



**CENTRO DE INTEGRIDADE PÚBLICA**  
**Boa Governação-Transparência-Integridade**  
**Good Governance-Transparency-Integrity**

**Public Procurement and Transparency in Mozambique**

*The case of Scanners for Non Intrusive Inspection*

Marcelo Mosse and José Munguambe

**July 2007**

Authors: Marcelo Mosse and José Munguambe  
Edition: Centre for Public Integrity  
Maputo, July 2007

CENTRO DE INTEGRIDADE PÚBLICA  
*CENTER FOR PUBLIC INTEGRITY*  
Boa Governação-Transparência-Integridade  
*Good Governance-Transparency-Integrity*  
Av.Amilcar Cabral, 903. 2º Esquerdo  
Tel.: (+258) 21 32 76 61 - Fax: (+258) 21 32 76 61  
Caixa Postal: 3622 - Maputo-Moçambique  
Email: cipmoz@tvcabo.co.mz  
Website: www.cip.org.mz

## **LIST OF ABBREVIATIONS**

WB: World Bank

BOT: Built, Operate and Transfere

CIP: Centre for Public Integrity

DFID: Department for International Development

DNA: General Customs Directorate (DGA)

IMF: International Monetary Fund

MPF: Ministry of Planning and Finance

WCO: World Customs Organization

SADC: Southern African Development Community

TOR: Terms of Reference

UTRE: Customs Technical Restructuring Unit

Contents

Summary

## PART I

*Contextualization, Framework Data and Methodology*

1-Background

2-Relevance of transparency in public procurement

3-Objectives of the study, methodology, applicable legislation

3.1 Forms of manifestation of corruption in procurement processes: *a matrix of analysis*

4-The tender for the introduction of non intrusive inspection

4.1 Summary of the Terms of Reference

4.2 The Evaluation Criteria

4.3 Polemic and Complaints/Kudumba versus Smiths

4.3.1 Kudumba Investments Lda proposals

4.3.2 Smiths Detection proposals

## PART II

*Discussion and Analysis*

5- Technical Evaluation

6-Conflict of interests and political financing

7- Final Evaluation

8-The BOT option and its economic impact

9-Conclusions

**Summary**

As a direct consequence of the 11 of September 2001 terrorist attacks, the World Customs Organization (WCO), to which Mozambique is a member, established the commitment to improve security and facilitation of trade exchanges through the introduction of new risk analysis methodologies e use of technical equipments, such as the scanners for non intrusive inspection of containerized cargo.

In 2005, the Mozambican Government concessioned, via a public international tender, the intrusive inspection services to a private firm, Kudumba Investimentos Lda. The first scanner was installed at Maputo port end of 2006, but a few weeks later the port operators began complaining of its economic impact.

This article aims primarily to analyse the procurement process which determined the allocation of the business to Kudumba. This company, which is owed by the ruling Frelimo party holding, SPI, also has direct interest in the importation of goods through Home Centre; one of the largest furniture shops operating in Mozambique, which Frelimo also has an interest.

In a context where there are allegations that the procurement processes are still object of manipulation from the part of national and foreign investors and from the political class, this article analyses whether the procurement process which led to the hiring of the concessionaire was compatible with the elementary norms and standards internationally acceptable (note that the new Mozambican legislation on procurement – Law 54/2005, was not in force by the tender period).

In conclusion, the reports shows that the attribution of the business to Kudumba was forced and influenced by business interests linked to the political elite: Kudumba would not have been eligible due to the fact that it is also an importer; Kudumba did not present a more competitive financial proposal; Kudumba sold the cat for hare when it proposed equipment different from what it actually installed after winning the tender. The fact SPI being one of Kudumba shareholders of reference weighed much on the final outcome.

Key words: *Procurement, intrusive inspection, conflict of interests, international trade, transparency*

## **PART I**

### **1- Background**

The cooperation council of the World Customs Organization, meeting in Brussels in June 2002, decided to adopt a Resolution regarding Security and facilitation of the International Trade Chain. Given the complexity of the issue and the nature of equipments, the WCO issued in October 2003 a document called “Guidelines for Members on Administrative Acquisitions and Operations of Scanners”<sup>1</sup>. The guidelines provide a detailed explanation on the various types of equipments available on the market, the advantages of their use and the basic facts determinants in the formation of costs associated with the acquisition, operation and maintenance of the same.

The rationale of the introduction of scanners on international trade, apart from those considered on the control of terrorism, was based on the idea that they allow greater security along the international trade exchange chain, giving credibility to Mozambican cargos and ports, ensuring greater control of imports, exports and transit of goods. In addition, the utilization of scanners allows, in theory, the increase of revenue levels thanks to rigorous verifications on the declarations presented by external trade operators, but also control on the trafficking of drugs, arms and materials used for the manufacturing of weapons of massive destruction.

Following the WCO guidelines, the Council of Ministers of the Republic of Mozambique, through Decree 10/2006, of 5 of April, approved the adoption of the Non Intrusive Inspection System of Goods, Transport Means, Luggage and People. According to instructions from the Minister of Finance, a memorandum was prepared and sent to the Economic Council which in addition to summarizing the nature and type of equipment explains the three scenarios for investment:

- The effective purchase of scanners;
- The acquisition under a leasing regime;
- The contract of the type BOT-Built, Operate and Transfer.

The Economic Council opted for the BOT model. This option implied hiring a private firm, through an international tender, with the know-how about how to operate a business of that nature. The former General Directorate of Customs (DGA) had proposed, and the Government agreed, not for the purchase of equipment, but for the hiring of services, allegedly to “avoid the problem of high costs that the acquisition of those equipments incurs”. Under the auspices of the Finance Ministry and the former DGA, the Government launched a Public International Tender for the hiring of a company to carry out the electronic visualization operations of containers using Scanners.

