and goods produced abroad, the local offer will have preference. Although this aspect contradicts the general principles established in the TLCCA, in practice it is not an impediment because the provisions set down in international treaties or agreements prevail over those established in the procurement law.

27. *Contractual modalities.* The law regulates the following types of contracts: a) public works; b) supply (of goods and services other than consulting services), c) consulting services, d) concessions; and e) leasing of movable property. Aside from the types of contracts mentioned, the institutions can enter contracts in accordance with the norms of Common Law, observing everything outlined in the law with regard to preparation, award, and fulfillment.

28. *Guarantees.* Article 31 of the law stipulates that, in order to proceed with the procurement or contracting, the contracting institutions should demand that the bidders provide the following guarantees, as the case may be: a) maintenance of bid; b) considerable advance investment; c) contract performance; and d) quality work. The specifications for the bid or tender can stipulate any other requirement that has to be guaranteed, even though it is not specified in the law. These guarantees can be surety bonds or bank guarantees issued by local or foreign surety companies, insurance companies or banking institutions authorized by the Superintendent of the National

Financial System. Bank deposits with restrictions, irrevocable letters of credit that are payable on demand, and any other security or asset that is easily or readily collectible can also serve as guarantees, provided the contracting institution believes that it sufficiently guarantees its interests.

29. *Bidding Methods.* The forms of contracting are public bid, public bid by invitation, public tender, public tender by invitation (the word tender is used when referring to the contracting of consultancy services), open shopping, and direct contracting. Public bidding is applicable for the contracting of goods, works or services when the cost of the contract is more than 635 urban minimum wages; public bidding by invitation is applicable for the contracting of goods, works or services whenever the cost is between 80 and 635 urban minimum wages²; public tender and public tender by invitation is used for the contracting of individual consultants when the contract amount is more than 200 urban minimum wages or between 80 and 200 urban minimum wages, respectively. Open shopping is used for any procurement or contract that does not exceed 80 urban minimum wages and a price comparison must be made with quotations from a minimum of three suppliers. This requirement is not applicable when the contract amount does not exceed 10 urban minimum wages or when only one offer is available, and in this case a resolution explaining the reasons must be issued. There is no limit for direct procurement because it is applicable only under special circumstances that are described in the law (LACAP Article 72). Contracts that exceed the amounts established in the law will be considered null, but those that are below the established amount can use some other type of contract. The following table shows the amount in US dollars for the various types of contracting.

Determination of Contract Amounts

Works, Goods and Services	From US \$	To US \$
Public bid	100,584.01	+
Invitation to public bid	12,632.00	100,584.00
Open shopping	0.01	12,671.99
Direct contracting	None	None
Individual Consultants		
Public tender	31,680.01	+
Public tender by invitation	12,672.00	31,680.00
Open shopping	0.01	12,671.99
Direct contracting	NA	NA
Open shopping		
Single supplier	0.01	1584.00
Three suppliers	1584.01	12,671.99

² A minimum wage is equal to 1,386 Colones, which is equivalent to US\$ 159. This amount is adjusted from time to time by the Government by means of Executive Decrees. The last decree issued was No. 39 dated May 23, 2003.

The legal framework

30. *Enforcement of the law.* The biggest difficulties experienced since the approval of the procurement and contracting law stem from problems arising from the interpretation of the law and the institutional weakness of certain public agencies to enforce it in an adequate manner. This is due, among other things, to a lack of regulations for implementation of the law (pending since July 2000) and the fact that some of the institutions do not have the capacity required to interpret and enforce all of the aspects of the law. As a way to supplement the regulation and to complete the cycle as far as procedures are concerned, some institutions have drawn up their own manuals of procedures.

31. *Paucity of regulations and personnel training.* This situation has been worsened as a result of: (a) lack of approval of regulations to govern procedural matters and to develop the precepts outlined by the law; and (b) insufficient capacity of the UNAC to provide adequate training and guidance to clarify concepts and unify criteria. A draft regulation drawn up by the Technical Secretariat of the Presidency and coordinated with the pilot UACIs and the Finance Ministry is awaiting review and approval by the Secretariat for Legal and Legislative Affairs. From another quarter, the UNAC and the Secretariat of the Presidency have carried out training programs to disseminate the law, but ongoing training is required, structured by specific topics, and this will require a continuous and unified effort.

32. *Bidding methods.* Due to the manner in which they are regulated by the law, the description of public bids and public tenders by invitation turn out to be confusing and inefficient to the institutions because, in practice, these procedures always are handled like public events. In addition to publishing the invitation – due to the interpretation made of the law – the institutions allow any other interested party to participate in addition to the companies that were invited, in the same manner in which they would handle a public bid, and consequently there is no difference between the two procedures. With regard to direct contracting, the law lists the cases in which this contracting method can be used (Art. 72), but even though it describes urgency as a “serious risk to the general interest” this definition is far too general. The regulation has to be more specific regarding the procedure to be followed for this form of contracting, for the purpose of clarifying the types of situation that pose a grave risk to the general interest and consequently deserve to be described as urgent.

33. *Open shopping.* A portion of the procurement and contracting of goods and services in El Salvador is accomplished through use of the Open Shopping method, which consists of requesting quotations from at least three suppliers. Requests for quotations are a suitable procurement method for the purchase of low value or standard quality goods and services.

34. For this type of contracts a long and perhaps costly bidding process would not be justified. Nevertheless, it is important to limit use of this contracting method by means of

good procurement planning, to avoid the splitting up of purchases for the purpose of eluding the threshold amounts that were set (LACAP, Art. 58).

35. *Guarantees:* In order to proceed with a procurement or contract, the Law stipulates that the contracting entities must demand that the bidders or contractors present, according to the case, guarantees to ensure: the maintenance of the bid, sound investment of the advance payment, contract performance, and good quality work. Furthermore, it stipulates that any other topic that requires a guarantee can be listed in the specifications for the bid or tender. Because of the way this provision is spelled out, the institutions are compelled to demand these guarantees, as the case may be, in the contracts regulated by the law. In practice, it is common for institutions with scant experience to interpret this requirement literally and to demand the entire menu of guarantees possible, or several of them simultaneously – sometimes even requiring additional guarantees – even though they might not be necessary due to the nature of the contract. For example, it is not advisable to require certain types of guarantees for consulting services, and even less so for individual consultants. In these cases fulfillment of the guarantees is frequently subject to interpretation and consequently it is easy to use them unduly (for example, as a way to disqualify a bidder). Furthermore, this tends to increase the costs for the institution and of the consulting services, without producing any evident benefit. Additionally, these costs eventually are transferred to the institution since the firms include them in their proposals.

36. *Amount of the guarantee for maintenance of the bid.* The Law provides that the amount of the Guarantee for Maintenance of the Bid will vary between 2% and 5% of the total amount of the contract budget. This guarantee is required to provide reasonable protection to the institution and to ensure that the selected bidder will sign the corresponding contract. Therefore, the amount of this guarantee should be reasonable enough to avoid discouraging serious bidders and therefore decreasing competition, and to avoid increasing the costs for the bidders since eventually these costs will be transferred to the purchasing institution itself. Taking all of the foregoing into account, in each case the amount of the guarantee for maintenance of the bid should be carefully studied, taking into account market conditions and the type and amount of the procurement activity. It is advisable for the contracting agencies to seek legal counsel and professional advice on the use, selection and preparation of bid guarantees according to each particular case.

37. *Availability of bid specifications.* The Law does not stipulate that the bid specifications should be made available to interested parties in the offices of the institution following publication of the invitation to bid. The law stipulates only that the interested parties can request them and pick them up in a specified timeframe after paying the corresponding fees. It is important to give interested parties the opportunity to review the documents before purchasing them so that they can decide if their participation is advisable and to improve access to and transparency of the bids; in such cases one can demand payment of the fees for the bid specifications in order to allow participation. It must be mentioned that certain institutions allow interested parties access to bid specifications at no cost.

38. *Petition for review.* Article 18 of the Constitution establishes the right of any person to send a petition in writing to the authorities for resolution and to receive information about the resolution. For its part, the LACAP (Article 76) authorizes a petition for review for any decision handed down as part of a procurement process, which means that the petition for review would apply only to those parts of the process that are subject to resolution such as the award and the addendas. It is advisable to allow the filing of petitions at any time during the process, including petitions against the bid specifications.

39. *Control by the Office of the Prosecutor General.* Article 193, paragraph 5 of the Constitution of the Republic of El Salvador establishes that the office of the prosecutor general is charged with representing the State in all contracts related to the procurement of real estate in general and of movable property subject to bidding procedures, and in all other contracts determined by law. This same provision is reflected in the Law, which specifies that signing of all other contracts is the responsibility of the person in charge of the institution or the person that he or she designates. Although this is a constitutional obligation, its purpose is not altogether clear because if the objective is for the prosecutor general to legally represent the state, this might give rise to a conflict of interests or ulterior responsibilities for the Office of the Prosecutor (Paragraph 55). The role of the Office of the Prosecutor General in public procurement merits a review.

40. *Bid Evaluation.* Article 55 of the Law establishes that bid evaluation commissions should evaluate the technical and economic-financial aspects of the bids in accordance with the evaluation criteria established in the bid specifications, in order to award the contract to the best evaluated proposal (paragraph 80). Consultant services contracts are excluded from this general rule, but it is specified that in this case the technical aspects should be the determinant factor in the evaluation of proposals (Article 55). A selection based on quality and cost for consultant services contracts is advisable when the nature of the work to be performed allows it, because better prices can be obtained. The weighted cost factor should be carefully assessed in each case, taking into account the complexity of the work and the relative importance of its quality. Generally, selection based purely and exclusively on technical aspects is advisable when dealing with complex or highly specialized works or works that require that the bid proposal itself contribute innovative methods. To the contrary, when dealing with the contracting of standard or routine consultant services, for which well established practices and regulations exist (i.e. audits, technical design of not very complex works, etc.), the weighted factor granted to price should be chosen in keeping with the intellectual or professional contribution of the consultant, but the quality of the consultant and the technical proposal should prevail during the evaluation. For consultant services, the LACAP stipulates that the evaluation of technical aspects should be the determinant factor in the selection of the consultant (Article 55) but it does not mention selection based on quality and price negotiation.

41. *Perfecting of contracts.* Article 79 of the Law establishes that contracts governed by the Law are perfected and formalized through the signing of the pertinent instruments, except open shopping contracts which require only the issuance of a purchase order or

invoice. However, modern theory on administrative procurement maintains that an administrative contract is perfected at the time of notification or certifiable communication of notification, which is a reciprocal manifestation of the will of the parties. This, which at first sight might seem like a purely theoretical discussion, can have important practical consequences because it creates rights and obligations for the parties from that moment onward. For example, in the case of Article 79 of the Law, if a bidder were to withdraw its proposal following the award and notification of the award, but before the contract is signed, it does not incur in non-fulfillment of contract because the contract has not yet been perfected. However, even though it is important from the evidence and audit standpoints, a written document signed by the two parties merely represents formalization and not the birth of the contract.

42. *Implementation of contract.* The LACAP contains several provisions for the implementation of contracts, and the following should be underscored:

- The guarantees for contract performance (Article 35) and good quality work (Article 37). For works contracts, articles 115 and 116 establish the conditions and timeframes for the provisional and definitive acceptance of the works, which must be taken into account in order to determine the periods of validity of the guarantees. The UNAC should be able to determine procedures for these articles by means of guidelines for the purpose of ensuring consistency and to avoid confusion regarding the periods covered by the guarantees.
- Penalties for delays (Article 85). This article sets incremental fines according to the number of days of delay, but the mechanism for the enforcement of such penalties is somewhat confusing and might become a cause for dispute and mismanagement. The regulation of the Law should clarify the method of enforcing the fines, but it would be better just to simplify the requirement.
- Payments to contractors. The Law is weak with regard to the contracting party's obligations to make payments, and leaves the definition of timeframes and method of payment to be determined in the specifications for each bid; for example, the law does not establish a maximum timeframe allowed for making payments. The international practice consists of making payments within 30 days from the date the payment request is submitted. The Law does not make reference to payment methods either – such as payments in foreign currency – but it does contain provisions for compensation due to delayed payments (Article 84) and a price adjustment for contracts that will take more than 12 months to complete (Article 88). The Law also contemplates expiration of the contract due to delay in timely payment by the contracting party (Article 94).

43. *Resolution of disputes.* Articles 161 through 169 of the Law provide for direct settlement and arbitration in cases of dispute. However, the law does not consider other alternative methods for resolution of disputes, such as, for example, an independent adjudicator. Additionally, there is the Mediation, Conciliation and Arbitration Law approved in July 2002 that gives the arbitration decision the same force and validity of a

court ruling and establishes other options for resolution of disputes. This law is integrated into the LACAP provisions by means of Article 25.

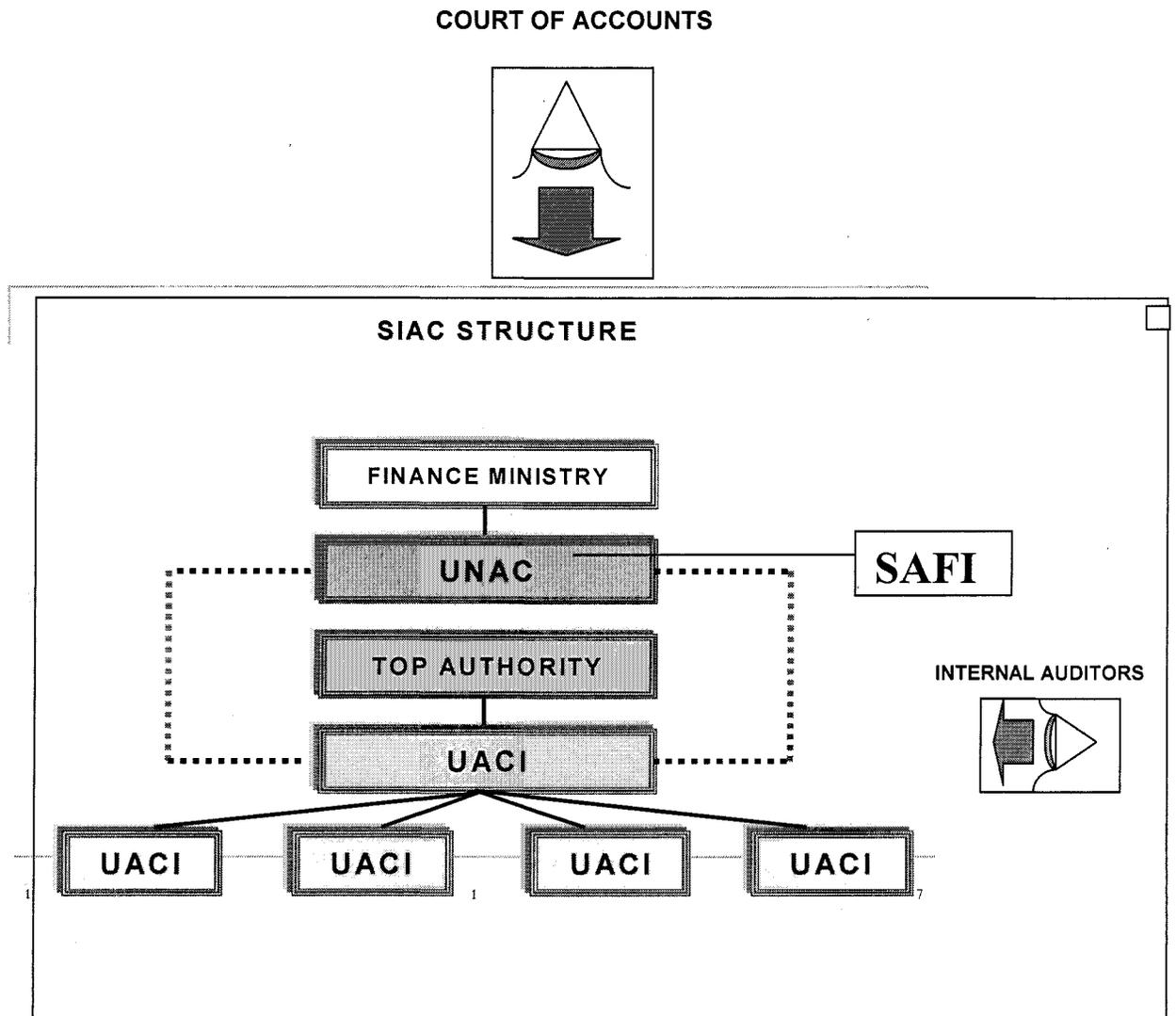
C. Institutional aspects and organization

Structure and Organization

44. Enactment of the LACAP set off the decentralization of procurement activities, in keeping with the principle of centralization of regulations and decentralization of operations. The LACAP established the UNAC as an entity under the Ministry of Finance in charge of promoting coherent guidelines and procedures, according to the Law, to be observed in the design, establishment, operation and coordination of the SIAC. The coordination structure of the SIAC is shown in the chart on the following page. The law assigns procurement responsibility to each contracting agency, which has to establish its own Institutional Unit of Procurement and Contracting (UACI). One of the most important functions of the UNAC is to advise public institutions so that they can carry out their functions related to procurement and contracting. The UNAC is in charge of:

- a) Proposing to the Ministry of Finance an annual policy for public administration procurement and contracting;
- b) Issuing general policies and guidelines for the design, implementation, operation and coordination of the SIAC;
- c) Issuing instructions, manuals and other instruments to facilitate attainment of the objectives of the law;
- d) Advising and training the UACIs in the preparation of technical documents; training, promoting, providing technical assistance and following up the UACIs to ensure compliance with all of the norms included in the law and in its regulation;
- e) Supporting the implementation of measures of a general nature considered advisable to improve the SIAC in its operational, technical and economic aspects;
- f) Reviewing and updating general policies and technical instruments in accordance with the Law and its Regulation;
- g) Establishing guidance manuals on the documents needed to carry out the procurement and contracting activities of Public Administration;
- h) Establishing and maintaining a National Registry of Public Administration Procurement and Contracting, which should include updated information about the nature, amount and degree of compliance of the obligations contracted with public administration; and
- i) Any other activities assigned to the UNAC by a senior authority.

SIAC COORDINATION STRUCTURE



45. In order to perform its duties, the UNAC has 17 public servants including its Chief, a legal advisor and 12 professionals distributed over three work areas: management coordination, operations and informatics.