It was never clear why the Government, instead of investing directly in an aspect linked to public security, preferred to allocate the business to a private company. What is of public

---

<sup>1</sup> Doc. N° TF0022E1.

knowledge is that it is written in one of the Government memorandums that the State “was not in condition to acquire the equipment” and that “it was an equipment of high technology about which the country still did not have the conditions necessary for its management and maintenance”

It is on this tender that this article focuses its attention. Were the standards recommended in a procurement process followed? After many years of public sector reforms and, specifically, of the Customs reforms, was this business made for public interest, namely the interest of a transparent and competitive international trade?

## **2- Relevance of transparency in public procurement**

In a democracy still under construction, one of the key indicators for the evaluation of governance is transparency at all levels. One of the areas where transparency is a golden rule is public procurement, which has to do with the purchase of goods and services by the State. A procurement process involves arrangements that regulate the purchase of goods and services and the concessions that the State makes. Clear transparency rules impose public tenders and prevent favouritism from decision makers, the trafficking of influences and cheating.

In Mozambique, the media has denounced cases of non transparent management in public procurement. These denunciations include cases of procurement of goods and services by governments without the observation of transparency rules; believing on the reports, the public tenders continue to be vulnerable to corruption and are potential sources of abuse of public funds.

Mozambique has a new procurement law (Decree 54/2005), approved in December 2005<sup>2</sup>. But a modern law, which responds to the requisites from various international institutions, does that mean that malpractices will be over. According to this Law, the procurement processes must be widely publicized and the final decisions written and signed – and adequately justified – by the competent entities.

The situation prior to the approval of the new law was dramatic. Some studies indicated diverse fragilities and a limited transparency, leading to an inefficient use of public resources and to a high vulnerability of the system to corruption. A report prepared by KPMG Mozambique for the Ministry of Planning and Finance<sup>3</sup> showed that in the public finance administration system there was no procurement plan, namely a plan which should contain information regarding the types of goods and services that needed to be hired/purchased, a codification of tenders and a timeframe of tender execution, etc. In addition, according to the same report, the members of the evaluation committees did not sign statements of impartiality, etc.

---

<sup>2</sup> Decree 54/2005 designated “Regulation for Public Works Contracts, Supply of Goods and Delivery of Services to the State”.

<sup>3</sup> KPMG Mozambique (2004): Public Financial Administration Procurement Review for the year ended 31 December, Maputo.

The synthesis document of the Joint Review of 2004, the Aide Memoire, pointed out that in Mozambique, various businessmen reported that public tenders were not clear and spoke of State preferences in particular companies, which were not based on criteria of impartiality, quality and price, but on the payments that evaluation committee members received in the form of bribes.

A SIDA (Swedish International Development Agency) audit to the Ministry of Education, carried out by Ernst & Young, revealed that existing procurement rules were not followed. “Invoices and receipts representing about half all payments made were reportedly missing; the reconciliation accounts were dubious, over half the payments were not adequately treated, the rules were misrepresented and expenditures not related to the purposes of the financing were made” (*Ernst & Young, Report on Additional Procedures for Mined, 16 June 2004*).

A study by Scanteam<sup>4</sup> said the audits of the general inspectorate of Finance pointed to the same problem of lack of compliance with the rules. “It is very difficult for a public official to have access to the book of procurement rules e there has not been any training on this matter”. The report added that “it is very clear that individuals well positioned at decision level have taken advantage of oversight fragilities and of their control position, to enrich themselves, through public procurement, including international cooperation funds”. Os main cooperation partners are of the opinion, however, that there has been progress in the reform of procurement in Mozambique (*Aide Memorier, 2004*).

### **3-Study objectives, applicable legislation and methodology**

O central objective of this article is to assess to which extent public procurement processes in Mozambique are based on transparency and impartiality that international rules recommend. As object of this study a procurement process for the installation of the non intrusive inspection system in Mozambique was chosen.

The reasons which dictated the choice of this object were the following:

- There were allegations published by the media according to which the process was “manipulated” in favour of political interests;
- The procurement process took place in an institution (Mozambican Customs) which went through a profound institutional reform, including a strong anti-corruption component;
- The winner of the tender was a company with strong links with members of the Government;
- The introduction of non intrusive inspection brought about an economic impact allegedly negative to operators of the sector; etc

The central question that was worth analysing was not necessarily the economic impact that the introduction of the scanners brought into the international trade in Mozambique; the

---

<sup>4</sup> Scanteam, Analysts and Advisers (2004): Public Management Assessment, Mozambique, Final Report Oslo.

question which interested us was to know if the option for the (BOT) concession and the concession process are today moulding such economic impact. Were the standards recommended in a procurement process followed? After many years of public sector reforms and, specifically, of Customs reforms, was this business done for public interest, namely in the interest of a competitive international trade? If there was no transparency, at which instance one can say the process was “manipulated”?

This report bases its analysis on formal and informal interviews with relevant actors and documental research. Reference documents were obtained from the ex-DGA, including a consultation to the entire process linked to the public tender in question. A seminar was held in October 2007, and preliminary results were shared and analysed with some interested actors.

Regarding the relevant legal framework, we must clarify that, at the time of the tender, the same was precarious. The procurement norms in Mozambique were governed by Decree 42/98 of 28 of December, whose content was not in line with acceptable international practices. The regulation currently in force, the decree 54/2005 of 13 of December, was approved in the date after the announcement of the tender. Therefore, we do not base the analysis on the new legislation. As alternative, we base ourselves in the principles contained in the guidelines of the World Bank and its agencies. Being the World Bank one of the sources of finance for Customs reforms, it seemed reasonable to us to use the norms established by this international institution. We must also clarify that, despite our request, we did not have access to the set of specific rules that guide the members in this process.

### **3.1 Forms in which corruption manifests in procurement processes: a matrix for analysis**

Procurement is central in the area of public expenditure. Even in contexts like ours in which the information regarding the procurement market size is limited, procurement is fundamental to a better management of public expenditure. Corruption in public procurement affects government revenues and forces, in some cases, the government to make expenditure in projects prone to corruption and in which the quality of services and products is very far from acceptable levels. Corruption and lack of transparency in public procurement are serious impediments to economic growth investment and trade.

Below we show the matrix for analysis of procurement processes, developed by the renowned website of anti-corruption resources, U4, accessible on [www.u4.no](http://www.u4.no). The matrix shows the moments in which corruption practices in procurement processes can occur. It allows one to analyze a process and identify at which moment manipulation took place. It also allows one, in a preventive approach, to analyze the risks of corruption in procurement processes.

**Table 1: Decision Status of a Contracting Process and Key Risks**



Description	Key Risks
The Government decides to acquire goods and services, or allocate to private entities the management of a particular service	The decision does not follow the principles of rationality or is not in accordance with the existing needs, but is taken in order to satisfy individual or collective interests

### Identification/Definition of the Contract Characteristics

Description	Key Risks
<ul style="list-style-type: none"> <li>The Government determines what needs to be acquired or privatized (technical conditions and specific characteristics) and the way for implementation (method of hiring, responsible agency etc).</li> </ul>	<ul style="list-style-type: none"> <li>(Technical or not technical) characteristics are made to favour a specific supplier and not to suit the identified needs.</li> <li>The participation of relevant actors is limited, which hinders access to the needs and to the relevance of the characteristics defined.</li> <li>The evaluation criteria are not made public from the beginning or are not objective, which paves the ground for abuses.</li> </ul>

### The Hiring Process

Description	Key Risks
<ul style="list-style-type: none"> <li>Open Hiring process</li> </ul>	<ul style="list-style-type: none"> <li>Tender notice is not publicized and this restricts the number of bidders.</li> <li>The bidders pay bribes to be short listed</li> <li>Abuse of confidentiality or lack of publicity creates the ground for inequalities among the bidders.</li> <li>Bidders conspire to influence the prices, or to divide the market</li> </ul>

Decision on the Winner Description	Key Risks
<ul style="list-style-type: none"> <li>The hiring process terminates and the decision on the winner is taken</li> </ul>	<ul style="list-style-type: none"> <li>The evaluation criteria are not clearly established in the tender documents, leaving no space for the justification of the decision.</li> <li>The evaluation of the proposals is subjective, leaving space for manipulation and influence of evaluation exercise.</li> <li>The decision on the contract winner</li> </ul>

	is not announced.
--	-------------------

### Contract Implementation and Supervision

Description	Key Risks
<ul style="list-style-type: none"> <li>The contract is signed with the selected company</li> </ul>	<ul style="list-style-type: none"> <li>Alterations of the contract and re-negotiation after the announcement of the winner, which alter the substance of the contract.</li> <li>The supervision organs are unduly influenced to alter the content of their reports.</li> <li>The subcontracted and partners are chosen in a non transparent manner, and there is accountability and bribe channels are used.</li> </ul>

Source: [www.u4.no](http://www.u4.no)

On the basis of this matrix of analysis, we can identify at which moments a certain procurement process was permissible to manipulation or lack of transparency.

#### 4-Public Tender for the Introduction of non intrusive inspection

A public international tender, aimed at hiring a scanner service, was launched through fixing of a notice at the ex-DGA and its publication in the daily newspaper Noticias. The first public announcements were launched on the 29 and 30 June 2005 and 1 of July of the same year<sup>5</sup>. The tender had as objective the selection and hiring of a company, which, under the supervision of the Government of Mozambique, and with recourse to equipment commonly known as scanners, would carry out electronic visualization operations of containers at main ports, borders and customs terminals of Mozambique. The same company would be in charge of the management of the same under a BOT contract regime.

According to the memorandum sent by the ex-DGA to the External Economic Relations Commission - CREE<sup>6</sup>, 18 companies expressed interest to bid, but only the following presented technical and financial proposals:

- Intertek International, Lda
- Smiths & Smiths, which constituted the company Smiths Detection Moçambique
- Kudumba Investments
- COTECNA
- SGS, Lda

<sup>5</sup> Because the first announcement did not present the bank account number to which the amounts related to the purchase of tender documents were to be deposited, the same were republished on 1, 2 and 3 of July 2005.

<sup>6</sup> With date of October 2005

To evaluate the proposals, the ex-DGA constituted a jury made up of three senior Customs officials, a Finance Ministry official, an environmental specialist, an information technology specialist and a specialist in radioactivity.

#### **4.1 Summary of the Terms of Reference**

According to the terms of reference (TOR), the tender was aimed at selecting and hiring of a company to, under supervision of the Government of Republic of Mozambique, and with recourse to equipment commonly known as scanners, carry out electronic visualisation operations of containers at Mozambique's main border posts and customs terminals and be in charge of their respective management under a BOT (*Build, Operate and Transfer*) contract regime.

The terms of reference also envisaged the need for transfer of know-how, training and development of customs officials regarding the interpretation of the images visualized in the scanning process, in the operation, conservation and maintenance of the equipment according to the TOR, the winner of the tender would responsible for the costs of acquisition, installation, operation and maintenance of the scanners. It was made clear that the Government of Mozambique would not have any investment cost under the project.

The TOR made it clear that the honoraries charged by the concessionaire should not constitute an administrative barrier to international trade, and should be in line with the international practice, especially regional, in view to making Mozambican ports competitive.