- The management coordination unit attends to the internal operation of the UNAC, with emphasis on personnel training and capacity-building and the development and implementation of the procurement system.
- The operations unit is in charge of UACI training programs and resolving UACI queries.
- The informatics unit is responsible for developing and implementing the information management system, including a database.

Even though the distribution of duties among the units seems sensible, the units have been attending solely to essential activities since they started to operate in 2001. Some of these activities are: the training program, preparation of a management manual to assist the UACIs, and the design of an electronic procurement system.

46. As of the date of this report, perhaps the unit that is most in need of strengthening is the informatics unit, which is operating with three experts borrowed from other areas of the Ministry of Finance. Likewise, the coordination unit has to coordinate with the other government institutions involved in training to be able to properly attend to the training program required by the UACIs, because at times its efforts have been isolated from the activities carried out by the procurement and contracting component of the Commission for Modernization of the Public Sector of the Technical Secretariat of the Presidency with regard to training on the LACAP. Furthermore, on occasion the UACIs are confused about who they should contact for advice.

47. Although Article 171 in LACAP establishes that the President of the Republic should approve the LACAP regulation within 90 days after the law becomes effective (June 29, 2000) (45 days after its publication in the official gazette), the law is not clear about which institution is responsible for preparing said regulation. A lack of coordination between the interested institutions and a lack of interest of the ranking authorities who are responsible for the regulation have contributed to the delay in the issuing of the regulation. As of the date of completion of this report the regulation of the Law has not yet been approved by the Presidency's Secretariat for Legal Affairs. The Bank was recently informed that a regulation agreed upon by the Technical Secretariat, the UNAC and the most important UACIs has been sent to the Secretariat for Legal Affairs and that approval is expected shortly.

48. In short, the UNAC is a young organization with clear objectives and devoted to its work, but it is still weak, and this is why it has not achieved the necessary credibility with the UACIs. The UNAC's main problems stem from frequent changes in its management (the Chief has been changed three times in the three years since UNAC was established), and its isolation from the Technical Secretariat of the Presidency. Additionally, the lack of the regulation of the law has led to misinterpretations by some officials regarding enforcement of the law and at times has caused misunderstandings with the UACIs and with the Technical Secretariat. In addition to these inconveniences caused by the environment in which it operates, the UNAC also confronts internal challenges due to a shortage of qualified technical personnel and the lack of an agile and adequate information system. In consequence, the UNAC needs to:

- Have the regulation of the law available as soon as possible.
- Consolidate its mandate, organizational structure, and internal management.
- Give more emphasis to professional and technical training of its personnel.
- Speed up the development and use of its information system.

49. The LACAP requires each public institution to have a UACI. These units are responsible for all activities related to management of the procurement and contracting of

works, goods and services, and are organized according to the needs and characteristics of each entity or institution and are directly answerable to said entity or institution.

50. The UACIs are in charge of the following:

- a) Ensuring compliance with policies, guidelines and technical provisions established by the UNAC, and performing all of the procurement and contracting processes established in the Law;
- b) Serving as the liaison between the UNAC and the offices of the institution with regard to technical activities, the flow and recording of information, and other aspects derived from the management of procurement and contracting activities;
- c) Preparing, in coordination with the Institutional Financial Unit (UFI), an annual schedule for the purchase, procurement and contracting of works, goods and services. This annual schedule should be compatible with the annual policy for public administration procurement and contracting, the institutional work plan, the budget, and the schedule for execution of the current fiscal year budget and its amendments;
- d) Verifying the budget allocation before starting any bid or tender process for the contracting of works, goods and services;
- e) Adapting, together with the requesting unit, the specifications for the bid or tender, in accordance with the guidance manuals provided by the UNAC, and in accordance with the type of contract to be entered;
- f) Receiving and opening bid offers and preparing the respective minutes;
- g) Carrying out the process of procurement and contracting of works, goods and services, as well as maintaining a file of each process;
- h) Requesting the advice of qualified experts or technicians whenever it is required by the nature of the procurement or contract;
- i) Preparing, together with the requesting unit and when required by the case, a record of the total or partial reception of the procurement or contracting of works, goods and services, in accordance with the provisions of the regulation of the Law;
- j) Controlling and updating the institutional database of bidders and contractors. (The UACIs are obliged to maintain information about all procurement activities performed during the last 10 years, in order to allow their assessment and oversight by the competent bodies and entities);
- k) Based on contract performance assessments, maintaining an updated registry of contractors, especially when the works, goods or services do not meet contract specifications or the contractor incurs in any infraction, and providing a written report to the head of the institution;
- l) Assessing the qualifications of potential local or foreign bidders, as well as reviewing and updating said qualifications at least once a year;
- m) Periodically informing the head of the institution about any contracts entered;
- n) Providing the bid evaluation committee any assistance it might need in order to perform its duties;
- o) Supervising, overseeing and establishing inventory control methods in accordance with the mechanisms established in the regulation of the law;
- p) Providing to the UNAC in a rapid and timely manner any information it might require; and

q) Complying with and ensuring compliance with all of the other responsibilities established in this Law and in its Regulation.

51. There are some 368 UACIs all over the country, including some 262 municipal UACIs and 106 of them in Government agencies. The latter UACIs are characterized by the heterogeneity of their organizational strength and their capacity to carry out the functions assigned to them by Law. Only the leads UACIs, in terms of the volume and complexity of their procurements, have developed or are developing suitable capacities in order to fulfill their mandates. Foremost among them are the MOP, the Road Conservation Fund, the Ministry of Education, the Ministry of Health, and the Social Security Institute (ISS).

52. The effort made by the authorities of the Ministry of Public Works (MOP) during the process to transform this institution deserves special mention. In the year 2001, this ministry launched an organizational restructuring process through a voluntary plan that prompted the departure of 7,761 employees, leaving only 741 employees in the institution. As a result of such restructuring, many of the services in the Ministry are contracted out to the private sector, including companies formed by some former MOP employees. Furthermore, and with the goal of improving efficiency levels, the MOP is working to develop new work processes and procedures. Attention is drawn, in particular, to the operation of its UACI, which is well structured, has highly qualified personnel, has demonstrated efficiency and transparency while carrying out its activities, and is considered a model organization within its professional environment.

53. With the exception of the leading institutions mentioned earlier, the situation of the majority of UACIs that operate within Government agencies is difficult because many of them are weak and perceive the requirements in the law as complex and difficult to enforce. However, it is a fact that the procurement performed by most UACIs is simple and of relatively low value, while the complex and high-risk operations are concentrated in the UACIs of the leading institutions. This shows that organizational and operational and control mechanisms should be designed taking into account the size of the operations and the risks involved in agency procurement. In addition, it is necessary to improve the inter-institutional relationship with the other offices of the Ministry or agency under which they operate. Currently, many UACIs are confronting problems similar to those of the UNAC, especially with regard to human resources. Although they have some talented, well-trained and enthusiastic individuals, careful and continuous attention must be given to the employee's knowledge level, capacity and experience.

54. The UACIs in the municipalities confront more complex challenges than their counterparts at Government agencies because they are autonomous and more disperse, and have a high rotation of personnel and less resource. The assessments made by the Court of Accounts in its audits show that the financial management, accounting, and procurement systems complement one another and that the municipalities generally encounter several problems:

a) Inadequate use of the accounting system and deficient records-keeping

- b) Lack of control on income
- c) Existence of fund disbursement documents that do not meet legal requirements
- d) Lack of knowledge about real estate owned by the municipality
- e) Insufficiency of internal audits and in some cases non-compliance with recommendations made by the Court of Accounts
- f) Income and expense budgets without sufficient information
- g) Scant citizen participation in the identification and classification of projects according to priority

On the specific topic of procurement, there is an unsatisfactory implementation of projects, including: (i) deficiencies in the technical and economic analysis of the offers; (ii) a small amount of bidders; (iii) scant use of public bids; and (iv) acceptance of works under terms different from those that were agreed upon.

55. For their part, the municipalities perceive the system as something complicated and confusing that obliges them to use documents and procedures with which they are not very familiar, thereby increasing their problems of efficient use of their scarce resources. Nevertheless, they recognize the reduced capacity of their UACIs. Similarly to the rest of the UACIs, the municipal UACIs need a systematic and sustained effort in personnel training as well as assistance with the installation of simple systems for procurement functions. In this regard, the Technical Secretariat of the Presidency – within the Program for Modernization of the Public Sector and with IDB support – is implementing, through the Institute for Municipal Development (ISDEM), a training program addressed mainly to the municipalities. During the 2000-2003 period, some 3,000 public employees were trained on the content and enforcement of the law under this program. In 2003 alone, about 1,000 public employees received training, and of this amount some 700 were from the municipalities. This initiative, however, needs to be better coordinated with the UNAC.

Budget Execution and Financial Administration

56. Since 1995, El Salvador has made efforts aimed at modernizing the financial management of its public sector. Legislative Decree No. 516 – the Organic Law of State Financial Administration – is the standard that establishes a coordinated integration of the administrative systems of Budget, Treasury, Governmental Accounting and Public Credit. The purpose of the Comprehensive Financial Administration System (SAFI) is to create such financial administration coordinating mechanisms among the entities and institutions in the public sector, and to establish economy, efficiency and effectiveness criteria for obtaining and using public resources. Similarly to the SIAC, the SAFI is governed by the principle of centralizing the regulatory function and decentralizing operational functions. The SAFI is made up of the four aforementioned administrative sub-systems, and the Finance Ministry is the ruler of the system.

57. The Finance Ministry is in charge of ensuring the functions of Financial Administration. The Budget Section of the National Public Investment System is in charge of scheduling, executing and following up on the investments made by public

entities and institutions. In accordance with the Organic Law of State Financial Administration, the Ministry of Finance is in charge of drafting the budget policy and presenting it to the President of the Republic for discussion and approval by the Council of Ministers no later than the second half of April each year. The Ministry of Finance is responsible for reviewing the draft budgets received from public entities to ensure that they conform to budget policy, and have to make the necessary adjustments before drafting the bill for the State General Budget Law.

58. In 2004 the World Bank issued an assessment of the financial administration system (Country Financial Accountability Assessment, CFAA). The CFAA's objectives include an assessment of the status of the modernization of said system. Since the CFAA and CPAR are complementary reports, work for the preparation of the two reports was duly coordinated.

Control and audits of Government operations and the Prosecutor General's Role

59. The control organization of the Salvadorian State is the Court of Accounts of the Republic, which submits an annual report on its work to the Legislative Assembly. The Court of Accounts is responsible for overseeing the administrative and jurisdictional aspects of the public treasury, especially execution of the budget. Also worthy of mention is the Public Prosecution System (Ministerio Público), which is made up of the Office of the Prosecutor General of the Republic in charge of defending the interests of the State and society; the Office of the Attorney General of the Republic that is responsible for the defense of the family and individuals, including the interests of minors and other defenseless individuals; and the Office for the Defense of Human Rights.

60. As explained earlier, all government agencies that hold bids or enter contracts to acquire real estate in general or movable property subject to public bidding, are obliged to request the intervention of the Prosecutor General, who has to appear in order to sign said documents or contracts in representation of the State, or the contracting institutions, in the latter case whenever said responsibility has not been legally transferred to another entity or official. Likewise, the Prosecutor General investigates – ex officio or in response to petition from a party – any non-fulfillment or contravention in the actions or contracts entered into by the State, public law institutions, or public utility.

61. In addition to performing as the State's representative in all movable property contracts subject to public bidding, the Prosecutor General's Office performs a legal review of these contracts since they have to be signed by the Prosecutor General. This requirement creates unnecessary bottlenecks, because the Prosecutor General's Office merely reviews the legal requirements of procurement and the added value of its contribution is relatively small. This type of ex ante control by an independent body dilutes responsibility and might create a conflict of interest. For example, in the event an irregularity or illegality were to be discovered later on in any contract that has been approved by the Prosecutor General's Office, since it is this very Office that is in charge of undertaking criminal processes in order to investigate any illegality derived from those actions. In order to avoid conflicts with his prosecuting tasks, the Prosecutor General's duties with regard to the signing of contracts should be reviewed. As a result of this situation, the Prosecutor General of the Republic has tried to propose changes to the Constitution in order to release his office from the responsibility of signing contracts.

62. The system for auditing Government operations is outlined in the Law of Accounts of the Republic (Decree 438, 1995) that establishes the Court of Accounts of the Republic (CCR) as an independent body in charge of supervising the management of resources by the Administration or by entities that handle public assets or funds. The CCR also is responsible for the National System for the Control and Audit of Public Management. The CCR reports directly to the National Assembly. According to the provisions of the law, the internal and external audit procedures should be exercised after the performance of the public actions and are subject to the CCR, while prior and concurrent internal control activities are the responsibility of the officials in charge of the daily operations of the institutions and are regulated by the Internal Control Technical Standards prepared by the CCR (Decree 15, 2000). The CCR is responsible for confirming that public resources have been used in accordance with their purposes, and for assessing and making recommendations about the effectiveness and efficiency of the institutions' operational systems used to manage the resources. The Law also assigns the CCR the task of determining the administrative responsibility of public servants by means of accounts trials.

63. The CCR is organized as three general coordination units for auditing, jurisdictional and administrative (operations, including process auditing) issues. The General Coordination Unit for Audits is in charge of performing Court audits, including processes having to do with procurement, while the General Coordination Unit for Jurisdictional Issues is responsible for handling accounts trials resulting from disciplinary investigations related to the official behavior of individuals who perform public functions.

64. The CCR has approximately 950 employees, including some 400 auditors, and in the year 2002 it carried out a total of 689 control activities, 46% of which corresponded to audits and 54% to special tests. As a result of such activities there were 4,717 findings; 39% of which correspond to internal control weaknesses in the audited institutions. The following chart summarizes the number of findings by origin and management sector.

RESULT OF AUDITS IN THE YEAR 2002

By origin	Number	%	By management sector	Number	%
Financial	1062	23	Administrative	969	20
Internal control	1839	39	Justice and economy	317	8
Legal compliance	1656	35	Social and environment	1535	32
Administrative	160	3	Municipal	1872	40
			External cooperation	24	-
Total	4717	100	Total	4717	100

65. On the topic of financial audits and special tests, it is important to note the effort made by the CCR with regard to municipal sector audits, to which it devotes close to 50% of its effort in this field. These audits have gained importance because of the administrative decentralization process and the assignment of 6% of the FODES budget

to municipal development. Many of these audits have been of the operations type and have resulted in recommendations for improvements in administrative (strategic plans, organizational structure, etc.) and financial aspects, such as implementation of the government accounting system and strengthening of internal control. It is also important to mention the existing agreement between the CCR and USAID by means of which the CCR performs audits and special tests of the projects financed by USAID, in accordance with audit regulations and guidelines issued by the Comptroller of the United States. This job is performed in a very diligent manner by the CCR.

66. In spite of these achievements and the dedication of its technical personnel, the CCR does not enjoy the prestige and leadership that corresponds to an independent organization that is responsible for supervising Government activities: (i) the law of accounts needs to be updated and to take into account modern auditing concepts and the reality of El Salvador. In 1995 the law apparently was adapted to the constitutional reforms, but not sufficiently enough to satisfy contemporary control and audit concepts, such as the independence of internal and external audits and coordination between them; (ii) the CCR does not have true independence to carry out its duties and, in the opinion of many of the persons interviewed, there is a lot of political interference that compromises its autonomy and impartiality. In order to resolve this problem staunch political will from the state is required, as well as a firm determination by the CCR to gain the respect it deserves; (iii) the relationship between internal audits made by the institutions and external audits should be reviewed taking into account the coordination and independence that should exist between them; and finally, (iv) in its assessments the CCR should pay more attention to the efficiency and effectiveness of results than to strictly legal and procedural formalities.³

67. According to the provisions of the Law of Accounts and the CCR Internal Control Technical Standards, internal control consists of the control system that each entity should use to achieve its objectives in an efficient, effective and economic manner, while an internal audit is an after-the-fact exercise that measures the effectiveness of the other internal controls and attains its top goal when it recommends improvements to management and said improvements are implemented. Due to their limited capacities, only the larger institutions have installed internal control and audit systems along the lines of those required by the legislation. Most Government and municipal agencies suffer problems similar to those mentioned for the CCR: a lack of trained personnel, a meager budget and more attention paid to formalities than to results.

68. The President and magistrates of the CCR are appointed by the National Assembly and consequently their appointments have political implications. Since 1994 several efforts were made in El Salvador to amend the portion of the Constitution related to the CCR, proposing conversion of the CCR into a Comptroller's Office and having its

³ These recommendations concur with the findings and suggestions of the CFAA, which recommends, among other things, over the medium term assigning the responsibility of regulating and designing agency internal controls to the Executive Branch while maintaining the CCR's external assessments. In a similar manner, the CFAA suggests that the CCR's legal functions be transferred to the judicial branch.

officials elected by a majority vote. Unfortunately these initiatives were unsuccessful and the topic has not been brought up again.

Human resources

69. The implementation of the SIAC, announced in LACAP, has created a demand for specialists in procurement and contract management that is estimated at some 600 individuals. There are capable officials already working in the UACIs at the more important ministries of the Salvadorian Government – especially in the MOP and the units in charge of carrying out the programs and projects financed by international agencies or bilateral donors – who have vast experience in public sector bids. The knowledge acquired by the government officials is generally achieved through practice, with all the negative effects that this implies due to the existing institutional weaknesses. The UNAC and the State Modernization Unit of the Secretariat of the Presidency are making efforts in this area and are developing a formal training program to attend to all the needs of the procurement and contracting sector. Recently, the Technical Secretariat of the Presidency hired a consultant whose terms of reference include the creation of a procurement training program for the UACIs. In general, the officials in this area receive low salaries, which can be a problem for a topic such as public procurement that is particularly susceptible from the viewpoint of ethics and transparency. In addition, personnel rotation is very common in UACI positions, which results in losing the experience acquired and frequently having to start again from zero. The described situation is even more critical in the municipal UACIs, especially in the smaller ones.

70. There is an evident need to make public contracting more professional and to establish a permanent training system for public servants involved in procurement and contracting. The training program could be handled by the Government or jointly with an academic institution. Any such program should be coordinated by the UNAC, which by law is tasked with providing training and advice to the UACIs. The training of officials should be linked to a strategy of training professionals, so that they can become “certified professionals” and said certification can be taken into account whenever it is necessary to hire personnel, make appointments, and make promotion and career decisions. At the same time, it is vitally important to address the salary issue of these officials in order to attract the best qualified professionals, such as those who work in the project implementing units of internationally-financed projects. At the same time, this would improve the current differences in salary for posts with the very same functions. Finally, it is very important to ensure that high level positions in the procurement sector are filled with individuals of recognized technical, human and professional capacity who can rely on the required support from their superiors.