The TOR present as conditions to pre-qualification the following proofs: proof that the company has its headquarters, delegation or representation in Mozambique; an irrevocable guarantee in the amount of 2,500,000.00MT (Two and half million Meticais), which should be put in favour of the Customs e valid for 120 days counting from the date of proposal submission; a declaration indicating the existence or non existence of pending judicial and/or administrative processes against the bidder; proof that the company is incorporated as a Limited Company of Anonymous Company; in formations on joint ventures, a technology transfer plan to a company with capitals mostly held by Mozambican entities; documental proof regarding the capacities of the company supplying the equipment to deliver the services and international certification; a plan on issues related to environmental security, essentially with regard to the aspects of radioactivity; a social support plan; a declaration in which the company commits itself to comply with the tender conditions.

The TOR also present the proposal evaluation criteria, namely experience and general competence of the company; dimension and expansion of the company; evidences of the capacity demonstrated by the company to increase and maintain the growth of the revenue from import duties; work plan; programme management methods; proof of capacity to deliver quality services, training and transfer of technology to the Customs; reporting proposals; secure computer systems; performance guarantees and, specially, guarantee of quality; honoraries that the company proposes to charge.

According to the TOR, to the technical proposal a weight of 75 points is assigned and to the financial proposal a weight of 25 points. The TOR also presented the following technical specifications: detection capacity, penetration capacity, radiation standards and performance. The minimum requisites of penetration in containers fully loaded defined under the terms of reference were the following:

Configuration	Minimum penetration capacity	Average of the Energy Level
Fixed	300mm	6 Mev
Relocatable/Re-installable	250mm	4 MeV
Mobile	180mm	2.5 MeV

## 4.2 The evaluation criteria

According to the Final Evaluation Report (produced by the ex-DGA), the proposals were opened in public session on 1 of September 2005, in an even witnessed by representatives of all the bidders, who had attained the minimum established in the Terms of Reference. Each member of the jury made an individual evaluation of the technical and financial proposals, giving scores to the bidders. On the basis of the score of each member, a consolidated map showing the results of each evaluation was prepared. Below is the map, as referred in the tender's final report:

### Presentation of the Final Evaluation

Jury	ITS		Smiths		Kudumba		SGS		COTECNA	
	Techn	Fin	Técn	Fin	Techn	Fin	Techn	Fin	Techn	Fin
A	73,5	30	67,75	74	84	84	68,5	10	52,75	20
B	78,75	46	57,5	52	91	84	71,75	0	66,5	34
C	81,5	44	57,5	56,5	90	82	73,5	0	64,5	40

D	72	25	43	13	97	92	62	0	63,5	11
E	70	35	60	90	88	85	63	35	51	30
F	87	0	98	89	99	93	86	0	79	0
G	72	40	92	88	66	63	85	20	80	20
Average	76,39	31,42	67,96	66,07	87,85	83,28	72,82	9,28	65,32	22,14
<b>Final</b>	<b>65,14</b>		<b>67,48</b>		<b>86,7</b>		<b>56,93</b>		<b>54,52</b>	

Source: DGA

On the basis of this map the averages of the technical and financial proposals were calculated for each bidder and, to obtain the final score, a mathematical formula was established, namely the sum of evaluations from all members of the jury of the technical proposals, multiplied by 0, 75 (Technical Evaluation weight), added to the sum of evaluations of the financial proposals; multiplied by 0, 25 (financial evaluation weight); divided by 7, which is the number of the members of the jury.

Schematically-speaking, the formula used was the following:

$$FF = \frac{\sum_{i=1}^7 (A_i) * 0,75 + \sum_{i=1}^7 (B_i) * 0,25}{7}$$

Where:

i – No of evaluators of the technical/financial proposal

A – Technical evaluation score (attributed by each evaluator)

B – Financial evaluation score (attributed by each evaluator)

0, 75 – Technical evaluation weight

0, 25 – Financial evaluation weight

On the basis of this formula, the final classification of the tender was the following:

1° Kudumba Investments - 86, 7 points

2° Smiths Detection Moçambique – 67, 48 points

3° Intertek International, Lda – 65, 14 points

4° SGS, Lda – 56, 93 points

5° COTECNA – 54, 52 points

### 4.3 Polemic and Complaints/Kudumba versus Smiths

After the announcement of the tender winner, in this case Kudumba, press reports alleged that there had some manipulation and irregularities, namely lack of transparency. One of the companies which felt harmed was Smiths Detection. Alleging manipulation and interferences, Smiths Detection wrote a letter to the Evaluation Commission expressing concern by the way how the tender had been conducted, asking the DGA to divulge the

criteria that had been used in the evaluation of proposals. The defunct newspaper Embondeiro reproduced at the time statements from a jurist who stated that that tender had not been passed through a mere “exercise of an adjudicatory cosmetic”. The polemic was now a fact and precipitated Kudumba and Smiths into a quite confrontation. Kudumba won the tender with about 20 points ahead of Smiths. But how did that happen? What was the difference between the two first classifications? What did Kudumba propose that is different from Smiths? And what did Smiths propose? What made the members of the jury choose Kudumba in detriment of any other company? Were there really objective criteria for the attribution of points?

### 4.3.1 Kudumba Investments Lda’s Technical Proposal

Kudumba’s proposal was presented in partnership with the company Rapiscan Systems Ltd, an internationally renowned manufacturer of goods screening equipment. As a matter of fact, to deal with the lack of knowledge in the area, Kudumba decided to form a joint venture with Rapiscan Systems Ltd<sup>7</sup>, a subsidiary of Rapiscan Systems Inc., owned by **OSI Systems Inc.**, entity listed (OSIS) in NASDAQ in New York.

Kudumba propose, therefore, to install equipment of the Rapiscan make. For the company, that option would be more competitive since it provided a broader spectrum of radiographic systems, from systems with base Rays Gamma to 1.3 MEV, passing through X Rays of high fidelity, etc, apart from other technical specifications.

### Financial Proposal

Kudumba’s financial proposal envisaged an investment in the amount of USD 42. 869 488 for a period of 10 years, in the following manner:

- Equipments; Phases I and II .....USD 15. 429 810,00
- Insurance.....6. 090 000, 00
- Installations.....2. 093 555, 00
- Operational Costs.....4. 582 577, 00
- Financial Costs.....2. 463 433, 00

#### *Subcontratation Costs*

- With personnel.....8. 865 373, 00
- Other Costs .....3. 353 569, 00
- **Total .....USD 42. 869 488, 00**

*Source: DGA (Tender Documents)*

To recover this investment in 10 years, Kudumba presented a table of charges to be applied to operators, comprising the following amounts (as for Maputo Port):

	Exports	Imports	Other
20 feet containers	100 USD	70 USD	
40 feet containers	100 USD	70 USD	

<sup>7</sup> Regarding Rapsican, consult the [www.rapiscansystems.com](http://www.rapiscansystems.com)

Trucks with over 2 axle	100 USD	70 USD	
Empty containers	30 USD	20 USD	
Containers in transit			60 USD
Light vehicles	30 USD	30 USD	
Passengers- domestic flights			5 USD
Passengers- international flights			10 USD
Private light vehicles*			0

*Source: ex-DGA (Tender documents)*

### 4.3.2 Smiths Detection proposals

#### Technical proposal

Smiths Detection<sup>8</sup>, on its turn, presented itself as “world leader technology dedicated to security and customs applications for over 50 years”, having developed and adapted “scanners that combine efficiency, performance and cost effectiveness”. This multinational, justifying to have understood “the particular needs and constraints of developing countries”, said it had designed programmes which allow those countries easier access to modern technology as well as “an adequate and sustainable organization for guaranteeing a country’s autonomy regarding operation and maintenance.”

Smiths propose to use different types of scanners, namely:

- Mobile scanners HCV-Mobile Hi-Pack
- Relocatable Scanners HCV-MGR Hi-Pack
- Train Scanners HCV-Train Hi-Pack

#### Description of scanners by Smiths

Types	X Rays energy beam	Penetration in steel	Guaranteed productivity 40”containers/hour
HCV-Mobile Hi-Pack	4 MeV	240 mm	» 15
HCV-MGR Hi-Pack	4 MeV	270 mm	» 10
HCV-Train Hi-Pack	4 MeV	210 mm	

*Source: DGA (Tender documents)*

<sup>8</sup>Regarding Smiths Detection, consult the website [www.smithsdetection.com](http://www.smithsdetection.com)

### Financial Proposal

Smiths Detection proposed to invest USD 150 000, 00 per year to finance “Capacity Building Fund”, which will put at the disposal of the ex-DGA to finance programmes of its own choice. According to the technical proposal, the revenues from the fees charged would cover the costs incurred. From Smiths’ financial proposal to which we had access the following usage fees were found:

Exports			Imports			In Transit		
40”	20”	Empty	40”	20”	Empty	40”	20”	Empty
US\$ 18	US\$ 12	US\$ 8	US\$ 92	US\$ 67	US\$ 8	US\$ 92	US\$ 67	US\$ 8

Source: ex-DGA (Tender documents)

## PART II

### Discussion and Analysis

#### 5- From technical evaluation

One of the aspects that prompted the polemic around the tender is related to the evaluation criteria. The Terms of Reference established, among others, that companies should meet the following requisites:

- Proven experience;
- Proof of capacity to deliver quality services, training and transfer of technology to Customs.

Kudumba, the winner of the tender, is a society by quotas constituted in October 2004. According to its commercial registration, its social object is to exercise the logistical activity, commercialization, import, export, wholesale and retail trade of all types of goods, development of tourist and eco-tourist activities, including the exploitation and management of hotels, restaurants, and any other related activities, provision of industrial or agro industrial consultancy services. The company has a share capital of 1 million MTs.

The first problem that Kudumba had is that it did not have the experience necessary to qualify for this tender. With effect, up to the date of the tender was launched (in June 2005), Kudumba had not yet completed one year of existence, which meant that it could not have sufficient know-how to operate in the area of non intrusive inspection.



But, in order to address its lack of experience, Kudumba established a consortium with experience in the area, the American firm Rapiscan<sup>9</sup>, a member of the OSI SYSTEMS group, which annexed a copy of its certificate as limited company of operational character and a financial agreement with BMI (Banco Mercantil e de Investimentos)<sup>10</sup>. This joint venture was a way out to turn Kudumba eligible to the tender: with Rapiscan's know-how, Kudumba met the pre-qualification requisites, namely the documental proof, including recommendation letters on its capacities to deliver the services of the nature of the tender object and evidence that the equipment supplying company holds International Quality Certification relative to the equipment to be supplied under the project.

Thanks to this consortium, it was possible for Kudumba to fill some of the items of the Evaluation Criteria referred in point 14 of the Terms of Reference, namely the company experience and proof of capacity to deliver quality services, training and transfer of technologies to Customs. But, even so, the partnership between Kudumba and Rapiscan did not look to be a firm partnership because, on 12 of September 2005, days before the conclusion of the tender evaluation, **OSI SYSTEMS**, Rapiscan holder, admitted in quarterly financial report that it had suffered big losses due to the “weakness of its line of cargo inspection products<sup>11</sup>”.

Kudumba then became debilitated following this information. After having addressed the eligibility barriers proposing the Rapiscan technology, Kudumba had to resolve the problem denounced by Rapiscan itself relative to technology. Therefore, after winning the tender, the Mozambican firm presented different equipment from what it had initially proposed. The option was equipment produced by the Chinese firm **NUCTECH COMPANY LIMITED**<sup>12</sup>. The equipment reference was the following: 4 Mev. Mobile x-ray System.