71. UNDP participation. Participation by the UNDP in contracting and contract administration has been very limited. As part of the program to reform government contracting, the Government’s policy is to continue strengthening the institutional structure of public agencies in such a way that each agency will have its own UACI to take care of procurement processes and its own UFI to make the payments. The only recent case of UNDP participation is in the secondary education project funded by the World Bank (loan 4224-ES that ends in December 2004). Under this project, the UNDP

was hired by the Government as a procurement agent for the purchase of books, equipment and vehicles during the first year of project implementation, and as a payment agent as well. In practice, the procurement services did not materialize and the Government carried out all procurement, and UNDP was used only as a payment agent to overcome the obstacles of disbursing funds from the special account.

D. Control systems and measures against corruption

72. Although violence, unemployment and poverty are the most worrisome problems for Salvadorian society, the fight against corruption also has become an issue of concern for the Government as well as for the different sectors of society. In keeping with this concern the country has signed and ratified the Inter-American Convention against Corruption. The convention has been converted into law and is in effect throughout the country, but not all necessary measures have been taken to place the envisioned mechanisms into operation. Transparency International's Corruption Perception Index for the year 2002 places El Salvador at number 62 in the 102 countries assessed. Although this indicator is still controversial for many, it constitutes an important negative signal for investors. The following chart gives an idea of the performance of institutions in El Salvador in relation to other Latin American countries. The situation is not critical, but the rate of governance shows that El Salvador is slightly below the Latin American regional average.

CLASSIFICATION OF LATIN AMERICAN COUNTRIES ACCORDING TO THE STATUS OF THEIR GOVERNANCE

COUNTRY	CORRUPTION CONTROL	COMPLIANCE WITH THE LAW	GOVERNMENT EFFECTIVENESS
Chile	1	1	1
Costa Rica	2	3	3
Trinidad Tobago	3	4	4
Bahamas	4	2	5
Uruguay	5	7	2
Cuba	6	8	19
Brazil	7	10	12
Suriname	8	21	11
Guyana	9	9	9
Jamaica	10	20	18
Peru	11	14	8
Argentina	12	6	6
Mexico	13	13	9
Bolivia	14	11	13
El Salvador	15	15	15
Panama	16	11	16
Colombia	17	22	10

Haiti	18	25	25
Venezuela	19	16	23
Dominican Republic	20	5	22
Ecuador	21	18	21
Guatemala	22	24	14
Nicaragua	23	19	20
Honduras	24	23	17
Paraguay	25	17	24

Reference: World Bank Institute, Worldwide Governance Research Indicators dataset.

73. The efforts to make government management activities transparent and to create the habit of rendering accounts are still incipient, and an example of this are the conclusions of a ‘National Integrity Journey’ workshop organized by Transparency International and Probity, a non governmental organization that began working in El Salvador in 1994. Some of the most important issues addressed in the report about this workshop are:

- The difficulties encountered while trying to access information, including factors such as weakness of institutional records, unreliable information, and information that has not been systematized;
- Transparency and the habit of rendering accounts is incipient;
- The work being done by the probity office, which is in charge of enforcing the law on illicit enrichment of public officials and employees, is still incipient;
- The lack of independence and impartiality of some communications media; and
- Incipient participation by the citizens in the fight against corruption.

74. An explanation for this last point can be found in the results of a study carried out by USAID, ‘Audit of Democracy, El Salvador 1999,’ that reported, among other findings, that “the corruption observed by the citizens as they go about their daily affairs is less common than in other Latin American countries”.

75. Over the recent past the Government and society have made a few efforts, such as the aforementioned study on democracy, to begin to develop a better-defined policy and strategy to battle corruption. For its part, the State has taken actions such as a reform of the Office of the Prosecutor General of the Republic and the Police Department; the appointment of a special public prosecutor to look into fake professional credentials; and promotion of improvements to the legal framework for procurement. The legal instruments related to the fight against corruption and their amendments include the following:

- The Political Constitution of the Republic, in particular Title VIII that establishes the responsibilities of public servants
- The criminal code

- LACAP (2000), which guarantees free competition and no discrimination in procurement, in addition to penalties for public officials who do not fulfill their duties correctly
- The Law of the Court of Accounts of the Republic (1995) that establishes a national system for the control and audit of government activities
- The Law on Illicit Enrichment of Public Officials and Employees (1959)
- The Internal Control Technical Regulations prepared by the CCR (2000)
- The Organic Law of State Financial Administration and its regulation
- The law against the laundering of money and assets
- The civil service law

76. In addition to these efforts there is a proposal from the Corporation of Municipalities of the Republic of El Salvador (COMURES) to draw up a law on municipal transparency and a draft bill on public ethics, prepared by the CCR as part of an agreement with USAID.

77. The legal framework should be complemented with codes of ethics and probity that go beyond observance of the law into aspects of personal conduct. In addition, it is necessary to ensure that implementation of the regulations will include the appropriate measures for enforcement of the rules as well as qualified institutions that are respected by the citizens. With regard to citizen participation, initiatives at the municipal level can have a substantial impact not only on municipal administration, but also on citizen capacity-building. However, within the national environment, action by a joint state – citizens commission is needed; a commission that can act independently and will have the necessary political support. The first activity of this commission should be to prepare a policy, a strategy and a detailed plan to fight corruption.

78. For the time being, the Government has a political commitment to develop a program for a direct attack on corruption. (A Secure Country: 2004-2009 Government Plan) and could require technical assistance from international institutions to draft a document on the anti-corruption policy as well as a strategy to put such a policy into practice.

Responsibilities of public servants

79. Title VIII of the Political Constitution of the Republic establishes the responsibilities of high level public servants, including the President, deputies, cabinet ministers, magistrates, prosecutor general, attorney general and others, who have to respond to the Legislative Assembly for any public or common crime they may commit. Said regulation also establishes a procedure for the Assembly itself to declare if there is reason or not to prosecute. In the event reason to prosecute is found, the case will be handled by a second instance court as the first instance, and by the Supreme Court of Justice as the second instance.

80. The deputies have the same rights as the other public servants mentioned in the preceding paragraph, but with the particularity that if they commit faults or offenses

considered as “less serious” during the term for which they were elected, they cannot be detained or summoned to declare until the term they were elected for has expired.

81. Article 240 of the Constitution defines illicit enrichment. Certain government officials and employees specified in the Law on Illicit Enrichment of Public Servants (approved in 1959 and later amended in 1974 and 1992) are compelled to declare their assets to the Supreme Court of Justice within 60 days after taking possession of their post and to file another statement of assets when they leave the post. Any employee found to have assets that cannot be justified will be obliged to restore to the State whatever was acquired in an illicit manner. In addition, the Law establishes penalties that include fines and removal from the post for non-presentation of the statement of assets, as well as disqualification from holding a public post for a ten-year period for whoever is found guilty of illicit enrichment. Nevertheless, the penalties established in the Law for public servants who are guilty of the crime of corruption and obtain money without a just cause are only of a civil (restitution of whatever was illicitly acquired) or administrative nature (removal from his/her post). Prison sentences for public employees are provided for in Chapter 14 of the Penal Code.

82. Due to its attributes, the Probity Section of the Supreme Court of Justice is limited to receiving the statement of assets and classifying and filing them, as well as to report any indication of illicit enrichment to the Supreme Court itself. However, said Section does not have the capacity to investigate the statement of assets or to launch a criminal process against any official who might have committed a crime of illicit enrichment. The person responsible for representing the State in court trials for the crime of corruption is the Prosecutor General of the Republic, in response to reports from the CCR or complaints from the citizens. The public officials mentioned in the Law also are compelled to present a sworn statement of earnings when taking possession of the post and another when leaving the post, but the Supreme Court of Justice does not have the means needed to confirm the veracity of these sworn statements.

83. Finally, Title VII of the Law on Procurement and Contracting establishes penalties for those public officials who commit irregularities or who do not properly carry out their functions in public procurement operations. Said penalties range from written admonitions through suspension without pay, all the way up to dismissal for cause and removal from the post, without detriment to the respective criminal and administrative actions that can be taken. The LACAP also imposes penalties on private parties, disqualifying them from participating in Government procurement contracts for a period of from one to five years, in keeping with the seriousness of the offense.

E. Processes and practices

84. Although the LACAP establishes relatively speedy requirements for the phase of bidding and awarding the contract, the reality indicates that there is a great heterogeneity of the processes and practices being used due to the diverse capacity of the institutions, the amount and characteristics of their procurements, the lack of a regulation of the law

and the absence of standardized documents. The exception are contracts financed by international institutions, which are excluded from the LACAP and follow the procedures and documentation agreed upon with each institution.

Bid procedures

85. Given the heterogeneity of processes and practices, and taking into account the predominance of the MOP / FOVIAL in procurement matters (these entities execute approximately one third of public investment), as well as the good quality and availability of their data, the comments made in paragraphs 87 refer to this Ministry.

86. The MOP, which was reorganized in the year 2001, has become a model institution with regard to its organization and the practices it follows, including those related to procurement and contract management. The assessment of their procurements in the June 1999 to July 2003 period – and particularly in the year 2002 – summed up in the charts below, confirms the good practice of the MOP and FOVIAL with regard to the use of public bidding for the contracting of works and open shopping for small-amount purchases:

- *Construction.* Construction represents approximately 93% of the total cost of procurement activities and this amount is substantially contracted through public bids. As far as number is concerned, the market is distributed equally between local and foreign contracting firms, but foreign firms are awarded only 6% of the contracts. The average amount of the contracts awarded to local contractors is US\$1.8 million, while the average for foreign contracts is in the range of US\$10 million.
- *Consultancy (including supervision).* The market is in the hands of local consultants even though it is open to foreigners. Two-thirds of the amount contracted with consultants is accomplished through public tender and the remaining third is accomplished by an invitation to tender that is sent to at least three firms. In the year 2002, the cost of consultancy represented around 3% of the amount contracted for construction.
- *Goods and services.* This sector represents 4% of the amount of MOP procurements. Even though 98% of the contracts is awarded by means of open shopping procedures the sum total thereof represents only 11% of the total amount of goods and services acquired; the individual amount of these contracts is in the range of US\$1,000. The remaining 89% of the amount assigned to goods and services is contracted through a few public bids for a substantial amount of money.

SUMMARY OF MOP AND FOVIAL CONTRACTS (JUNE 99 – JULY 03)

	LOCAL		FOREIGN		TOTAL		LOCAL		FOREIGN		TOTAL	
	N	%	N	%	N	%	\$	%	\$	%	\$	%
CONSTRUCTION	148	83	30	17	178	29	262.9	46	303.7	54	566.6	93

SUPERVISION	88	99	1	1	89	15	19.6	98	0.4	2	20.0	3
GOODS/SERVICES	335	99	2	1	337	56	24.3	98	0.6	2	24.9	4
TOTAL	571	94	33	6	604	100	306.8	50	304.7	50	611.5	100

SUMMARY OF MOP AND FOVIAL CONTRACTS (2002)

	CONSTRUCTION			CONSULTANCY			GOODS AND SERVICES		
	N	\$	%	N	\$	%	N	\$	%
PUBLIC BID	55	170.0	88	19	3.4	64	26	11.6	89
INVITATION	8	22.1	12	15	1.8	34	2	-	-
OPEN SHOPPING	2	-	-	14	0.1	2	1445	1.5	11
TOTAL	65	192.1	100	48	5.3	100	1473	13.1	100

87. In many UACIs the estimated average time for processing from the time of the request for goods or services until the signing of a contract is approximately six months, which is considered excessive if one wants to provide the institution with the requested goods or services in a timely manner. The MOP however, has managed to reduce this period to approximately three months (para. 94). It is advisable to conduct a detailed investigation of the time it takes to complete bidding processes in the different institutions and to recommend specific improvements in this efficiency indicator.

Announcing the invitation to bid

88. It is essential to properly inform the public about bidding opportunities. The LACAP requires that all public institutions prepare an annual program for the procurement of goods, works and services, and that they publish the invitation to bid in local newspapers, detailing the scope of the bid, the location where the interested parties can obtain the specifications and the timeframe given to receive and open the proposals. The LACAP regulation should be more specific with regard to the amount of time required to prepare and deliver the proposal, since this has to take into account the type and importance of the bid. For example, for international bids the time given to prepare the proposal is usually at least six weeks. Likewise, the regulation also should specify the minimum number of newspapers to be used and the frequency with which the invitation to bid should appear. However, as the use of electronic means to satisfy this requirement grows, the use of newspapers will be increasingly less relevant. The MOP is making use of its electronic portal to announce bidding opportunities.

Registry and qualification of bidders

89. The LACAP mentions that one of the responsibilities of the UNAC is the establishment of a National Registry of Suppliers and Contractors, which should include information on the degree of compliance of suppliers and contractors of the State. In a similar fashion, the LACAP also requires that the UACIs set up a database that basically would contain the same information required by the National Registry. Nevertheless, the law establishes that it is not indispensable for the bidder to be registered in order to

participate in a bid. The requirements for the registration of suppliers and contractors should be spelled out in detail in the regulation of the law.

It is recommended that the regulation should specify that the information that will be maintained in the registry will be used solely to categorize providers according to technical and financial capacity (this information should be updated and presented every time the provider participates in a bid) and experience in general, and that the information in the registry will not be used for qualification or pre-qualification of companies company for any particular bid or invitation to tender. The regulation has to clearly specify if the registry will be used to confirm the companies' compliance with legal and fiscal requirements, and if such information will be used to qualify or disqualify a supplier or contractor, in keeping with article 25 of the LACAP. The regulation also should clearly state that registration should not be used as a substitute for public announcements and invitations whenever competition is required. With regard to bids for civil works, depending on the quality of the registry, a bid announcement could indicate that a company has to be registered under a specific category in order to be able to participate. The national registry system should be designed in such a way that it is open to any provider or contractor and should allow registration and update of registry data by mail or by Internet, when allowed by the circumstances. Following good practice methods, the LACAP also establishes the pre-qualification of bidders as a requirement for participation in bids for complex or large-scale works or goods.

Bid evaluation and contract award

90. Paragraphs 25 and 39 refer to the bid evaluation process from a legal standpoint. As for evaluation criteria, the law is flexible and requires only that the criteria be established in the bid specifications, which in many cases results in the use of ambiguous and not very objective criteria. Also, the LACAP states that the contract should be awarded to 'the proposal that technically and economically is considered the best qualified', which also is ambiguous. These matters should be dealt with in the regulation, in such a way that evaluation of the bidder's qualifications is made independently from the evaluation of his bid, and the contract is awarded to a qualified bidder who has submitted the offer that is evaluated as the lowest bid.

Petition for review

91. The petition for review referred to in articles 76 and 77 of the law has to be resolved by the same official who issued the resolution awarding the contract, which creates a conflict of interest for the official involved. Nevertheless, this official has to appoint a high-level commission to analyze the petition and make a recommendation. In practice, the number of petitions for review submitted by bidders is very small. In the MOP, for example, the number of bids in which petitions for review have been submitted represent less than 1% of the total bids conducted during the past four years. Even though the possibility of presenting additional petitions to the Supreme Court of Justice already exists, it would be a good practice – in order to speed up resolution of claims – to include

another independent administrative instance with the authority to resolve complaints submitted by the bidders.

Use of electronic means

92. The Government of El Salvador has taken the initiative of establishing an electronic procurement system, using information and communications technology (basically the Internet) to provide information to suppliers and the public in general on matters related to public procurement. This is largely in line with the multilateral development organizations' definition of electronic procurement. The electronic procurement system will be part of a broader strategy on electronic government launched by the Technical Secretariat of the Presidency during an international seminar on electronic government held in San Salvador on May 20 and 21, 2004, with participation of the IDB and the WB. Until an institutional framework is established for implementation of the electronic government system, the Technical Secretariat will be responsible for implementation of the first phase. Within the framework of the electronic government strategy, all Government entities should develop e-government applications based on the guidelines and provisions established in the Government strategy paper. Implementation of the e-government strategy will require a strong leadership to carry out the e-government reform program. The Government will have to give some programs priority over others to maximize the use of the limited financial resources, and will need to prepare a detailed action plan for the short, medium and long term in order to implement the selected priority programs. Implementation will be carried out by all participating public agencies and will be coordinated by an inter-institutional entity at the highest level of government.

93. As part of this e-government strategy, the UNAC and the Technical Secretariat of the Presidency, with the assistance of an international consultant, have started development of an electronic procurement system known as "Comprasal". This system is expected to be developed in three different modules, implemented in three different stages, and integrated to the administrative and financial system, SAFI. The first stage involves the development of an information module to provide information on: (i) legal requirements to participate in bids and purchases; (ii) announcements regarding business opportunities with the public sector; (iii) specific announcements regarding bids and purchases; and (iv) results of the bidding process and the awarding of contracts. The Government hopes to officially launch this information module in June or July of this year and, as a pilot program, implementation will begin with central government and autonomous agencies to later expand to the rest of public agencies. The second and third stages of Comprasal involve electronic purchases (low cost and high volume contracts) and an electronic bidding system (high cost and low volume contracts) respectively for the procurement of goods, works, consultancy services and other services. From the viewpoint of the banks, this approach appears reasonable and is in line with the country's needs and capacities. A detailed implementation schedule for the short, medium and long term will be discussed thoroughly and will be reflected in the action plan to be agreed upon with the Government. Particular attention should be given to the sequence for implementation of the second and third stages. Technical assistance and purchase of

electronic equipment for the Government's electronic procurement system will be financed by means of the projects to modernize the state financed by the two banks, as well as the IDF grant from the WB.

F. Performance of Contract Management

94. Similar to the processes and practices of the bidding stage, the performance of contract management largely depends on the management capacity of the contracting institution and consequently the practices differ quite a lot in terms of quality and professionalism. In the case of the MOP, in parallel with implementation of structural reforms, important changes related to procurement and contracting have been made to the management of investment projects. According to the MOP, these changes include:

- A clear definition of roles and responsibilities for the various stakeholders in order to ensure the quality of the works, demanding from construction companies maintenance of their own quality control program; supervising companies must check compliance with the standards that the construction company agreed to meet in the contract; and the MOP must provide oversight of the responsibilities assumed by the contractor and supervising company by means of quality checks.
- Giving project managers enough authority for the making of decisions associated with the control and follow-up of projects.
- Inclusion of right-of-way management (appraisals, negotiations for land and indemnification) as part of the activities to be handled by the contractor. One of the main difficulties in the construction of works is the clearing of an easement strip, causing frequent extensions of project execution time, an increase in costs due to design modifications, and claims from the contractors. When this task is assigned to the contractor, the contractor organizes its work schedule according to its own plan to secure right-of-way clearance.
- Review and customization of specifications for bids, tenders, and contracts. A system has been set up for many procedures and a large amount of documents have been standardized.
- Implementation of the "turnkey" contracting system, which centralizes in the contractor responsibility for design and construction of the works, thereby reducing the time required for bidding and contracting.