But this alteration was a flagrant breach of the rules governing public tenders. With effect, one of the principles of procurement norms establish that the bidder cannot, after winning a tender, supply a product different of that it proposed in the tender. World Bank guidelines (2004)<sup>13</sup> establish that, after the opening of proposals, bidders are not allowed to alter the substance or price of the proposals. This is not what happened. Procurement rules admit the possibility of certain contracts to be renegotiated after the evaluation process, but the central nuclear of the contract should never be touched such as the technical proposal.

---

<sup>9</sup> Regarding Rapiscan consult its site [www.rapiscansystems.com/eagle.html](http://www.rapiscansystems.com/eagle.html).

<sup>10</sup> The Terms of Reference for the tender, on the part relative to the minimum requisites for admission of candidates to the tender, indicated on point 4.5, that the bidding companies should present information regarding joint ventures or other types of partnerships that the bidder could opt to be eligible.

<sup>11</sup> In <http://www.osi-systems.com/osinews/osinews.aspx?newsid=1038>, consulted on 11 of July 2007. OSI Systems, Inc. (NASDAQ: SIS - News): Net Loss of \$4.0 million for the Fourth Quarter Impacted by: Weakness in Cargo & Vehicle Inspection Product Line.

<sup>12</sup> Regarding NUCTECH see [www.nuctech.com](http://www.nuctech.com).

<sup>13</sup> Guidelines Procurement Under IBRD Loans And IDA Credits May 2004, Revised October 1, 2006, in [www.worldbank.org](http://www.worldbank.org)

In an interview with the General Director of Kudumba, Kevin Davies, he told us that the decision to change the equipment (from Rapiscan to Nuctech) was taken in coordination with the DGA. However, this information is not contained in the final tender report.

The fact that Kudumba supplied equipment different from that proposed corresponded to an advantageous situation against other bidders. This type of situation ns could not guarantee transparency to the process and put into suspicion that Kudumba could even induced the Evaluation Commission to error when it present a technical proposal different from that the company initially proposed. Considering the fact that we are before a public international tender, it is not confirmed that this alteration was informed to all the stakeholders in the process, in order to ensure greater transparency, without putting into question the principle of confidentiality<sup>14</sup> of the evaluation process.

## **6-Conflict of interests and Political financing**

The other aspect that can be raised around this procurement process has to do with a total absence of conflict of interest management<sup>15</sup>. The World Bank guidelines state that the situations of conflict of interests constitute some of the facts that undermine transparency in public international tenders. Rules on conflict of interest and on a guarantee of impartiality are meant to caution situations of manipulation and trafficking of influences.

The possibility of, in a certain tender, the service to be hired – goods inspection in this case – ending up being executed by a company with interests in the importation of goods, is prone to conflicts of interest. The rules on conflict of interest allow prevention, in a context of this nature, of irregularities, reduce fraud in imports and exports and help combat contraband.

As we said, Kudumba was already involved in distribution business, logistics, commercialization, importation and exportation, wholesale and retail trade, before the tender was launched etc. If the international standards had been taken care of, Kudumba would have never been awarded this concession due to the following reasons: There was a clear incompatibility between its social object and the customs inspection activity; Kudumba could not be referee and player at the same time; i.e. Kudumba could not inspect the goods that it imports. In the present situation, it is hardly expected that Kudumba could detect eventual irregularities a company where it participates such as Home Centre could make in the importation of furniture.

In addition, Kudumba has a 35% participation by SPI, a holding linked to the ruling party, Frelimo. SPI is not a collective society of the Frelimo Party; it is made up of individuals. In this case, and taking into account that one of SPI strongest men is the Minister of Planning and Development, Auiba Cuereneia, a law could have been applied to prevent a situation of conflict of interests which arose. With effect, line a) of article 17 of Decree 30/2001 of 15 of

---

<sup>14</sup> Guidelines Procurement Under IBRD Loans And IDA Credits May 2004, Revised October 1, 2006, point 2.47

<sup>15</sup> Regarding this aspect see Bruce Bolnick Economic Costs of the Port Fees of Scanning in Mozambique, p.8, in [www.tipmoz.com](http://www.tipmoz.com)

October, does not allow a Public Administration agent to participate in administrative procedures or in contractual acts either public or private, when he/her has an personal interest, or if he/she is a representative or manager of another person's businesses.

The lack of clear legislation that regulates the participation of companies linked to political parties in businesses was behind the total ignorance of ethical limits that such participation entailed. Those limits govern the practices of political financing. Legally, one of the sources of political party finance are activities such as the sale of newspapers, memory books of legendary figures of the party and participation in businesses. Frelimo is a party with various economic interests.

In this context, on behalf of transparency, it would have been prudent if Kudumba had not participated in this business, especially because it is a business based on a public asset. The fact that the State concessioned a business to a company linked to the ruling party corresponds to a form of political financing, in this indirect case but with severe consequences given that the uneven possession of funds among political parties influence the electoral campaigns and results.

This concession confirms various allegations according to which there is still a clear confusion between the party and the State, 15 years after the democratic transition began, which fuels the lack of transparency. Furthermore, a correspondence sent by the Minister of Planning and Development, Auiba Cuereneia, dated 07 of August 2006, in response to a complaint by one of the losing bidders, the minister states clearly that the procurement process also involved the Government and was led by the President of the Republic. What is left is to question the reasons why the Administrative Tribunal, the competent entity to give the green light to contracts signed by the State, did not prevent this business from moving forward as it did.

## **7- Financial evaluation**

One of the aspects that prompted the polemic immediately after the introduction of the scanner system has to do with operational costs imputed to international trade operators<sup>16</sup>. As it is known, the business logic consisted in allowing that the concessionaire recovered the investment charged to port operators. As we said, the rationale for this operation was not clear. However, among the most disagreeing voices was that of the Association of Shipping Agencies, Forwarding and Port Operators of Mozambique (ASANTROP), which through CTA<sup>17</sup>, publicly expressed its discontentment because of the fees charged by Kudumba in its inspection operations.

The question of interest in our report is not necessarily the economic impact that the introduction of scanners brought about for international trade in Mozambique; the question that interests us is that of knowing if the option for a BOT concession and the concession process are today moulding that economic impact. With effect, the fees charged by

---

<sup>16</sup> Noticais newspaper of 09 of July 2007.

<sup>17</sup> In Media fax, 10 of July 2006

Kudumba are causing discontentment among the port operators, among them the MPDC<sup>18</sup>, forwarding agents and importers and exporters, with some suggesting that the fees charged for non intrusive inspection could force the operators to seek other ports in the region.

Be that as it may, and taking into account the tender documentation, the financial proposal of Kudumba, regarding the fee charged for each inspection (which also is the source of return of its investment), was more expensive than the proposal presented by the company which lied on the second position, Smiths. For example, and as the tables above demonstrate, for the importation of a 40 feet container, Smith had proposed to charge 92 USD and Kudumba 100 USD; the importation of a 20 feet container, Smiths had proposed to charge 67 USD e Kudumba 100 USD. The table published above shows in detail the difference of the figures. The comparison shows that there was a considerable difference in financial terms between the Kudumba and Smiths proposals. So, and taking into account the financial impact that the fees proposed had, one does not understand how the evaluation process ignored this aspect of vital importance.

In spite of the Evaluation Commission having adopted by a conjugated evaluation criterion (75% of weight for the Technical Proposal and 25% of weight for the Financial Proposal), it is necessary to take into account that, by the nature of the services in question, the financial factor (in this case the price to apply to users) played a fundamental role, especially because the cost of inspection is borne by the user (importer or exporter)<sup>19</sup>. The Evaluation Commission could have opted for a Better Technical Proposal Less Expensive for the Operators, thus protecting the interests of economic agents. This was not what happened.

## **8- The adoption of BOT and its economic impact**

Was the option for the BOT model decided by the Government a correct option? What issues were taken into account? Why didn't the Government opt for investing in the project, opening the possibility of revenue generation for the State without creating negative externalities on international trade?

These questions are not very clear. In the documentation that we obtained, it was only stated that the reason for the option was that the Government did not have capacity to invest in the process, it was an expensive investment and that there was no technical capacity. But it is also not known if all the financing possibilities were explored. The option for the BOT model implied a scenario in which the concessionaire had to charge from the services in order to have the investment return. Was this option totally innocent? Or the Government decided because it knew beforehand that that was a finance strategy for the Frelimo party?

---

<sup>18</sup> The Maputo Port Development Company is a consortium formed by the Mersey Docks and Harbour Company (United Kingdom), Skanska ID (Sweden), Liscont (Portugal) and Grindrod (South Africa), who jointly hold 51% of the company's share capital. The Mozambican State and CFM are also MPDC shareholders. This company sent a letter to the Deputy Minister of Finance on the 15th of September 2006 expressing its concern around the matter.

<sup>19</sup> Cfr. Article 5 of Decree 10/2006 of 05 of April introducing the Non Intrusive Inspection System.

Two questions can be raised around the BOT logic. The first is to know if the option for the concession was fairest especially given the role of the State in the delivery of public security services. The non intrusive inspection, put into the context of the combat against terrorism, is clearly a sovereignty function. By concessioning its management, the Government did not safeguard the interests of the private sector, given the role of Customs of not only collecting revenue for the State but also of facilitating a fairer international trade. By allowing Kudumba fix the fees it proposed, the Customs did not defend the interests of the private sector, subverting the principle of facilitation of international trade established by the World Trade Organisation (WTO).

In addition, is the question of the impact that the fees charged is having on the traffic of goods via Mozambique and the consequent risk of the national ports ceasing from being competitive in relation to other ports in the region where the cost of non intrusive inspection is, in some cases, zero. For example, South Africa, although it also recently introduced the system, is not charging any scanning fees. According to a recent study by Bolnick (2007), “the high cost of non intrusive inspection in Mozambique – are applied to all shipments – will probably have a sharp negative effect on the development of the ports, on the expansion of in transit trade and on investment along the main corridors”.<sup>20</sup>

The second question has to be with the charging of fees to operators. According to the Bolnick study, citing a recent report on Maritime Security prepared by the United Nations Organisation, in 20 ports from 16 countries where fees for container inspection are charged, the same vary between US\$ 1, 50 to US\$ 19 by TEU<sup>21</sup>. This means that the fees charged by Kudumba are too high compared with the fees charge on the international arena. The fees in Mozambique are applied at 100 per cent of the shipments, including to empty containers and cargo in bulk.

In various countries, the option taken in relation to non intrusive inspection was that of maintaining it in State hands. Bolnic, citing the World Bank manual on Customs Reforms (2005), pointed out that the bank recommends that the acquisition of equipment for the purpose has to be based in a solid cost-benefit analysis. This analysis was not made in Mozambique. To take the decision on the option of investment on non intrusive inspection, the Government only considered three options regarding the intervention model, namely the effective purchase of scanners, the acquisition under a leasing regime and the BOT (**Built Operate and Transfer**) model. Having opted for the later intervention model, the Government did not deepen the debate around the finance model.

As a matter of fact, there is no unique investment standard regarding the non intrusive inspection. According to the Bolnic study, some countries apply a fee to expeditors to cover part or the total cost, but others sustain it through its registration as investment expenditure in the State Budget. In the cases in which the fees are applied to operators, they can be collected by the Government, by the port terminal concessionaire or by an independent entity.

---

<sup>20</sup> See Bruce Bolnick (2007). Economic Costs of Port Fees of Scanning in Mozambique, p.8.