Other significant achievements associated with MOP management are:

- Reduction of works cost overruns by avoiding frequent change orders due to inadequate design, delays due to negotiation, and payment of rights of way.
- Substantial reduction of supervision costs in relation to construction costs, from more than 20% to less than 4%.
- Reduction in the contracting process from approximately 10 months to some three months.
- Timely payment to contractors. Average time for payment is 15 days.

“Turnkey” contracts

95. In El Salvador, a “turnkey” contract is an obligation whereby a contractor is solely and directly responsible to the contracting party for the quality, time and cost of the design and execution of all of the components of the project. It is a contracting method through which the contractor provides all engineering, equipment and construction services. Under this type of contract changes and price adjustment orders are not allowed, and the deadline for execution cannot be modified except in cases of force majeure. The quality of the works is entirely under the responsibility of the contractor, through its own control system, and supervision of the contract by the customer, either through its own means or through consulting services, is limited.

96. The leading characteristics of the turnkey system as it is usually handled by the MOP can be summed up as follows:

During the bidding phase:

- The MOP delivers an advanced design concept
- No pre-qualification is made prior to the submission of tenders, even though this depends on the source of financing
- The deadline for preparation of tenders usually is 30 days
- The tender is delivered in a single envelope containing bidder information, the technical proposal and the economic proposal
- Evaluation of tenders comprises three aspects: (i) assessment of the bidder’s legal and financial background; (ii) evaluation of the bidder’s technical proposal; and (iii) a recommendation to award the contract
- Aspects (i) and (ii) are assessed according to the score system outlined in the bid specifications, and award is made to the company that submits the lowest bid and obtains a score equal to or above the minimum indicated in the bid specifications

During implementation of the contract:

- Emphasis on self-styled quality control of works by the contractor
- Continuous presence of the supervisor at the work site
- Payments based on work measurements and in accordance with table of work quantities for major works items.
- Payments made within a 15-day period following approval

Large risks:

- Contractor is totally responsible for project design, even if the design concept delivered by the client is an advanced design
- The contractor assumes the risks posed by subsoil conditions
- The contractor is responsible for managing the acquisition of and compensation for lands where the works will be executed, as well as for permits for the relocation of public utility services

97. During the 2001-2003 period, 36 works were contracted by the MOP under the turnkey system, for a total of \$196.3 million. Of these works, 28 already have been completed and according to MOP data, the experience appears to be positive.

- No contract has exceeded the original contracted amount
- Only four contracts have exceeded the timeframe that was originally contracted
- In 22 of the 36 bids, between 2 and 4 proposals were submitted per bid, and in another 11 bids more than five proposals were submitted
- The tender with the lowest price was awarded the contract in 60% of the bids
- Most of the contracts were for relatively simple works (over-coating, reconditioning, etc.) that are considered low-risk contracts, while 70% of the contracts had an individual value under \$5 million

98. The turnkey contracts conceived by the MOP have been successful because they have corrected some of the problems resulting from the traditional contracting of works, such as delays in execution, excessive costs overrun and a lack of discipline by the contracting parties and contractors during execution of the contract. Even though the MOP is passing on to the contractor risks that are usually considered high, it seems that contractors have responded positively as evidenced by the number of tenders submitted. Furthermore, the fact that no major claims have been filed suggests that they are satisfied with the profit being obtained from the contracts. Now, the question is whether the MOP is obtaining an adequate return on investment, and here it must be remembered that an inappropriate risk retention/ distribution strategy might pose a threat to said return. In this sense, any comparison between the turnkey system and the traditional contracting method must be made under certain equal terms (for example, timely payments, a lack of change orders during construction, etc.)

99. Another comment that was frequently made during the interviews for CPAR preparation is related to the evaluation of bids, since bids are not identical. Although the MOP's design concept is an advanced one and reduces the heterogeneous nature of tenders, it also significantly reduces the bidder's ability for innovation as far as the offering of different solutions is concerned, and this is precisely one of the goals of contracts that include the design and construction of works. Another concern mentioned has to do with the use of a points system for bid evaluation. Even though the aspects to be evaluated have to do with good practice, a points system has a degree of subjectivity that – even though it might not be well regarded from the viewpoint of transparency – with good use can reduce the risk of awarding a contract to a bidder that is not qualified to execute it. A reassessment of the system should certainly consider the pre-qualification of bidders before inviting them to tender, and this reassessment should be carried out in two phases. In the first stage, bidders are invited to submit technical proposals with no prices, based on a schematic design or the operating specifications, subject to clarification and technical/commercial adjustments. In the second stage, an invitation to submit a technical proposal with prices, based on modified bid specifications. This procedure requires more time, but it is more transparent and objective than the existing system.

100. The strategy for risk allocation in a project defines the type of contract for its implementation and is determined by contracting-entity policies and by project requirements. However, the entity must bear in mind that its risk distribution strategy has important implications with regard to execution and the cost of projects. Construction risks such as subsoil conditions, the availability of land to carry out the works, non-compliance by contractor, costs overrun and delays are generally considered as major risks and their distribution and management must be carefully evaluated for each project. Therefore, a lot of care should be exercised when trying to transfer the MOP's experience to other agencies that might not have as much experience in the contracting of complex works. For example, turnkey contracting can be used for construction of simple buildings (such as office and apartment buildings, etc.), but it might not be appropriate for building restoration or construction of hospitals and facilities with complex functions, because the contracting agency cannot exert the required control during construction and the contractor's aspirations with regard to design innovation and excellence inevitably will be affected by such considerations as how to save time and money. If integration of design, construction, and provision and installation of equipment is the desired objective, with responsibility centralized in the contractor, but with payments made according to quantity charts as well as a fair and equitable distribution of risks among the parties to the contract, then selection of a more traditional type of contract for "Design and Construction", including the provision and installation of equipment, is recommended.

101. Although "turnkey" contracts have been successful to a certain degree, it is important to recall that this type of contract is not a panacea and that most of their achievements also can be attained with traditional contracts; for example, by means of strict discipline by the contracting entity regarding non-introduction of changes and additional works during contract performance. Furthermore, turnkey contracts impose on bidders the high costs involved in preparing proposals, since the designs must be complete enough to allow setting the price with a high degree of accuracy and the contractor might be paying the cost of a risk that might not materialize (for example, due to unforeseen conditions in the subsoil). If the contractor is responsible for most of the risks, the contracting entity obviously has to give it enough time and opportunity to obtain and take into account relevant information before signing a contract for a fixed large sum. The contracting party also should understand that the contractor has to include the risks taken in its costs, thereby increasing the price of the works. International experience shows that turnkey contracts that assign most of the risks to the contractor are not the best alternative, if:

- Bidders do not have enough time or information to study and verify the client's requirements, or to complete the designs and evaluate risks and costs;
- The construction includes underground work or work in areas in which the bidders cannot carry out investigations;
- The contracting party intends to introduce changes during execution of the contract or to control the work that is the contractor's responsibility.

Files and documentation

102. The quality of the files varies according to the institution. Entities with more experience and a larger volume of contracts maintain better organized files than entities with less experience. The UACIs are responsible for keeping the original documents pertaining to bid documents and contracts, but many of them still maintain the documents scattered all over the institution's various administrative units. For example, the AFI Law requires that the UFIs maintain the original support documents for their operation. Executing units maintain their files separately. In this regard they do not maintain a unified filing system, and instead their files are maintained by the various units. As an example, the Institutional Financial Units (UFI) and the Accounting and Treasury Units maintain in a separate manner the finance and accounting documents to process payments covering estimates or payment commitments with suppliers and contractors.

103. Audit results frequently show that files are not complete and that folders do not contain all the documents associated with each phase of the bid process, from beginning to end. In this sense, auditors' comments indicate that when trying to link financial controls on payments to the accounting records, and later to locate the corresponding documentary evidence, it is impossible to identify them because there is no coding to link the various control systems to the documents in file. Likewise, a common complaint from auditors is that the records do not include the details required to identify the goods purchased and the services contracted, or the use of said goods and services, or the costs of investment or progress of the works. The files issue must be addressed by the UACIs.

G. Environmental Issues

104. The protection, preservation and improvement of natural resources and the environment are subject to special regulation under Decree 233, in keeping with the country's Constitution. As part of the policy set by said regulation, public management of the environment must be global; inter-sectorial; shared by the various State institutions, including the municipalities; and supported by civil society. Moreover, efficiency criteria must be applied to environmental management, allowing for attainment of environmental benefits at a lower cost and in the briefest possible timeframe, reconciling the need to protect the environment with economic development.

105. The law establishes the National Environmental Management System, SINIMA, made up of the Environment and Natural Resources Ministry (MARN), acting as coordinator, the environmental units at each Ministry, and the autonomous and municipal institutions. SINAMA's objective is to establish and maintain the principles, standards, program, direction and coordination of the State environmental management at public institutions.

106. The environmental units are specialized structures tasked with the supervision, coordination and follow-up of policies, plans, programs, projects and environmental actions within the institutions, for the purpose of ensuring compliance with environmental norms and the necessary inter-institutional coordination.

107. Public administration policies, plans and programs must be evaluated for their environmental impact – choosing the option with the least negative impact – as well as for consistency with the National Policy for Managing the Environment. Therefore, each institution or entity has to perform its own environmental assessments. Starting with the pre-investment phase, every activity, work or project is subjected to an assessment aimed at identifying negative environmental impacts; quantifying any such impact; and making recommendations aimed at ensuring protection of the environment.

108. An environmental permit must be obtained prior to beginning or placing into operation any activity, work or project. These permits are issued by the Ministry of the Environment, following approval of an environmental impact study that has a maximum timeframe of 60 working days, including a public consultation of the citizens. According to the environmental permit, the party responsible for the activity, work or project is compelled to carry out all prevention, mitigation or compensation actions indicated in the environmental management program, which is part of the impact study. The permit will be valid for the duration of the project.

109. To ensure control and follow-up of the environmental assessment and compliance with the terms of the permits for works and projects, the MARN performs regular and random environmental assessment audits. Aimed at ensuring compliance, the party responsible for the works or project must provide a bond equal to the total costs of the physical works or the investment required. Such a bond must be maintained until the works or investments have been carried out or made as previously established in the environmental management and improvement plans. The bond required is usually for 100% of the contract value and seems to duplicate the obligations guaranteed under the policy guaranteeing fulfillment of the contract. This requirement must be reviewed.

110. The provisions mentioned in the preceding paragraphs should be complemented with clear guidelines on the environmental considerations that must be taken into account during procurement processes, and which should:

- Take into consideration the environmental issue from the beginning of the procurement process, which is when, needs and specifications are defined and when recommendations can be more successful.
- Insist on careful planning of the procurement process.
- Recommend the use of functional specifications where appropriate.
- Ensure participation of procurement specialists, environmental experts and users in the relevant parts of the procurement process.
- Motivate contractors, vendors and consultants to submit innovative solutions.

II PRIVATE SECTOR PERFORMANCE

H. Commercial practices

111. El Salvador has a small private sector dominated by firms that are well-established in the market. The country has several well-organized business associations, which, generally speaking, maintain good relations and cooperate with the Government. The main associations are: the Chamber of Commerce and Industry, the Salvadorian Construction Chamber (CASALCO), and the National Association of Private Enterprise. Some of these associations are related to one another, represent similar interests and even share various members. In addition, the Salvadorian Association of Engineers and Architects is a professional association, founded in 1929, which watches out for the development and safety of all its members.

112. With regard to business practices within the private sector, there are no regulations that govern procurement and contracts, and all commercial transactions are ruled by civil and commercial laws that are based on traditional civil law. As a general rule, the enterprises have no written regulations to govern their purchases and contracts, but in practice several of them maintain registries of qualified vendors and of prices; perform market studies; and usually require several quotations to make a price comparison before a purchase is made. In some cases, the larger companies carry out public bids in order to choose their providers.

113. With regard to the private sector's business practices with the State, a survey carried out in April 2002 by the Chamber of Commerce and Industries – which is mainly made up of providers of goods – showed that 81% of its members claim to have submitted offers to the State on at least one occasion, but only 63% believe they are familiar with the new regulatory framework for public sector procurement and contracts. In this sense, 83% of the membership expressed an interest in receiving advice or training on the subject. The Chamber of Commerce and Industries has signed an agreement with the Technical Secretariat of the Presidency aimed at implementing a training and technical assistance service on the topic of State procurement and contracts for the members of the Chamber. The aforementioned survey was conducted as a result of this agreement. Another objective of the agreement is to promote transparency in processes having to do with public administration, and to this effect a mechanism was set up for permanent consultation with the Government.

114. Inquiries made of some of the members of the Chamber of Commerce and Industries concerning the reasons why they had not responded to government calls for bids showed that: 65% answered that the procedures were cumbersome; 42% answered that the costs of doing business with the Government were high; 39% mentioned collection problems; and only 6% mentioned a lack of technical or financial resources. Likewise, the Chamber found that the major deficiencies of submitting tenders to the State occur during the following phases: bid evaluation, awarding of contracts, appeals, requests for guarantees, and delay in payment. Corruption problems or a lack of flexibility by entities when enforcing the law also were cited, but to a much lesser extent. The majority of participants in the survey said that the main government entities they work with are the Salvadorian Social Security Institute and the Ministry of Public Health and Social Action.

I. The Construction Industry

115. The State is the main user of services associated with civil works construction in El Salvador, with expenditures of approximately \$500 million per year, while private sector construction is aimed mainly at commercial facilities and housing, with expenditures of some \$200 million per year. The annual billing of \$700 million for this industry represents 5% of the GDP.

116. The Government made an effort to increase investment in order to rebuild the infrastructure damaged by earthquakes in 2001, causing investment to double and reach US\$600 million. A large portion of this investment was used for the construction of roads, hospitals, schools, housing, potable water infrastructure and electrical energy, etc. The construction sector generates at least 27,000 direct jobs (close to 5% of total employment). A very rudimentary estimate of the sector's productivity shows an annual yield of approximately \$26,000 per worker, which is relatively high for yield achieved in Central America, but low if compared with those attained in more industrialized countries.

117. All public investment is carried out through contracting with the private sector. Both local and foreign companies take part in the bidding processes. In general, foreign companies participate to a greater extent in the larger projects, and carry out 20% of the total amount of public investment. National companies are represented by CASALCO, which groups together approximately 150 companies associated with the construction sector, including 60 contractors for public works, 46 contractors for housing projects, and approximately 44 providers of goods and equipment. In addition, there is a large amount of individual contractors who occasionally participate in the market but are not affiliated with CASALCO. The annual billing capacity of local construction companies is estimated at some \$400 million. National companies are relatively small, with just a few firms carrying out large contracts and a large amount of small companies executing the remainder. In many cases the small companies participate in cooperatives, such as the case of services rendered to the Road Fund by some 33 micro-enterprises created by former MOP employees.

118. The following are the main problems and requirements from the construction sector:

-- Local contracting companies fear foreign competition guaranteed by the LACAP and by the Free Trade Treaties (TLC) presently under negotiation. Local companies would like to see homologation of the laws of the other TLC countries so as to foster reciprocity, which would allow Salvadoran contractors to compete in other countries' bids with the same conditions under which foreign companies compete in El Salvador.

-- Fluctuations in public investment do not allow sound planning of the companies' costs, which has a negative impact on their development. It must be noted that during the 2001-2003 period the increased investment did not provide much help to local contractors because many of the housing construction works were handled by NGOs and mutual

assistance programs, and the large reconstruction contracts were carried out by large companies, some of them foreign companies.

-- In many Government agencies there is little experience and training to carry out bidding processes and manage contracts due, among other reasons, to a high turnover of personnel.

-- The bidding documents and contracts are designed for larger and more complex works and not for simple works to be performed by small and medium-sized companies, which impacts the quality and speed of processes and works, giving rise to all sorts of conflicts.

-- There are too many requirements to participate in a bidding process, which increases the costs for preparing a bid.

J. Professional services

Consulting practices

119. Considering the amount of foreign funds in Salvadoran investment, in the form of loans or donations, there is a demand for consulting services and many of these services are provided by local firms in association with foreign companies. A large proportion of these consulting services is focused on the design and supervision of works construction, particularly roads, hospitals, schools, housing, and potable water infrastructure. Recently, turnkey contracts that assign the responsibility for design to the works contractor also have affected the consulting practice. For their part, consultants have reacted in a not very effective manner by using protectionist arguments that garnered scant attention in the market.

120. The consulting industry is grouped under the Consultants Association of El Salvador (ACODES), which brings together some 27 firms – 18 companies and nine individual consultants – that have a billing capacity of approximately \$25 million per year.

121. One of the major problems faced by consulting engineering is the practice of selecting consultants based on cost, a practice that continues to spread throughout Latin America. Even though the guidelines from international institutions and the law itself establish that technical aspects should be the prime factor when selecting consultants, in practice the importance given to these factors is in appearance only and price outweighs all other considerations. For example, in many cases the tender is required to be submitted in a single envelope containing both the technical and economic offer and this envelope is opened in public; this creates a prejudice in the evaluators and facilitates the accommodation of results. The entire approach deserves review. Check consistency with Appendix A.

Guarantee and Insurance Services

122. The insurance industry in El Salvador is made up of 18 insurance companies, which are authorized by the Superintendent of the Financial System to operate as insurance and bonding companies. The surety insurance market (bonds) is somewhat reduced and represents 3% of total premium. When the time comes to obtain bonds to participate in bids and carry out contracts, contractors usually prefer insurance companies because their financial capability is not affected as much as when they obtain the bonds from banks. However, bonds are becoming more expensive because international reinsurance companies are more cautious now and have either restricted their geographic area of action or have withdrawn from the market. There are only five international reinsurers for Central America.

123. The main problems encountered by insurers have to do with limited knowledge regarding insurance and bonds. This generates confusion regarding terminology, a duplication of bonds, and abuse in executing said bonds.

III PERFORMANCE OF IDB-ASSISTED PROJECTS

124. The Bank's report on El Salvador states that this portfolio is relatively recent. The oldest project, approved in 1992 (731/OC-ES), was first reformulated in 1998 to address emergency conditions caused by Hurricane Mitch, and again later on, in 2001, to support the national government in repairing the damage caused by earthquakes to the road infrastructure.

125. A large part of the El Salvador portfolio, 18 of the 25 projects, was approved by the Bank during the 1997-2002 period and represents 91.2% of the portfolio's available balances for the transportation and energy sectors, while the more recent projects have to do with the housing sector, local development, civil society, and the financing of loans for small and medium-sized enterprises. Furthermore, in the year 2001 the largest number of loans existing in the portfolio was approved for a total of US\$296.8 million, which is equivalent to 22.8% of the total loan portfolio.

126. Execution of the portfolio does not show any major problem of inefficiency due, in part, to the Bank's continual efforts to teach executing agencies how to carry out the processes involved in the operating framework for loans. Achievement of development objectives for the Bank's 25 portfolio projects in El Salvador has been classified between probable (21) and highly probable (4). Consequently, there are no operations with problems. There are two operations (1092/OC-ES, Health Sector Modernization and 1084/OC-ES, Support of Education Technologies) with an unsatisfactory performance rating, while the rest attained a satisfactory performance rating with regard to their components. There are eight (8) operations that have been classified under alert status in accordance with the risk indicators of the Bank's Project Alert Identification System (PAIS), as follows: (i) Justice System Reform Program, Loans 919/OC-ES and 920/OC-ES; (ii) Program to Support Modernization of the Ministry of Public Health and Social Assistance, Loan 1092/OC-ES; (iii) Education Technologies Support Program, Loan 1084/OC-ES; (iv) Fiscal Administration Modernization Program, Loans 941/OC-ES and 980/SF-ES; (v) Road Administration Program II, Loans 839 and 840/OC-ES; (vi) Critical

Areas Decontamination Program, 1209/OC-ES; (vii) El Salvador Environmental Program, 886/OC-ES; and (viii) the Program for Modernization of the Legislative Assembly, 1203/OC-ES.

127. During the 2001 period, 473 bidding processes were reported in the PRISM System (Procurement Report Information System), for the procurement of goods and the contracting of works and consultancy services, with an average of 49 processes per month. During the same period of the previous year (2000), 364 bidding processes were reported. During 2001 there was a higher incidence of works contracts, many of them for minor amounts, due to damage caused by the two earthquakes that affected the country. Works contracted for higher amounts, which require international publicity, were performed in keeping with IDB emergency procedures.

128. In the period between June 30, 2002 and July 31, 2003, 595 procurement processes were reported for the procurement of goods and the contracting of works and consultancy services, with a monthly average of 50 processes.

129. The procurement of goods and contracting of works and consultancy services continue to be a priority and an important issue for the Executing Agencies and the Bank. However, portfolio efficiency is affected occasionally, due mainly to the lack of experience of many officials in some executing units. Nevertheless, the situation has improved as a result of the enforcement of the Law on Public Administration Procurement and Contracting in all public sector bidding processes and the continual effort to train officials from the executing units of the Bank's projects. Enforcement of the Law has diminished the discretionary use of criteria and has improved the management of government procurement activities.

130. For its part, COF/CES has contributed with various specific seminars on procurement topics, funded by the C and D Countries Plan, as well as training imparted during the workshops held to launch the new operations. In addition, the Representation has a procurement expert to support the executing agencies and specialists with regard to preparation of documents, training, communication with the Procurement Office, prevention of problems and provision of solutions.

131. The COF/CES project portfolio has two loans, 1100/OC-ES, Education Infrastructure Program, Local Development Program I and II, respectively, with the option of undergoing an *ex-post* sample review of the procurement processes. However, in keeping with agreements reached with the borrowers, at the present time oversight of loan 1100/OC-ES is being conducted *ex-ante*.

132. In loans 1067 and 1352/OC-ES, the limit for *ex-post* supervision was lowered for bids under US \$100,000. This new limit was set in lieu of the original amounts of US\$250,000 for the procurement of goods, US \$1,500,000 for the contracting of works and US\$200,000 for the contracting of consultant services. This measure was agreed upon with the borrower until institutional capacity has improved and the Bank determines, along with the borrower, that *ex-post* supervision is advisable. It is expected

that the training efforts promoted by the Bank and the improvements in procurement systems will help to increase the institutional capacity of borrowers so that an *ex-post* review can be made of all operations in which such review is possible.

133. The Institutional Units for Procurement and Contracting (UACIs), created thanks to the Law on Public Administration Procurement and Contracting, provide assistance to and coordinate all public sector bidding processes. The Government, together with the Bank, makes a continual effort to train the officials of the units that are executing the projects funded by the Bank.

134. The Salvadorian government authorities maintain an interest in developing a system to improve and ensure transparency, efficiency and savings in public sector procurement.

IV PERFORMANCE OF WORLD BANK-ASSISTED PROJECTS

135. The World Bank's operations in El Salvador began in the year 1949 with a credit for the development of a hydroelectric project on the Lempa River. From 1949 to date, the World Bank has approved 37 credits and loans totaling US\$989 million. WB financing priorities in El Salvador have undergone a significant change during recent years, with the emphasis shifting from infrastructure projects toward social area projects, while the most important objective in all WB operations is reduction of poverty.

136. Between the years 2002 and 2005, the WB expects to disburse a total of US\$270 million to support the Government in the execution of emergency projects in the areas of health, judicial reform, community development, environmental services and land administration. The WB's current portfolio has a total commitment of US\$397 million in loans, including \$142 million for the reconstruction of damage caused by the earthquake and improvements to the health system, \$146 million for education, \$50 million for land administration, and two loans for technical assistance to help modernize the public sector and improve the competitive ability of the private sector. This effort has been supplemented by the International Finance Corporation and the Multilateral Investment Guarantee Agency for the development and promotion of investments by the private sector.

137. Procurement financed by WB loans is made up mainly of relatively small reconstruction and new civil works, consulting services and purchases of relatively simple products. As shown under Appendix A, local contracting procedures are, in general, consistent with WB guidelines. In addition, the LACAP exempts contracts financed by international agencies from its jurisdiction. The agencies that execute WB-financed projects use standard documents for ICB and NCB.

138. To evaluate performance of WB-assisted projects from the viewpoint of public procurement and project management, all Implementation Completion Reports (ICRs since the 1990s) and all Project Status Reports (PSRs) for projects under execution were reviewed. There are no records in WB archives about country project performance review or country performance auditing. None of the available reports provides a critical

evaluation or specific analysis regarding public procurement, and in general terms they conclude that performance has been highly satisfactory. A careful analysis of those reports and of the conversations held with officials from the project-executing agencies show that the difficulties and delays experienced during project implementation have resulted mainly from problems associated with the lack of (i) counterpart resources at the beginning of the project; (ii) timely planning of all contract activities; and (iii) trained staff and an organization consistent with needs. The following are among the main problems encountered:

- a) Delays in approving WB loans by the National Assembly, which in some cases exceeded 20 months. Consequently, and due to the lack of financial and material resources at the beginning of project execution from both loan and counterpart funds, the project-executing units have been practically paralyzed in spite of the fact that in certain cases they were prepared and ready to start.
- b) More attention should be given to, and a more detailed assessment should be made of, the execution capacity of the executing agencies, including identification of the human and material resources required for project execution.
- c) During the first year project implementation was very slow due to the Borrower's lack of knowledge about the Bank's norms and guidelines pertaining to the procurement of goods, works and services, including standard documents. This situation was compounded by the absence of a project operations manual as a result of the late start, and by the lack of timely intervention by key personnel in the preparation of the manual.
- d) In many cases the preparation of bidding documents for civil works has been hindered by the lack of complete designs, drawings and cost estimates, a situation that could have been avoided with the timely hiring of specialized technical staff.
- e) The lack of knowledge about and dissemination of the project's important actions, including loan and project evaluation documents by the main actors involved in the project. This situation was even more critical in the case of the social rehabilitation loan that benefited the health and education sectors.
- f) The lack of financial and accounting systems, as well as follow-ups and assessments of the project, particularly during the first year of execution, caused delays in disbursements and the preparation of project progress reports.

139. There are no records in WB or IDB files about any cancellation of grant funds due to violations by the borrower of agreements signed with the banks regarding contracts for goods, works, or services.

Procurement Thresholds

140. Current thresholds and methods for procurement and contracting of works and goods at both the WB and the IDB are shown in the following table:

Institution	WORKS			GOODS		
	ICB	NCB	3 Q	ICB	NCB	3 Q
WB	> 5,000	350-5,000	< 350	>150	25-150	<25
IDB	> 1,500 *	12-1,500	**	> 250	12-250	**
Country	>100	12-100	<12	>100	12-100	<12

ICB = International Competitive Bidding; NCB = National Competitive Bidding; 3Q= Three Quotations
Amounts are in thousands of US dollars.

* For transport and energy projects the maximum threshold is US\$3.0 million

** IDB follows local legislation.

Given the type of projects financed by the Banks, the contract amounts for the provision of works and goods are almost always below the thresholds established by the banks, and since the thresholds established by LACAP are lower than those of the banks, the LACAP does not represent an obstacle for the banks. For consultant services, the banks allow a short list with only local consultants when the amount of the contract is equal to or below US\$200,000, and in practice most of the contracts have been awarded to local enterprises. In cases of pre-qualification of consultancy firms, the banks make sure that foreign companies are included on the short list (a minimum of two in the case of IDB). The analysis made in the following paragraphs concludes that in procurement and contracting the risk is in the medium range, and for this reason the recommendation is to maintain the thresholds established by the banks. For medium risk countries, the WB establishes the threshold for the prior review of contracts for works, goods, consultancy services provided by firms and consultancy services provided by individuals at US\$ 5.0 million, US\$ 500,000, US\$ 300,000 and US\$ 100,000 respectively. In the case of the IDB. Given the characteristics and size of the contracts financed by the banks, it is recommended – at least for the short term – that in each case a prior review should be made of the first two contracts for only one year or for each year during the entire life of the project, depending on the capacity of the entity executing the project.

V GENERAL ASSESSMENT OF RISKS

141. The risks inherent to the SIAC depend on the key objectives assigned to the system, to wit, maintaining the principles of public probity, ensuring the efficiency of procurement processes, and making sure that resources are used in a rational manner. The following table sums up the most important risks associated with achievement of these objectives.

RISKS INVOLVED IN ACHIEVEMENT OF SIAC OBJECTIVES AND OPTIONS TO MITIGATE THEM

RISK	PROBABILIT Y	IMPACT	MITIGATING FACTORS
Insufficiency in SIAC's management.	High	High	<ul style="list-style-type: none"> ▪ Strong support from top authorities at SIAC and at the UNAC
Inappropriate management of public resources with regard to purpose, efficiency and	High	High	<ul style="list-style-type: none"> ▪ Strengthening of the CCR's independence, autonomy and impartiality ▪ Strengthening of internal

effectiveness.			control in government agencies
			<ul style="list-style-type: none"> ▪ Approval of LACAP regulation ▪ Independent and frequent assessments
Interference from other agencies in UNAC affairs	Low	High	<ul style="list-style-type: none"> ▪ Consolidation of mandate, organization and internal management of the UNAC ▪ Technical training of UNAC personnel
Loss of coherence in the implementation of procurement policies and regulations	Medium	High	<ul style="list-style-type: none"> ▪ Consolidation of UNAC mandate ▪ Design and implementation of simple procurement systems at the municipalities ▪ Strengthening the UACIs
Human resources' poor technical capability	Medium	High	<ul style="list-style-type: none"> ▪ Specialization in public procurement ▪ Design and implementation of a procurement training program
Inefficient purchase prices	Medium	High	<ul style="list-style-type: none"> ▪ Optimum allocation of risks associated with each project
No risk analysis is carried out for implementation of electronic procurement	High	High	<ul style="list-style-type: none"> ▪ Preparation of risk analysis for implementation of electronic procurement
Fraud by people involved in electronic commerce	Medium	High	<ul style="list-style-type: none"> ▪ Design and implementation of an anti-corruption strategy

142. Considering the importance of public sector procurement, the materialization of certain risks – such as insufficiency in SIAC's management; the inappropriate management of public resources; and the lack of risk analysis for new activities such as e-procurement – can bear considerable consequences for society and represents significant obstacles to achieving probity and efficiency goals.

143. For contractors – be they for works, goods or services – the risks vary according to the contracting agency and the complexity and financing of the procurement. Contracts financed by international banks and other development agencies generally entail less risks for the contractor than those financed by the Government, because often they are

managed by special units supported by those banks and use standardized documents and procedures. However, both the World Bank and the IDB have focused their operations mainly in social areas where the executing agencies face difficulties with regard to planning their procurement and public works programs and in selecting the best strategy for contracting. In spite of the fact that much of the procurement in these areas do not represent high risks due to their relatively low dollar value and their simplicity, they do bear a high transaction cost considering the time that personnel from the contracting agencies and the banks have to devote to this activity.

144. One exception to what has just been mentioned are the MOP's "turnkey" contracts, mainly financed by Banco Centroamericano, in which practically all risks are assigned to the works contractor, who bears a very high risk.

145. Taking the foregoing considerations into account, one can say that El Salvador is at medium risk as far as procurement is concerned.

VI RECOMMENDED ACTION PLAN

146. This report confirms the efforts made by El Salvador in the procurement area and the Government's willingness to improve the SIAC, as demonstrated by the following:

- a) the approval of, and the effort being made to implement the LACAP
- b) the creation of the UNAC and the UACIs, whose main responsibility is to implement the SIAC
- c) the onset of training activities and dissemination of the Law
- d) the existence of good practices in some UACIs

147. However, and in spite of the implementation of LACAP, a generalized and systematic procurement process has not yet been established in all agencies. If El Salvador wants to have a procurement system that meets its aspirations of maintaining the principles of public probity, ensuring the efficiency of the processes, and making sure that its resources are used in a rational manner, it has to tackle the challenges in the legal framework for procurement, in the public institutions related to the sector, and in the processes that are needed to implement the SIAC. For this purpose, it is recommended to: confirm the objectives and scope of the SIAC, obtain a commitment from higher authorities, and prepare a realistic plan for its implementation. The priority activities identified during the preparation of this report to tackle the challenges in the three areas that were mentioned, and which could serve as a basis for such a plan, are outlined in the action plan proposed on the following pages. If adopted, the action plan should be coordinated and be consistent with the activities funded by the public sector modernization project financed by the World Bank and the IDF grant in order to ensure the efficient use of resources.

VII MONITORING AND EVALUATION

148. The program to reform public procurement and contracting that began in 1996 has lacked a monitoring and evaluation tool that would allow it to systematically measure the degree of progress achieved in the reform process. To facilitate this task, it is recommended that performance indicators be identified and a monitoring and evaluation system be established in order to measure the degree of progress of the public procurement modernization program, as well as the level of improvement or deterioration of the contracting processes in terms of quality, efficiency and transparency.

EL SALVADOR - ACTION PLAN

TOPIC	RECOMMENDATION	Conclusion Months After (09.30.03)	Responsible Agency
<p>1. Legal Framework</p> <p>1.1 The LA CAP is incomplete and has not been regulated</p>	<p>1.1.1 Approve regulation of the law. 1.1.2 Disseminate the regulation and provide training to the UACIs. 1.1.3 Revise the law as required.</p>		<p>P. Legal Sect. UNAC Leg. Assembly</p>
<p>2. Institutional Framework</p> <p>2.1 Institutional weakness of the UNAC and the UACIs.</p> <p>2.2 Weaknesses in the CCR and in the internal control system of the agencies</p> <p>2.3 Deficiencies in training programs.</p> <p>2.4 Deficiencies in the Resolution of disputes</p>	<p>2.1.1 Take actions to consolidate the mandate, organization and management of the UNAC. 2.1.2 Carry out strengthening and training programs at all the UACIs. 2.2.1 Strengthen the CCR with regard to its independence, autonomy and impartiality. 2.2.2 Review the internal control system of the institutions and their relationship with CCR. 2.3.1 Review the short- and medium-term training programs and reinforce their implementation within the context of SIAC. 2.4.1 Develop a system for the resolution of disputes in the contracts and so the petitions for review will be handled by an independent entity.</p>		<p>Finance Min. UNAC Leg. Assembly CCR UNAC UNAC / Leg. Assembly</p>

TOPIC	RECOMMENDATION	Conclusion Months After (09.30.03)	Responsible Agency
<p>3. Processes and Practices</p> <p>3.1 Conflict of interest of the Prosecutor General.</p> <p>3.2 Institutional weakness of the UACIs.</p> <p>3.3 The public procurement sector is not regarded as a professional career.</p> <p>3.4 Weaknesses in following up the environmental aspects of acquisitions.</p> <p>3.5 Bureaucracy, low efficiency and scant transparency.</p> <p>3.6 Performance of the turnkey contracting system.</p>	<p>RECOMMENDATION</p> <p>3.1.1 Review the role of the Prosecutor General's Office in the review and signing of contracts.</p> <p>3.2.1 Review the control and operational mechanisms of the UACIs.</p> <p>3.3.1 Structured professional training of public servants engaged in procurement.</p> <p>3.4.1 Review the system to control and follow up environmental aspects to be taken into account in procurement processes.</p> <p>3.5.1 Continue developing the use of electronic technology in procurement in keeping with the Government's e-government policy</p> <p>Phase 1: Information system Phase 2: Electronic purchases of large volume and low costs. Phase 3: Electronic purchases of small volume and high costs.</p> <p>3.5.2 Develop, establish and maintain a national register of procurement and contracts. Design harmonized bidding documents for use by all State agencies.</p> <p>3.6.1 Evaluate, by means of an independent technical audit, the "turnkey" contract system.</p>		<p>Leg. Assembly</p> <p>UACIs/UNAC Agencies</p> <p>UNAC / MARN</p> <p>STP</p> <p>UNAC</p> <p>UNAC</p> <p>MOP</p>
<p>4. Control & Measures Against Corruption</p> <p>4.1 Lack of a strategy to attack corruption..</p>	<p>4.1.1 Prepare a policy/strategy to fight corruption, and prepare a</p>		<p>Executive</p>

TOPIC	RECOMMENDATION	Conclusion Months After (09.30.03)	Responsible Agency Branch
<p>5. Monitoring the Reform Process</p> <p>5.1 Lack of a tool that will allow measuring the degree of progress in implementation of the SIAC.</p>	<p>detailed plan for implementation.</p> <p>Prepare performance indicators to measure the degree of progress of implementation of the SIAC.</p>		Branch

VIII UPDATE (May 2006)

1. The field work for preparation of this report concluded in November 2004. Since that time and until today, El Salvador has made rapid progress in modernizing its procurement system and has made changes that it is advisable to highlight and reinforce. The majority of the initial recommendations of the CPAR, which were made in September 2003, have been substantially addressed and the Government and the banks have agreed to make new recommendations to help maintain the dynamism of the modernization of the procurement system in El Salvador. For this reason this update is being made and new recommendations are included.