<sup>21</sup> TEU = Twenty-foot equivalent unit. This is a standard unit of container traffic.

The concession option was, therefore, a decision motivated by other factors and not necessarily by factors of pure public interest. The fact that the system is complex and its management implies specific skills on the matter, it did not imply necessarily an option for outsourcing, especially because of the economic impact that it incurred.

In addition, it now seems that if the management of the system implied a major financial effort by the State, the business could also generate direct revenues which would compensate that investment. Bjorkholm and Boeh, cited by Bolnick, defend that the revenues resulting from non intrusive inspection, by far, exceed the investment costs, at least in the case of the ports that handle large volumes. They cite the example of Great Britain, where the introduction of non intrusive inspection caused the increase of customs revenues by more than 5 billion pounds as a result of cigarette contraband.

South Africa is the example of who opted for a model different from ours. In 2005, the South African Government launched a public tender, under its Container Cargo Scanning Initiative (CCSI), to hire a private entity under an outsourcing regime with the purpose of managing the non intrusive inspection system. After the evaluation of the proposals of the bidders and having considered that the concession of the system would have a strong financial impact on the economy, the outsourcing option was abandoned. So, SARS (South Africa Revenue Services) ended up acquiring the system, and became its operator.<sup>22</sup>.

## **9-Conclusions**

The procurement process which led the selection of the non intrusive inspection system concessionaire did not take into consideration the prevention of conflict of interests at two levels: In the first place, some of the entities that were involved in the adjudication of the concession – even being high ranking governmental leaders – had business interest in the company that won the tender, Kudumba, which put into question the principle of impartiality; in the second place, the company to which the business was adjudicated exercise export and import activities, which conflicts objectively with the activity of inspection of the entry and exit of goods, prompting doubts around the neutrality of the inspection of the export and import operations carried out by that company. These two aspects should have constituted factors that would have hindered Kudumba from participating in the tender in question.

The fact that the winning company submitted a technical proposal with an equipment of American origin and later supplied a product of Chinese origin was not in line with the procurement rules, which soon generate a clear situation of unfair competition. This situation was not solved In addition; the financial evaluation of the tender did not bear in mind the negative impact that the high fees would have to economic operators, taking into account the reality of rival ports in the region.

These problems were identified by our analysis of the tender documents. These are problems that happened half way and, eventually, the Evaluation Commission did not many and big possibilities of overcoming them since, in our opinion, Kudumba was in favourable situation

---

<sup>22</sup> SARS press release [www.sars.gov.za](http://www.sars.gov.za).

given its connection with the political power. The major problem of this tender, the moment at which the risk of manipulation occurred, was during the decision-taking on the non intrusive inspection introduction model in Mozambique. The facts show that the option for the outsourcing of the inspection, the BOT model, could have been better pondered. The option appears to have been taken in the perspective of attributing the business to a company with strong political connections, guaranteeing some political finance for the ruling party.

## **10-References**

BOLNICK, Bruce (2007): Economic Costs of Port Charges of Scanning in Mozambique, p.8.

SCANTEAM, Analysts and Advisers (2004): Public Management Assessment, Mozambique, Final Report .Oslo.

KPMG Mozambique (2004): Public Financial Administration Procurement Review for the year ended 31 December, Maputo.

WORLD BANK (2004): Guidelines Procurement under IBRD Loans and IDA Credits May 2004, Revised October 1, 2006

MAPUTO CORRIDOR Logistic Initiative (2006) Newsflash 289 of 17 November 2006  
Media Coverage on Mozambique Scan

World Customs ORGANIZATION (2003): Guidelines for members Relative to Administrative Considerations on the Acquisition and Operation of Scanners. Doc. No. TF0022E1, Brussels.

## **Tender Documents**

- Memorandum of the Opening of the Tender Technical Proposals, 01.09.2005
- Smiths Detection International letter to DGA, of 05.09.2005
- Letter from the Ministry of Planning and Development to Smiths Detection
- Kudumba's letter to the Research Office of the Ministry of Planning and Finance
- Memorandum on the Tender for the Hiring of a Container Electronic Visualization Operations service provider through Scanners - CREE (14.10.2005)
- Additional Memorandum of the Ministry of Finance on the Controversy Around the Base and Levels of Incidence of the Non Intrusive Inspection Tariffs.
- Information from DGA n° 016/DGA/GD-CI-OP/05
- Information from DGA n° 002/DGA/GD/05
- Information from DGA n° 009/DGA/GD/05
- Information from DGA n° 036/CAS/DGA/05
- Final Tender Evaluation Report (016DGA/GD-CI-OP/05)
- Tender terms of reference for the acquisition of scanners
- Terms of reference for the hiring of a company to carry out container electronic

- visualization operations using scanners, at Mozambican main border posts and customs terminals
- Contract signed between the Government of Mozambique and Kudumba
  - TFA Background Note: *GATT* ARTICLE VIII “FEES AND FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION”
  - Smiths Detection’s Technical Proposal
  - Smiths Detection’s Financial Proposal
  - Normative structure aimed at security and facilitation of international trade (July 2005)
  - Comparative Map of the Satisfaction of Requisites of the Technical Proposals of the Tender.

### **Newspapers and websites consulted**

- Embondeiro, Edition n°54, of 28 of September to 4 of October 2005
- Media fax, of 10 of July 2006
- Noticias of 09 of July 2007
- [www.sars.gov.za](http://www.sars.gov.za) for SARS Media Release: SARS CCSI (Container Cargo Scanning Initiative) Project
- [www.sars.gov.za](http://www.sars.gov.za) for Cargo and Container Scanner Installation, Commissioning and Acceptance: Certification Services
- [www.unctad](http://www.unctad) for Trade and transport facilitation: Building a secure and efficient environment for trade

THE END