2. First of all this report looks at the progress made with the recommendations suggested in the framework of the CPAR in 2003. It then goes on to underscore the relative importance of public procurement in El Salvador, and lastly it examines the current situation in five large areas: political and institutional framework, legal and regulatory framework, operational and management framework, public procurement operations and market practices, and transparency and probity of the public contracting system. Each of these areas includes a summary table at the onset, followed by a detailed presentation of content.

Progress achieved with recommendation made in October 2003

3. The table on the following pages shows the recommendations made in September 30, 2003 and in the last column it shows how much progress has been made to date. The column will show if a recommendation was fulfilled or if it is on its way to completion.

**El Salvador – Public Procurement
Action Plan issued in 2003 and State of Progress in 2006**

TOPIC	RECOMMENDATION made on September 30, 2003	STATE OF PROGRESS as of May 30, 2006
<p>1. Legal Framework 1.2 The LA CAP is incomplete and lacks regulation</p>	<p>1.1.1 Approve regulation of the law. 1.1.2 Disseminate the regulation and provide training to the UACIs. 1.1.3 Review the law as required.</p>	<p>1.1.1. The regulation was completed and approved. 1.1.2. The LACAP and its regulation have been widely disseminated and ample training has been provided. 1.1.3 The law has been reviewed on several occasions and has been amended.</p>
<p>2. Institutional Framework 2.1 Institutional weakness of the UNAC and the UACIs. 2.2. Weaknesses in the CCR and in the internal control system of the agencies 2.3 Improving the training structure.</p>	<p>2.1.1 Take actions to consolidate the mandate, organization and management of the UNAC. 2.1.2 Carry out strengthening and training programs at all of the UACIs. 2.2.1 Strengthen the CCR with regard to its independence, autonomy and impartiality. 2.2.2 Review the internal control system of the institutions and their relationship with the CCR. 2.3.1 Review the short- and medium-range training programs, and reinforce their implementation within the context of SIAC.</p>	<p>2.1.1. The UNAC has been strengthened, its leadership is recognized, and it is exercising its regulatory function 2.1.2. An intense training program has been carried out at the UACIs. 2.2.1. The CCR has shored up its independence and raised its levels of autonomy and recognition. 2.2.2. Internal control has been strengthened based on the recommendations of the CCR. 2.3.1. The training program has been reviewed and modified several times in keeping with the SIAC's strategic objectives.</p>
<p>2.4 Deficiencies in the settling of disputes</p>	<p>2.4.1 Develop a system for the settling of disputes related to contracts and so that the petitions for review will be handled by an independent entity</p>	<p>2.4.1. Petitions for review are being handled in a sufficiently rapid manner. After administrative channels have been exhausted, the petitions are handled by the Supreme Court. This mechanism is satisfactory for DR-CAFTA. The outlook is not favorable for creation of an administrative appeal level as suggested by the Banks. Use of the conciliation and arbitration mechanism is being encouraged by means of promoting, training and</p>

TOPIC	RECOMMENDATION made on September 30, 2003	STATE OF PROGRESS as of May 30, 2006
		implementation of the dispute registry module.

TOPIC	RECOMMENDATION made on September 30, 2003	STATE OF PROGRESS as of May 30, 2006
<p>3. Processes and Practices</p> <p>3.1 Conflict of interest of the Prosecutor General</p> <p>3.2 Institutional weakness of the UACIs.</p> <p>3.3 The public procurement sector is not considered a career track.</p> <p>3.4 Weaknesses in following up the environmental aspects of procurement processes.</p> <p>3.5 Bureaucracy, low efficiency and scant transparency.</p> <p>3.6 Performance of the turnkey contract system.</p> <p>4. Control of and Measures</p>	<p>3.1.1 Review the role of the Prosecutor General in the review and signing of the contracts.</p> <p>3.2.1 Review the operational and control mechanisms of the UACIs.</p> <p>3.3.1 Structured professional training for public servants who work in the procurement area..</p> <p>3.4.1 Review the system used to control and follow up the environmental aspects that have to be taken into account in procurement processes.</p> <p>3.5.1 Continue encouraging the use of electronic technology for procurement in keeping with the e-government policy. Phase 1: Information system Phase 2: Electronic purchases of large volume and low cost. Phase 3: Electronic purchases with small volume and high cost..</p> <p>3.5.2 Develop, establish, and maintain a national registry of purchases and contracts. Prepare harmonized bidding documents for use by all state agencies..</p> <p>3.6.1 Evaluate the "turnkey" contract system by means of an independent technical study.</p>	<p>3.1.1 Everyone agrees on the need to eliminate this procedure, but this requires an amendment to the Constitution. Such an action will be discussed whenever an opportunity to reform the Constitution arises.</p> <p>3.2.1 The operational capacity of the UACIs is being strengthened by giving them technical advice; the processes have been analyzed for the purpose of providing them with information system tools.</p> <p>3.3.1 A program is being drafted for academic specialization in the field of procurement.</p> <p>3.4.1 An environmental authority has been established to regulate this topic.</p> <p>3.5.1 The development of COMPRASAL is progressing according to the action plan. The dissemination module is already in operation, the module for bids has been designed, and the modules for management of guarantees, recording of disputes, and the help desk are under development.</p> <p>3.5.2 A database on procurement operations that will be updated on line is being developed. Standardized bidding documents have already been designed and are undergoing coordination process.</p> <p>3.6.1 Contracting with design and work execution companies has been normalized and are no longer a motive for complaints.</p>

TOPIC	RECOMMENDATION made on September 30, 2003	STATE OF PROGRESS as of May 30, 2006
<p>against Corruption</p> <p>4.1 Lack of a strategy to fight corruption.</p>	<p>4.1.2 Prepare a policy/strategy to combat corruption and prepare a detailed plan for its implementation.</p>	<p>4.1.1 An anti-corruption policy exists. Ethical codes have been established as well as a committee to ensure their observance. Prevention, transparency, oversight and punishment strategies have been drawn up.</p>
<p>5. Monitoring the Reform Process</p> <p>5.1 Lack of a tool that will allow measurement of the degree of progress in implementation of the SIAC.</p>	<p>5.1.5 Prepare performance indicators to measure the degree of progress in implementation of the SIAC.</p>	<p>5.1.1 Work has begun on the design of performance indicators and construction of a baseline to measure the progress of the SIAC.</p>

The situation in May 2006

Relative Importance of Public Procurement

4. After the high levels of public investment achieved between 2001 and 2003 during the reconstruction phase that followed the earthquakes, consolidated public procurement has become stabilized at close to US\$800 million, which is equivalent to 4.7% of the GDP. A potential savings of 20% thanks to modernization of the procurement system would have a tremendous positive impact, because it would be equivalent to the additional income obtained from the most recent fiscal reform, to 1/3 of public spending on education, or to 2/3 of public spending on health.

Political-Institutional Framework

Indicator	Generalities of the current system	Recommendation according to international reference
<i>Political priority</i>	<ul style="list-style-type: none"> - The Government has granted special priority to modernization of the procurement system - There is coordinated and effective management by the STP and the MH, which are the key institutions as far as procurement reform is concerned 	To continue the effective integration of the two institutions
<i>Management of the procurement system</i>	<ul style="list-style-type: none"> - The UNAC is effectively managing the system thanks to strong support from the STP. - The UNAC is responsible for regulatory management and not for operations, control, or the imposing of penalties - The human resources team at the UNAC is becoming qualified - The UNAC is still institutionally weak - The UACI Network has begun operating successfully and can be strengthened further 	<ul style="list-style-type: none"> - To continue the institutional strengthening of the UNAC - To continue the strategy of improving the qualifications of UNAC personnel - To strengthen the UACI network and give priority to the dissemination of best practices and horizontal cooperation among the UACIs
<i>Scope and comprehensiveness of the goals</i>	<ul style="list-style-type: none"> - The basic objectives are transparency, savings, and efficiency - Mention already is being made of proposing the development objective to MiPyMEs 	<ul style="list-style-type: none"> - To incorporate into the strategy the goal of promoting national companies without detriment to the competition. - To incorporate the goal of strengthening interoperativeness with

		the other Central American countries.
<i>Guidance and planning capacity</i>	<ul style="list-style-type: none"> - The drafting of the Strategic Plan has begun. - There is still scant information for monitoring purposes. 	<ul style="list-style-type: none"> - To give priority to the Strategic Plan, release it to the public, and have it approved and operational in 2007 - To make progress in the use of indicators of procurement processes and results.
<i>Building a consensus with the private sector</i>	<ul style="list-style-type: none"> - Consensus-building meetings and training activities have been held. 	<ul style="list-style-type: none"> - To convert consensus-building with the private sector into the axis of the procurement modernization policy and to create permanent mechanisms to achieve it

5. *Political priority.* The Government has given a high priority to the modernization, transparency, and efficiency of public procurement. Political responsibility for the progress of the procurement system lies at the highest level by means of the Technical Secretariat of the Presidency of the Republic and the Chief of the Council of Ministers. Through them the entire cabinet is involved in the modernization of the procurement system. The Technical Secretariat of the Presidency, by means of the Purchases and Contracting Component, has played a decisive role in procurement modernization and the approval, regulation, and dissemination of the new legal framework. The Public Administration's Regulatory Unit for Procurement and Contracting (UNAC), which comes under the Finance Ministry, works hand in hand with the Purchases and Contracting Component of the Technical Secretariat of the Presidency and has strengthened its leadership over the past year thanks to the strategic management of the Deputy Finance Minister, who has vast knowledge about the public procurement process. The Technical Secretariat of the Presidency and the Finance Ministry are the key institutions to promote change in the procurement system throughout the entire public sector. Coordinated work between the two and their willingness to support UNAC has broadened the outlook of modernizing public procurement in El Salvador and has made room for the progress that is discussed further on.

6. *Management of the Procurement System.* The UNAC is the lead institution in the procurement system. Its most important activities have been: disseminating the LACAP, promoting the development of the COMPRASAL system, and providing advice to the network of Institutional Units of Procurement and Contracting (UACIs) that are responsible for public sector procurement. At the present time there are 381 UACIs (119 at the central level and 262 in a like number of municipalities). All of the UACIs are using the LACAP and thanks to the boost given by the UNAC many of them have increased their contracting capacity and transparency, and horizontal cooperation mechanisms have been created among the more effective UACIs. The UNAC was wisely conceived as a regulatory unit to guide, promote and follow up, without any direct execution or control functions. More than half the personnel at the UNAC (12 technical level officials) received high level training recently and the chief of the UNAC maintains

ties with international networks of public procurement experts. The Government has the purpose of maintaining a stable, high level management at the UNAC in order to facilitate institutional strengthening. The UNAC's capacity to make a difference is high thanks to the resolute support of the Technical Secretariat of the Presidency and the Finance Ministry. Nevertheless, the UNAC is still institutionally weak because its influence hinges more on said support – a situation that might change in the future – than on its own organizational and political strength. Due to this it is recommended to continue strengthening it as an institution and to continue training staff members.

7. *Scope and comprehensiveness of the goals.* The goals of the procurement system in El Salvador are focused on transparency, savings and efficiency. It was recently decided to also contribute to development of the MIPYMES, without detriment to the competition but creating conditions whereby the MIPYMES can put their comparative advantages to good use. Until now there are no plans to contribute to the strengthening of national companies or to territorial development within the country, and no one has brought up the goal of facilitating integration of the Central American subregion by means of the procurement system. Incorporation of these new goals might help to strengthen business sector support for the procurement modernization effort, improve the contracting system at the municipalities, and spur on interaction with the countries of the subregion.

8. *Capacity to plan and guide procurement processes.* The STP has promoted the preparation of a strategic plan for the general modernization of the procurement process and development of the e-GP. This plan includes a description of the desired system and the phases and responsibilities required to attain it. At the same time and in coordination with the UNAC, the STP also began to gather relevant information on procurement, especially aspects such as method, amounts, prices, and timeframes, to be able to improve the UNAC's guidance and monitoring capabilities. One of the main recommendations is to complete, disseminate, and adopt the strategic plan, which should include:

- A quantitative and qualitative diagnosis of the current status of the country's procurement system, including a general description of the procurement system, the political and institutional framework, the legal framework, national business development, and connectivity.
- A baseline with the main quantitative indicators.
- An easily disseminated description of the final result expected from development of the e-GP and the basic characteristics of its operation.
- A basic construction plan by phases to attain the desired result.
- Identification of participants in the phases foreseen (different levels of government, national and international suppliers, the community), their responsibilities and incentives in order to ensure their participation.
- Identification of timeframes for the various phases.
- Identification of costs.
- A mechanism to carry out ongoing follow-up of the progress made and to define any corrective action required.

- A method for periodic review of the Strategic Plan and the introduction of adjustments.

9. *Building a consensus with the private sector.* Over the past few years, the STP and the UNAC have held discussions meetings on the topic of procurement with various private sector business associations as a part of consensus-building meetings and training seminars. These consensus-building processes have been positive but have to be strengthened further. The private sector has not mentioned a lack of trust in the UNAC. Modernization of public procurement will require strengthening the dialogue with the private sector and setting up a plan to shore up its capacity to participate in COMPRASAL.

Legislative and Regulatory Framework

Indicator	Generalities of the current system	Recommendation according to international reference
<i>Pertinence of the legal framework. Compliance with national and international requirements.</i>	<ul style="list-style-type: none"> - The LACAP contains the basic elements of a modern procurement law, complies with internationally accepted requirements, and favors the development of e-GP - Its use is widespread - There is no conflict with the T.L.C (RD-CAFTA) 	
<i>Regulations and instances for implementation</i>	<ul style="list-style-type: none"> - The LACAP has a regulation for implementation and has created the instances required for its implementation 	
<i>Norms, guidelines, and tools to support implementation of the law</i>	<ul style="list-style-type: none"> - There still are differences in the methods of enforcing the law and in procurement procedures - Standard documents have been prepared 	<ul style="list-style-type: none"> - Focus efforts on drawing up and disseminating standardized procedures.
<i>Standards</i>	<ul style="list-style-type: none"> - Market standards: UNSPSC has been adopted. - The single registry of providers is taking shape - Processing standards: unification of bidding documents and bid evaluation procedures has begun 	<ul style="list-style-type: none"> - Market standards: put into operation a single registry of providers that is open, free of charge, is updated on-line and is valid internationally - Process standards: design and put into use standards for bidding documents, presentation of offers, evaluation of offers, and contract methods - Systems standards: to create interoperability between the registry of bidders and the databases of the company registry and the fiscal data registry

10. *Pertinence of the legal framework.* The “Law on Public Administration Procurement and Contracting” –LACAP– approved in the year 2000, contains the basic elements required for a modern public procurement law; meets internationally-accepted requirements; and facilitates the development of e-GP. Thanks to the dissemination carried out by the UNAC with the support of the STP, the law is widely known and is considered of great value by the contracting public entities as well as the potential suppliers. Use of the LACAP is widespread because all public entities base their procurement on it. There are no exceptions to the law except for the reasons of public emergency it provides for, which account for an insignificant percentage of total contract amount.

11. *Regulation.* The LACAP already has the regulatory norms it needs for its implementation.

12. *The LACAP and the TLC.* In general the LACAP is compatible with the “Dominican Republic and Central American Free Trade Agreement” (DR-CAFTA), signed on August 5, 2004 and ratified by the Salvadorian Legislative Assembly on December 17, 2004. There are specific differences between the two instruments on the following topics: thresholds, entities involved, use of the open bid method, advertising, timeframes for the preparation of offers, characteristics of the technical specifications, exceptions, and petitions for review. With regard to these differences, Salvadorian law clearly establishes that the treaty will prevail (Article 144 of the Constitution). Consequently, the Salvadorian authorities have clarified that the DR-CAFTA is applicable in its entirety and that the LACAP is applicable for matters that are not provided for in the treaty, and that there is no need for any amendments to be made. In keeping with the provisions of the treaty, Article 25 of the LACAP was amended to reinforce and generalize the restrictions on contracting.

13. *Norms and guidelines for implementation.* Even though the LACAP is the sole legal framework, varying procedures still are being used due to differing interpretations about how it should be implemented. The UNAC provides general training on the characteristics and scope of the law. From now on it is going to have to direct its training toward specialized topics such as procedures and, above all, designing and implementing standards. The UNAC already has drafts of sole contracting procedures by sector and type of procurement that have to be coordinated, revised, and placed into operation.

14. *Standards.* The STP and the UNAC, with the support of certain UACIs, designed standards. Among the market standards, the United Nation’s international classification system for products and services (UNSPSC) was adopted and ensures international interoperability. There is an urgent need to place into operation a single registry of providers, which has to be open, free of charge, updated continuously and internationally operable. The registry of providers has to have interoperability with the registry of companies and the Finance Ministry databases, so as not to ask the providers for information that the State already has and to remain updated on a continual basis. In order to develop process standards, work is already under way on standardizing bidding

documents, evaluation procedures, and formats for contracts. Making progress in this field is considered a top priority task in order to unify and obtain the most benefit from the methods of implementing the LACAP and to maximize transparency and the efficiency of the processes.

Operations and Management Framework

Indicator	Generalities of the current system	Recommendation according to international reference
<p><i>Monitoring and evaluating procurement. Availability of information for the monitoring process.</i></p>	<ul style="list-style-type: none"> - The UNAC has started to design the follow-up system and to set up the baseline 	<ul style="list-style-type: none"> - Complete and place into operation a system of indicators to follow up on procurement activities - Set up the baseline in the second half of 2006 - Create a mechanism for on-line monitoring and the capacity for ongoing production of public information on the procurement operation - Create in the UNAC the capacity to assess system performance
<p><i>Development of the e-GP</i></p>	<ul style="list-style-type: none"> - COMPRASAL has begun to operate with the dissemination module, and has had a high level of impact and acceptance. - COMPRASAL services are free and can be easily accessed - Some municipal entities still are not a part of COMPRASAL - Several modules are currently being developed in order to continue advancing with COMPRASAL 	<ul style="list-style-type: none"> - Include the municipalities in COMPRASAL as soon as possible - Strengthen the dissemination module with the capacity of generating statistics on-line. - Finish developing in order to place into operation in 2006 and the first half of 2007 the modules for bids; monitoring of procurement; management of guarantees; recording of disputes and controversies; and a help desk. - Begin development of the payment portal and help desk modules - Perform a diagnosis of UACI connectivity

<i>Personnel training</i>	<ul style="list-style-type: none"> - A group of persons have been trained to have knowledge about LACAP. - There are still only a few experts on procurement in the country - The STP and UNAC have carried out an extensive training program and is currently training the new mayors. - A program to specialize in procurement is being designed. - There is need for a strategy to inform the citizens about the changes in the procurement process 	<ul style="list-style-type: none"> - Conserve and expand the training strategy, with emphasis on standard procedures - Create university-level specialization in public procurement. - Define a standardized UACI profile according to type and define job profiles as a complementary task - Create an accreditation system for the UACIs
<i>Capacity of the purchasing entities</i>	<ul style="list-style-type: none"> - Uneven capacity. The largest deficiencies are in the municipalities 	
<i>Capacity of the providers</i>	<ul style="list-style-type: none"> - The organized business sector has considerable capacity for public sector contracts - The MIPYMES have limitations - The gap threatens to widen 	<ul style="list-style-type: none"> - Strengthen the training of providers, with emphasis on MIPYMES
<i>Integration with the public finances management system</i>	<ul style="list-style-type: none"> - There are plans for the new COMPRASAL modules to operate in coordination with the SAFI 	<ul style="list-style-type: none"> - Guarantee integration between COMPRASAL and SAFI from the very origin of the COMPRASAL modules

15. *Monitoring and evaluating procurement.* Traditionally El Salvador has lacked an information system that would allow it to consolidate information on procurement in such a way that it can track trends, identify weak areas, improve processes, and strengthen control. Aware of these limitations, the UNAC recently began to design a system to follow up on public procurement processes. For starters, it requested from the UACIs information on their operations in 2005, for the purpose of setting up a baseline that will allow it to make a follow-up of the entire system and assess the impact of the modernization actions and the operation of COMPRASAL. The baseline should be ready before the end of 2006. In the future it will be necessary to generate the monitoring information on-line when the procurement and payment transactions are made. The monitoring system will be essential to propose quantitative goals in the procurement modernization process; create a mechanism to follow up on processes and results; and to be in a position to assess progress made and to answer for the work being done by the UNAC and the UACIs. The setting up of this system has two key elements: the generation of information on-line and development of performance analysis capacity.

16. *Development of the e-GP.* The development of COMPRASAL is progressing satisfactorily and COMPRASAL is beginning to turn into the engine of procurement modernization in El Salvador. The Web procurement portal (www.comprasal.gob.sv) has been in operation since late 2005 and the dissemination module is fully operational, which allows inclusion of the entities' procurement plans and essential information regarding the bidding and tender processes. The information covers the majority of public

entities under the executive, legislative and judicial branches, but the majority of municipalities still are not included. Expansion of the dissemination module to the entities that still have not been included is a top priority in order to guarantee the completeness of the process from the outset. A design has been made of an operational prototype of the interactive module for bidding processes and its construction is currently being contracted out. Also in the development phase are the modules for management by results; managing guarantees; recording disputes; and a help desk, which should undergo a trial phase toward the end of 2006 so as to be operational in January 2007. Work is scheduled to begin soon on the design and development of five new modules, but the financing of this effort has yet to be defined. It was a wise decision to finance the COMPRASAL operation with funds from the national budget, without any cost to providers or the purchasing entities, because this has facilitated its acceptance and expansion to a larger number of providers. The development of COMPRASAL also demands making, in the short term, a diagnosis of the technological infrastructure and connectivity of the UACIs.

The development of COMPRASAL has been accurately conceived as an overall process of institutional change and adjustment of public procurement practices, and technological development is considered as just another component. In order to handle this, the UNAC can rely on support from the Finance Ministry's Directorate of Technology, which renders services on demand. The UNAC has decided to strengthen its information management capacity (generation of indicators and development of analysis capacity).

17 Personnel training. El Salvador has gradually been training a group of persons who are now familiar with the national procurement law, but it still has only a few experts on the new world trends regarding public procurement and e-GP. The UNAC has a competent management team and is training its human resources by means of specialized consultancies, exchanges with experts and international contacts. In government entities specialization in the procurement area traditionally has been low, but over the past year the UNAC, with STP support, launched a high-speed training effort and began to set down the initial foundation for specialization. The UNAC offers a wide range of training courses free of charge for state procurement agencies, government officials, and organizations of companies that sell to the State. Those who have participated in the training seminars believe that they are functional and useful. At present the UNAC is beginning a training cycle with the new mayors who took office in May 2006. Training for public officials includes knowledge of the LACAP and the TLC and their regulations; methods to draw up the annual procurement plan; attending to petitions for review; mechanisms for the resolution of disputes; and management of the COMPRASAL dissemination module.

There has been a lack of a plan to inform the citizens en masse about the e-GP strategy. The UNAC has had contact with several e-GP development experiences in Latin America, but still needs more systematic knowledge about the international experience in e-GP and a better exchange with the countries that are more advanced in this field. The recommendations made in the following paragraph are aimed at creating a critical mass

of people specialized in government procurement and at reducing the impact of personnel rotation on UACI management.

18 *Capacity of the purchasing entities.* Just like the 2004 CPAR reported, the capacity of procurement entities is uneven. Some of them are high performance units with trained personnel as well as advanced institutional capacity. Others, however, have a low capacity level and are vulnerable to improvisation and external pressures. Personnel turnover at the UACIs is very high. The STP and UNAC have decided to try to overcome this situation by taking two sets of actions: ongoing training and creation of the UACI network. The UACI network, which includes mechanisms for horizontal exchange and the dissemination of good practices, has allowed the strengthening of several procurement units with an intermediate level of development, even though an impact has not yet been made on the more backward units. To help develop the capacity of procurement entities and their human resources, the mission makes the following recommendations: strengthen training with an emphasis on standardized procedures; promote the establishment of academic specialization in government procurement, which could soon become a job requirement at the UACIs; define standardized UACI profiles according to type and volume of activities, along with job descriptions for each case; strengthen the monitoring of procedures; reinforce the UACI network with the continuous dissemination of good procurement practices and setting up a horizontal cooperation system between the UACIs; and creation of a UACI accreditation system that will meet organizational and procedural standards.

19. *Capacity of the providers.* El Salvador's organized business sector has considerable capacity to attend to a large portion of the public sector requirements for works, goods and services. To the contrary, the MIPYMES traditionally have experienced difficulties when trying to become providers to the state, and these difficulties have been worsened by barriers that the state itself has set up. With the development of COMPRASAL this gap could grow even wider, and consequently training of providers with emphasis on the smaller ones has to be given priority in order to convert them into effective bidders for government purchases.

20. *Integration between the procurement system and the financial administration system.* The UNAC has made plans for the COMPRASAL modules to be integrated with SAFI from the design stage, so that a single operation will simultaneously trigger operations related to both procurement and financial management. This integration is facilitated by the fact the UNAC comes under the Finance Ministry and that responsibility for the technological design of COMPRASAL lies with the Finance Ministry's Directorate of Technology and the same team that is responsible for the SAFI.

Public Procurement Operations and Market Practices

Indicator	Generalities of the current system	Recommendation according to international reference
<i>Procurement planning capacity</i>	- Annual procurement plans are weak	- Strengthen preparation of procurement plans by means of a specialized manual, a help desk, and the holding of a fair to publicize said plans
<i>Efficiency of procurement practices and management</i>	- In El Salvador efficiency levels (costs, duration, suspended processes) appear to be above the Latin American average	- The strategic plan has to define goals to make progress as far as efficiency is concerned
<i>Functionality of the public procurement market</i>	- Large and medium-sized companies are less than 1% and yet they represent 93% of the amount contracted by the government - The country has international contracting experience	- Implement the strategy to open up to the competitive advantages of the MIPYMES - Develop interoperability with the providers registry of the Central American countries
<i>Incorporation of MIPYMES</i>	- The design has been completed	- Place into operation and monitor
<i>Government supply strategies</i>	- There are no such strategies even though they are considered urgently needed in certain areas	- Based on market studies, design procurement strategies for fuel, medications, and products of common use - Evaluate the advisability of consolidating procurement by means of framework contracts in areas selected according to market studies and projections

21. *Planning public procurement.* The planning of public procurement traditionally has been very weak, and in the majority of cases procurement plans have been regarded as a formality. Recently, the publication of plans on COMPRASAL began to generate an interest in improving them. DR-CAFTA procedures also have helped to drive home the importance of good procurement planning. Aware of the needs, the UNAC has plans to strengthen training for the preparation of procurement plans; to set up a help desk with the UACIs that are the most advanced in the field; and to hold in the month of October or November of each year a fair at which public entities can show potential providers the demands that are projected for the following year.

22. *Efficiency of procurement management.* In El Salvador, public procurement is proportionally more efficient in terms of cost, duration, and failed processes than in the average Latin American country. The cost of participating in a bid selection process is relatively low (usually below US\$20) but there are barriers to entering caused by the cost of the guarantees demanded from all bidders. Available data show that the duration of the provider-selection process tends to be shorter than the regional and subregional average. The entities do not frequently incorporate any requirements other than those demanded by LACAP. The contracting of public works between 2001 and 2003 to help the country recover from the damage caused by the earthquakes showed efficiency levels that on several occasions earned international recognition. In order to consolidate these relative advantages, the strategic plan should set higher efficiency goals attainable by reducing administrative costs, shortening timeframes, and cutting down on requirements and paperwork.

23. *Functionality of the public procurement market.* The organized business sector in El Salvador has a high competitive ability because it has been increasingly exposed to the international market. Large companies are the habitual main suppliers of the state. In turn, small businesses and micro-businesses, which make a considerable contribution to economy and the generation of jobs, have had little access to public contracts. The concentration of public procurement in El Salvador can be seen in the following table:

El Salvador
Number of Contracts and Amount Contracted by Private Enterprises
with the Public Sector broken down by Company Size, 2005

Type	#	%	US\$ Maximum sales year	# workers	% amount contracted	% number contracts
Large	126	0.03	No limit	> 100	55	11
Medium	1,402	0.77	4,571,000	51 a 100	38	58
Small	15,777	3.07	686,000	11 a 50	5	29
Micro	496,365	96.63	69,000	< 10	2	2
Total	513,670	100.00	–	–	100	100

Source: UNAC

Large and medium-sized companies, which are less than 1% of the total amount of enterprises in the country, together accounted for 93% of the amount of the contracts, while micro-enterprises represent 97% of the total companies but accounted for only 2% of the total amount of the contracts. Consequently, the table shows that Salvadoran public procurement has a marked preference for large companies (55% of the amount of the contracts) and medium-sized companies (38%).

The public sector has acquired experience with international contracts within the framework of external credits. An assessment of projects shows that, in general, the process of selecting providers or contractors by means of international bids and executing the projects afterward were accomplished without any major problems.

24. *Incorporation of MIPYMES.* The concentration of public procurement has led the STP to contract a plan to design incentives for MIPYMES participation in public procurement. The guidelines for the design of the project, which is currently under way, is to reduce costs and eliminate barriers for entering, provide training, and combine large-scale procurement with small-scale purchases located over all parts of the national territory so that the smaller companies can find competitive advantages in contracts with the state.

25. *Government supply strategies.* El Salvador does not have any supply policy for products and services of strategic interest, with high public demand, or with very imperfect markets. The STP and UNAC have made plans to design strategies for the procurement of fuel and medication; undertake studies on the advisability and impact of framework contracts; and design mechanisms for collective procurement of products that are of common use at several entities. The mission concurs with these plans and has incorporated them into the recommendations.

Transparency and Probity of the Public Contracting System

Indicator	Generalities of the current system	Recommendation according to international reference
<i>Existence of effective control and auditing systems</i>	<ul style="list-style-type: none"> - The CCR has strengthened external control of procurement based on the LACAP - The entities are making progress in the internal control area based on the COSO report 	<ul style="list-style-type: none"> - Continue processes to strengthen the CCR's control of procurement activities, stressing incorporation of the capacity to control based on digital information (invisible control)
<i>Existence of efficient mechanisms for appeals and resolution of disputes</i>	<ul style="list-style-type: none"> - The appeal mechanism is effective and efficient - Arbitrage and conciliation for the resolution of disputes have been generalized successfully 	
<i>Citizen oversight</i>	<ul style="list-style-type: none"> - Decision in favor of full transparency by means of COMPRASAL 	<ul style="list-style-type: none"> - Make known to the general public the COMPRASAL dissemination module's ability to exercise citizen oversight - Create capability to receive and process on-line complaints about contracting processes

<i>Degree of access to information</i>	<ul style="list-style-type: none"> - Until now scant information on procurement has been available. COMPRASAL is beginning to remedy this situation 	<ul style="list-style-type: none"> - Manage to get the institutions to place all of their procurement activities in the COMPRASAL dissemination module - Create the awareness that all citizens have the possibility of looking up information on procurement
<i>Existence of ethical and anti-corruption measures</i>	<ul style="list-style-type: none"> - The Government has defined a policy and a set of anti-corruption measures. - The perception of corruption in public contracting is proportionally low - COMPRASAL is in itself an anti-corruption subsystem and plans to carry out coordination with the other subsystems and organizations 	

26. *Control and auditing systems.* The LACAP provided the legal basis for the Court of Accounts to have a tool to improve control over procurement processes. A large number of Court of Accounts officials have been trained in the LACAP and the control procedures related to public procurement. During the past two years the Court of Accounts has strengthened control measures and has obtained recognition from the people and the entities under its control. It is recommended that the Court of Accounts set up an electronic system to control procurement based on the information in COMPRASAL and SAFI, using the procedure that has become known as “invisible control” because at any point one can call up and compare the information generated by transactions during all of the phases of the procurement process.

Over the past two years, the Court of Accounts has established technical norms and standards for the strengthening of internal control. Within this framework, each entity has its own internal control norms based on the COSO report. Nevertheless, the challenge of strengthening internal control is still in place, because it continues to be weak in several government agencies and in the majority of municipalities.

The Prosecutor General of the Republic represents the state in contracts for the procurement of real estate in general and movable property subject to a bidding process, which implies that the aforementioned official has to sign the contracts. The mission was able to confirm that in practice its passage through the Prosecutor General’s Office does not hinder the contracting process or increase the contracting timeframe.

27. *Mechanisms for appeals (petitions for review) and resolution of disputes.* Appeals having to do with selection and contracting processes are submitted to the responsible administrative authority and the authority has three working days to accept or reject it, and once accepted it is allowed 15 days to respond. If 15 days go by after the petition is accepted and the administration has not issued a resolution it will be understood that the

matter was resolved in a manner that is favorable to the complainant. After exhausting all administrative channels, the interested party has 60 days to resort to the Supreme Court of Justice, which issues a ruling. These procedures were considered satisfactory for DR-CAFTA. The mechanisms for conciliation and arbitration in cases of dispute have functioned satisfactorily. At present the UNAC is conducting a study aimed at making conciliation and arbitration mechanisms more rapid and efficient during the processes of preparation, selection, execution and guarantees related to public procurement.

28 *Citizen oversight.* Common citizens are familiar with and trust the LACAP. This trust is a vulnerable commodity that has to be preserved and strengthened with actions to enhance transparency since there is not a mass perception of corruption in procurement. The development of COMPRASAL, incorporating all of the UACIs and with full guarantees for transparency and facilities for citizen oversight, is decisive in order to increase the people's confidence. It is necessary for COMPRASAL to rapidly develop the capacity to receive complaints, to make arrangements with the pertinent authorities for quick and appropriate attention to these complaints, and to guarantee to the complainants and the community information on the status and resolution of any legal processes launched as a result of these complaints by the citizens.

29. *Access to information.* The Government considers that the most important measure to prevent and combat corruption in public procurement is by guaranteeing full access to information by means of the development of COMPRASAL. The mission recommends that in order to attain this goal, COMPRASAL should include the possibility that any person can run unrestricted searches within the procurement database and be able to make a cross-check of variables without any restriction whatsoever.

30. *Ethical and anti-corruption measures.* Recently, several strategies for the development of ethics and the prevention and control of corruption were placed into operation in El Salvador. Among them it is worthwhile to mention that codes of ethics were approved for the entire public sector. A Government Ethics Committee was formed with ranking members of the administration among its members. The Court of Accounts has started to issue reports with comments on public administration.

**APPENDIX A1
COMPARISON LIST BETWEEN LOCAL PROCEDURES FOR PUBLIC BID
AND THE POLICIES OF THE WORLD BANK**

	Yes	No	Bank Standards
1. Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?		X	Not allowed
2. Are there primary boycotts which are established by law?		X	Only primary boycotts are acceptable.
3. Are bidding opportunities advertised in the local press?	X		Required
4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small volume contracts)?		X	Required
5. Are contractors/suppliers pre-qualified for specialized/large volume contracts?		X	Required
6. Are experience, technical and financial minimum requirements (for pre- or post-qualification) explicitly stated in the documents?	X		Required
7. Is an invitation to pre-qualify advertised for each procurement involving large volume or complex potential contracts?	X		Required
8. To ensure eligibility, are foreign firms required to form a joint venture with local firms?		X	Not allowed
9. Are joint venture partners jointly and severally liable?	X		Required
10. Are there set limitations to the number of firms that can bid for a contract?		X	Not allowed
11. Are parastatal entities allowed to bid?			Acceptable only if the entity (i) is financially autonomous, (ii)

		X	operates under commercial law, and (iii) is independent from borrower and the contracting organization.
12. Are bidders required to register with a local or federal organization as a prior condition for bidding?		X	Any such practice should be discouraged. Acceptable only if registration process and criteria do not keep foreign firms that are efficient, well-qualified, and have reasonable costs from competing.
13. Are extensions to bid validity period allowed?	X		Acceptable only if justified by exceptional circumstances.
14. Are there restrictions on the means of delivery of bids?		X	Not allowed, except when bidders have to submit physical samples. In any such case bidders can be asked to deliver bids by mail, by courier, by hand, etc.
15. Is preference given to suppliers or contractors based on registration region or locality, the small size of their business, affiliation with ethnic groups, etc.?		X	Not allowed
16. Are there restrictions related to source of labor and material?		X	Not allowed, except for locally available unskilled labor
17. Is public bid opening required? Are the bids opened immediately or shortly after completion of the bid submission deadline?	X		Required
18. Is a "two envelope" bid opening procedure permitted for procurement of goods or contracting of works? ⁴	X		Not allowed
19. A new bid is automatically required when an insufficient number of offers is received?		X	Acceptable, provided all qualified bidders are allowed to bid, the process is efficient and no serious delays occur.

⁴ All the envelopes containing technical proposals are opened first and, after these have been examined, the envelopes with the financial proposals from all or only the qualified bids that meet the requested requirements are opened in a second round.

20. Are procedures to restrict the admissibility of bidders used during bid evaluations? ⁵		X	Not allowed
21. Is award made to the qualified bidder whose bid meets the requirements and has been evaluated as the cheapest?	X		Required
22. Are price negotiations conducted with "winning" bidders prior to signing of contract?		X	Not allowed, except when the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risks and responsibilities that can result in a reduction in Contract Price. (See paragraph 2.60 of the Regulations)
23. Are price adjustment provisions generally used?	X		Not required, but recommended for works contracts of one year or more in duration when the country has a high inflation rate.
24. Are the terms and conditions used for the procurement of goods and contracting of works generally suited to the size and nature of the projected contract?	X		Required (to be acceptable they should be balanced and should reasonably and clearly address the most important issues that might cause problems during execution, such as allocation of risk, payments, inspections, completion and acceptance of goods or works, insurance, guarantees, changes, contract remedies, force majeure, applicable laws, rescission of contract, etc.)
25. Are contract scope/conditions modified during execution?	X		Acceptable, but the Bank has to approve these changes in advance on the basis of a prior review if this is established in the Loan Agreement.

⁵ Rejection of bids outside a specific price range.

This annex was prepared on the basis of the practices of the Ministry of Public Works.

APPENDIX A2
COMPARISON OF IDB CONTRACTING POLICIES AND PROCEDURES AND
THE LAW ON PUBLIC ADMINISTRATION PROCUREMENT AND
CONTRACTING (LACAP) OF EL SALVADOR FOR THE PROCUREMENT OF
GOODS AND CONTRACTING OF WORKS

IDB	LACAP
Origin of goods Must originate in one of the Bank's eligible member countries.	Origin of goods Has no restriction
Eligibility If financed by the Bank, the bidder of goods or contractor of works must meet eligibility requirements.	Eligibility Has no restrictions for works contractors
Review of Documents The Bank allows the interested parties to examine the Bid Documents before buying them.	Review of Documents Provides an opportunity to examine the documents prior to purchase.
Alternative Tenders The Bank allows alternative tenders	Alternative Tenders The Law does not provide for alternative tenders even though it states that the bid specifications will define the method for submission of bids.
Addendas Can be issued prior to closing of presentation of tenders deadline. The executing parties are advised that, if necessary, they can and should extend the bid opening schedule in the event an addendum is issued.	Addendas Time is not defined, Art. 50
Clarification of Bidding Documents. The contracting agency can receive from Bidders requests for clarifications related to the Documents. Questions can be raised up to 21 days prior to closing of presentation of tenders, and the contracting party must provide a response prior to that date.	Clarification of Bidding Documents The Law does not provide for clarifications; it provides for consultations (Article 51). Inquiries in writing can be received before the closing date for delivery of tender and must be answered and communicated in writing to all interested parties who acquired the bidding documents.

<p>Extension of Bid Validity Period The Borrower will evaluate the tenders and award the contract within the period indicated under validity of the bid. If justified due to exceptional reasons, an extension of this period will be requested in writing to all bidders prior to expiration of the original period and the Bank will be notified.</p>	<p>Extension of Bid Validity Period Not specifically provided for in the Law.</p>
<p>Reparable Errors or Omissions The Bidding Documents should make a distinction between errors and omissions that are reparable and those that are not, in both the pre-qualification and presentation-of-bids phases.</p>	<p>Reparable Errors or Omissions The Law does not contemplate them directly, but requests that they be contemplated in the bid specifications (Article 44).</p>
<p>Formalities for opening of bids Bids received after the date established for their submission will be returned without being opened. Bids will not be rejected during the opening event, they will only be opened and any comment will be included in the minutes.</p>	<p>Public opening of bids Bids received outside the period and bids that do not guarantee maintenance of the offer shall be excluded as a matter of law, Article 53.</p>
<p>Purchasing documents and tendering a bid The Bank allows bids tendered to be eligible even when the bidding documents were not acquired from the executing agency.</p>	<p>Purchasing documents and tendering a bid In order to tender a bid the documents must be purchased from the Contracting Agency.</p>
<p>Advance payment The Bank allows advance payment under special circumstances.</p>	<p>Advance payment Up to 30% of the total value of the works, goods or services to be contracted. Art. 69</p>
<p>Protests Bidding documents must indicate an appropriate forum for resolution of protests or claims raised up until the signing of the contract with the contractor, as well as a timeframe to present them – generally not less than 10 calendar days from the date of the award.</p>	<p>Filing of petition The petition for review should be presented in writing to the official who ordered the action being protested within five working days beginning the day after notification. Article 77</p>
<p>Bid Offer Guarantee To indicate an amount and not a percentage in the document, even though in practice, and for calculation purposes, these guarantees can fluctuate between 1% and 3% of the estimated price of the works depending on the size of the</p>	<p>Bid Offer Guarantee The value of the guarantee will fluctuate between 2% and 5% of total budget value. Art. 33</p>

works; for small contracts, it might not be required.	
<p>Guarantee of execution or compliance with contract</p> <p>Within twenty (20) days following notification of the award and before signing of the contract, the awarded bidder must submit a guarantee of compliance with contract.</p>	<p>Guarantee of compliance with contract</p> <p>For works, the amount of the guarantee cannot be less than 10%, and for goods it can be up to 20%. Art. 35</p>
<p>Guarantee of good investment of advance payment</p> <p>Presentation of this guarantee will be a requirement for delivery of the advance payment. The amount of the guarantee will be 100% of the advance payment.</p>	<p>Guarantee of good investment of advance payment</p> <p>Presentation of this guarantee will be a requirement for delivery of the advance payment. The amount of the guarantee will be 100% of the advance payment. Art. 34</p>
<p>Guarantee of good-quality work</p> <p>Is granted to the contracting entity to ensure that the contractor will respond for any faults and defects he is found responsible for during the period indicated in the contract; the effective period of the guarantee will start when the work is definitively delivered. The percentage of the guarantee will be 10% of the final contract amount.</p>	<p>Guarantee of good-quality work</p> <p>Is granted to the contracting entity to ensure that the contractor will respond for any faults and defects he is found responsible for during the period indicated in the contract; the effective period of the guarantee will start when the work is definitively delivered. The percentage of the guarantee will be 10% of the final contract amount. Art. 37</p>
<p>Works supervision</p> <p>Is considered as consultancy service. It allows the entity that produced the design to supervise the works without any conflict of interest. The only guarantees acceptable are for advance payment and the withholding of 10%.</p>	<p>Ban on Supervision</p> <p>Contracts for supervision of public works cannot be entered with the same company in charge of execution, or with the company that produced the design; non-compliance can produce invalidity. Art. 106</p>
<p>Evaluation Committee</p> <p>Requires that an evaluation committee be appointed, but does not define the members of the committee.</p>	<p>Evaluation Committee</p> <p>The institution will appoint an evaluation committee made up of: 1) The Head of the UACI or the person he/she designates, 2) the requestor of the works, goods or service or his/her delegate, 3) a financial analyst, and 4) an expert on the item(s) being procured or contracted. Art. 20</p>
Notification of Results	Notification of Results

<p>In writing, to all bidders who took part in the process.</p>	<p>Public notification through newspapers in circulation. Art. 57</p>
<p>Fines Fines are not defined for all type of contracts, mainly for works contracts.</p>	<p>Fines Law stipulates fines for delay in complying with all contractual obligations. Art. 85</p>
<p style="text-align: center;">Direct Contracting</p> <p>No competitive procedure required, but justification must be provided and should be included in the loan document. The Representative is authorized to sign up to \$30,000; larger amounts must be consulted with the Procurement Committee and be technically or institutionally justified; time and cost are not considered.</p>	<p style="text-align: center;">Direct Contracting</p> <p>Stipulates that three (3) or more quotations are required in order to create competition.</p> <p>This procurement method can be used after a bid or tender has been declared deserted for the second time.</p>
<p style="text-align: center;">Contract Signature</p> <p>Signs contract in 28 days, sends to bidder for signature and return</p>	<p style="text-align: center;">Contract Signature</p> <p>In public bidding or invitation to tender, a contract is signed within 8 days. Art. 81</p> <p>In cases of open shopping, the issuance of a purchase order and invoice or equivalent document at the moment the goods are delivered or the service is provided will suffice. Art. 79</p>
<p>PRIVATE BIDDING (or Invitation to Tender)</p> <p>Even though no amounts are set, there are recommendations as to when this method should be used.</p> <p>It is not public</p> <p>Invitation is made in writing to a short list of participants.</p> <p>Invitation: By means of a letter sent by the contracting party to the previously-defined short list.</p> <p>No publicity is required.</p>	<p>PUBLIC BIDDING BY INVITATION (\$12,672.00 - \$100,584.00)</p> <p>Is public.</p> <p>A list of bidders is prepared with at least four corporations or individuals, national or international. Art.66.</p> <p>Invitation: in writing or by any other technological means that allows evidence of the invitation.</p> <p>The invitation and names of those invited should be published at least once in newspapers that are in circulation. Art. 67</p>
<p>NATIONAL PUBLIC BID (LPN)</p>	<p>PUBLIC BID (\$100,584.01)</p>

<p>For amounts lower than LPIs, for example: Goods \$250,000 Works \$1,500,000 or as indicated on the loan document.</p> <p>Is published in the national newspapers and participation of foreign bidders from eligible Bank member countries cannot be prohibited. Evaluation of bids will take place provided a minimum of two bids are submitted. When a single bid (sole offer) is submitted in a bidding process, the Contracting Agency cannot award the contract unless the Bank has no objection because the offer has reasonable cost and quality. LACAP procedures can be used for LPNs provided there is no conflict between its provisions and the Bank's policies and procedures.</p> <p>International Public Bid (LPI) Requires international and national publication whenever the amounts exceed the limits indicated above.</p>	<p>National or international.</p> <p>When only one offer is presented in a bidding process, this situation will be recorded in the corresponding minutes. This sole tender will be analyzed by the Bid Evaluation Committee to verify compliance with technical specifications and with the conditions called for in the bid or tender documents, whichever the case. If the results indicate that the bid offer complies with the established requirements and is consistent with market prices, the corresponding contract will be awarded to the bidder. Art.63.</p> <p>Allows interested parties to review the documents prior to purchase.</p> <p>Does not allow presentation of bids if the documents have not been obtained from the executing party.</p>
<p>Formalization of Commitment Awarding of bid formalizes commitment between the Contracting Party and the Contractor.</p>	<p>Formalization of Commitment Signing of contract formalizes commitment between the Contracting Party and the Contractor.</p>

APPENDIX B

LIST OF LAWS, REGULATIONS AND REFERENCES CONSULTED

Laws and Regulations

Political Constitution of the Republic of El Salvador. Decree No. 38, December 15, 1983.
Law of Mediation, Conciliation and Arbitration. Decree No. 914, July 23, 2002.
Law of the Court of Accounts of the Republic of El Salvador. Decree No. 438, August 31, 1995.
Law about Illicit Enrichment of Public Officials and Employees. Decree No. 2833, April 24, 1959.
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Organic Law of Public Prosecutor's Office. Decree No. 603, March 4, 1952.
Law on the Creation of a Fund for the Economic and Social Development of the Municipalities. Decree No. 74, September 8, 1988.
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**APPENDIX C
LIST OF PEOPLE INTERVIEWED**

TECHNICAL SECRETARIAT OF THE PRESIDENCY OF THE REPUBLIC

Lic. Carmen Regina Arévalo, Director

Lic. Victoria Eugenia Mirón, National Project Coordinator, Procurement and Contracting.

Lic. Esmeralda Torres de Posada, Procurement and Contracting Project.

Lic. Martha Águila, Procurement Unit

Lic. Izela Martínez, Procurement Unit

Dr. Silvana Rubino-Hollman, Consultant

COURT OF ACCOUNTS

Dr. R. Hernán Contreras R., President

Lic. Benigno Vásquez Figueroa, Audits Director, Municipal Sector.

Lic. Alfonso Bonilla Hernández

Lic. Walter Alarcón

Lic. Luis Amilcar Varela U

Lic. Martha Dinoro de Palomo, Legal Affairs Director

OFFICE OF THE PROSECUTOR GENERAL OF THE REPUBLIC

Lic. Víctor Ernesto Rodríguez Díaz, UACI Chief

MINISTRY OF GOVERNMENT

Lic. Haydee Calvo Escobar.

GOVERNMENT CENTER

Engr. José Oscar Medina, Executive Director

Engr. Carlos Armando Rivera, Procurement Unit

MINISTRY OF FINANCE

Dr. Juan José Daboub, Minister

Lic. Guillermo Hernández Coto

Lic. Elsa Gallado.

Lic. Mauricio Sosa de la Cruz

U N A C (Regulatory Unit of Procurement and Contracting)

Lic. Salvador Portillo, Director

Lic. Antonia Maria González de Hernández, Training and Technical Coordinator

Mrs. Sujin López de Jaimes

Engr. José Enrique López Perla

MINISTRY OF EDUCATION

Dr. Saúl Aguirre, UACI Chief

Engr. Marilyn de Jovel

MINISTRY OF PUBLIC WORKS

Lic. José A. Quirós, Minister of Transportation, Housing and Urban Development
Engr. Carlos M. Duque González, Vice Minister of Public Works
Engr. José Jacinto Reyes, UACI Director
Engr. Rene Mauricio Rodríguez, Works Manager
Engr. Oscar Alfredo Díaz, Director of Road Planning Unit
Lic. Oscar Lara, Auditor
Engr. Rene Gómez, Work Supervision Director

MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES

Mrs. Mabel de Molina, UACI Chief
Mr. Luis Armando Trejo, Administrative Area

NATIONAL ADMINISTRATION OF AQUEDUCTS AND SEWAGE (ANDA)

Lic. Víctor Manuel Domínguez, UACI Director

MUNICIPAL MAYORALTY OF SAN SALVADOR

Lic. Carlos Alberto Rivas Zamora, Municipal Mayor
Mr. Hugo Armando Arévalo, UACI Director
Mr. Luis E. Rosales
Mrs. Magda Baltodano, Chief of Public Relations

NATIONAL POPULAR HOUSING FUND (FONAVIPO)

Lic. Ana Margarita Salinas, UACI Director
Lic. Marcos Iglesias, Auditing and Supervision

SOCIAL INVESTMENT FUND FOR LOCAL DEVELOPMENT OF SALVADOR

Lic. Patricia Forten, General Manager
Mr. Moisés Miguel Sánchez, Management Deputy Director

PROGRAM TO SUPPORT REFORM OF THE JUSTICE SECTOR

Mr. Juan José Castillo, General Coordinator
Miss Silvia Bazan, Project Logistics
Mrs. Morena Pérez, Procurement Area

SALVADORIAN SOCIAL SECURITY INSTITUTE

Lic. Ivania Maribel Álvarez de Nieves, UACI Chief

SALVADORIAN MUNICIPAL DEVELOPMENT INSTITUTE

Lic. José Leonidas Rivera Chevez, Executive Director

CHAMBER OF COMMERCE AND INDUSTRY OF EL SALVADOR

Lic. Jorge José Daboud, Vice President
Lic. Rosario de Barriere, Technician in Economic and Trade Affairs
Mr. Mauricio Mendoza

Lic. Jaime Antonio Baires, Technical Assistant of Technical Studies

SALVADORIAN CHAMBER OF THE CONSTRUCTION INDUSTRY (CASALCO)

Engr. Guillermo A. Ruiz Maida, President

Mr. Orlando Altamirano, General Manager

Engr. Leopoldo A. Ventura Urrutia, Executive Director

Mr. Miguel Ángel Arévalo Ortuño, Technical Manager

NATIONAL ASSOCIATION OF PRIVATE ENTERPRISES

Mr. Waldo Jiménez, Technical Manager

SALVADORIAN ASSOCIATION OF ENGINEERS AND ARCHITECTS (ASIA)

Engr. Ricardo Lagos Moncada, Vice President

Mr. José Arriaza, Executive Director

Lic. José L. Pérez Sánchez, General Manager

CONSULTANTS ASSOCIATION (ACODES)

Engr. Melecio Rivera

ARCHITECTS ASSOCIATION (CADES)

Arch. Hugo Barrientos

LA CENTRO AMERICANA, S.A. (MAPFRE System)

Sr. José Antonio Arias Bermúdez, Finance and Administration Manager

CENTRAL DE SEGUROS Y FIANZAS

Eng. Eduardo Enrique Chacón Borja, President

Mrs. Ana Irradia de Iraheta, Finance Manager

INTERAMERICAN DEVELOPMENT BANK

Mr. Ricardo J. Rovira, Procurement and Sectors Specialist

Mr. Phillipe Dewez, Representative in El Salvador

US AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. Todd M. Sorenson, Democracy Office

Engr. Mauricio Herrera C., Project Manager

Mr. Parviz Shahidinejad, Financial Administration Specialist

PROBITY

Mr. Jaime López, Executive Director

Mr. José Manuel Castillo, Coordinator

CONSULTA S.A. (Engineering and Architecture Consultancy)

Mr. Víctor A. Figueroa, Civil Engineer

CONSTRUCTORA SIMAN

Engr. Rafael Siman, Executive Director

CASTANEDA INGENIEROS, S.A. DE C.V.
Eng. José Raúl Castañeda Villacorta, President

R. Z. ASOCIADOS
Lic. José Luis Rodríguez

COSTRUCTORA BETON
Mr. Edmundo Roeder
Mr. Hanss Roeder

CORPORACIÓN M & S
Engr. Juan José López M., General Manager

ARCO INGENIEROS S.A.
Engr. Gustavo Cartagena, General Manager

UNIVERSIDAD CATOLICA DE OCCIDENTE
Mr. Moisés Antonio Martínez, Vice Chancellor



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