



## **Country Procurement Issues Paper**

### **The GAMBIA**

**June 27, 2005**

**The World Bank Group: Operational Quality and Knowledge Services,  
AFTQK**

### **CURRENCY EQUIVALENTS**

(Exchange rate Effective May 14, 2005)

Currency Unit = Gambia Dalasi

GMD28 = US\$1

### **FISCAL YEAR**

January 1-December 31

### **ABBREVIATIONS AND ACRONYMS**

CAS	:	Country Assistance Strategy
CBEMP	:	Capacity Building and Economic Management Project
CDD	:	Community Driven Development
IC	:	Institutional Capacity
CFAA	:	Country Financial Accountability Assessment
CPAR	:	Country Procurement Assessment Report
CPIP	:	Country Procurement Issues Paper
CPPR	:	Country Portfolio Performance Review
DFID	:	Department for International Development (United Kingdom)
EU	:	European Union
GMD	:	Gambia Dalasi (the national currency)
GPPA	:	The Gambia Public Procurement Authority
LRF	:	Legal and Regulatory Framework
MDBs	:	Multilateral Development Banks
AGO	:	Auditor General's Office
PER	:	Public Expenditure Review
POP	:	Procurement Operational and Market Performance
PPA	:	Public Procurement Act
PRSP	:	Poverty Reduction Strategy Paper
UNCITRAL	:	United Nations Commission on International Trade Law
UNDP	:	United Nations Development Program

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## **PREFACE**

The Gambia Country Procurement Issues Paper (CPIP) is based on review carried out between September 2004 and May 2005. A preliminary mission was conducted in September 2004 by Pierre Morin (Hub Coordinator - Sr. Procurement Specialist) and Bourama Diaté (Task Team Leader - Sr. Procurement Specialist); the main mission took place in May 2005 and was comprised of the following members: Jean-Jacques Raoul (Consultant-Procurement Specialist); and Laurent Mehdi Brito (Procurement Specialist). The assessment was conducted through meetings and discussions with senior Government officials, the Manager of the Gambia Public Procurement Authority and his staff, private sector representatives, managers of public enterprises, donors (UNDP, European Union, DFID). The mission also benefited from the advice and support of The Gambia World Bank Liaison Office.

## EXECUTIVE SUMMARY

1.01 The Gambia is a small State located on the West Coast of Africa and a predominantly agricultural country with a limited resource base. The major sectoral contributor to The Gambia's GDP is the service sector (55%), comprising transit trade and re-export and tourism. Agriculture and industry represent 31% and 14% of GDP respectively.

1.02 This Country Procurement Issues Paper (CPIP), is an interim assessment of the public procurement system of The Gambia based on the self-evaluation conducted by the Government in early 2005. The CPIP is a follow-up of the Country Procurement Assessment Review (CPAR) undertaken in 1998, which led to the preparation and implementation of the public procurement reform program.

1.03 Since the 1998's review, progress has been made especially in the legal, regulatory and institutional framework. In 2001, Parliament adopted the Public Procurement Act (PPA) that defines the rules for public procurement. The PPA complies with the international best standards with a few exceptions. The PPA created a regulatory authority, The Gambia Public Procurement Authority (GPPA), to supervise the sector. Under the leadership of GPPA; The Gambia has made slow but steady progress towards a more transparent and more efficient procurement system.

1.04 As of June 2005, IDA portfolio includes five projects with a total commitment of US\$79 million, of which US\$28.5 million is undisbursed. Country Portfolio Performance Reviews (CPPRs) have concluded that the overall performance of the portfolio is generally weak. Procurement is no exception; Post Procurement Review (PPRs) carried out in 2004-2005 have concluded that (i) procurement planning needs to be improved, (ii) bidding documents and requests for proposals need to be improved, (iii) delays in bid evaluation and contract award are excessive, (iv) the approval of contract award by Authorities other than those mentioned in the Public Procurement Act (PPA) should be discontinued.

## FINDINGS AND RECOMMENDATIONS

1.05 The CPIP focuses on the following areas, called the four pillars of a sound procurement system: (i) the clarity of the legal and regulatory framework within which the public procurement currently operates; (ii) the public procurement institutions, organization and associated risks; (iii) the procurement operations and market performance; and (iv) the integrity of the public procurement system. Recommendations made under each of the four pillars are interwoven; their implementation will impact not only the foundations of this very pillar but also that of the overall public procurement system.

### *The Legal and Regulatory Framework*

1.06 Following the conclusions of the CPAR, the Government of The Gambia prepared - with technical assistance from the International Trade Center (ITC), funded under the Capacity Building and Economic Management Project (CBEMP) - the PPA which was adopted by Parliament and came into force in July 2003. Implementing regulations and standard bidding documents were prepared and issued during 2002-2003 also with the assistance of ITC.

1.07 The PPA is a modern law inspired from the UNCITRAL Model Law for public procurement and certainly one of the best in Africa. There are three points that could be improved to bring the PPA to (near) perfection:

- (i) GPPA, as a regulator, ought not to be involved in prior review of procurement decision. Ex ante approval could be conflicting with other functions namely the supervision of audits, reviews and complaints. Therefore, the PPA should be modified to clarify the conflicting functions of GPPA;
- (ii) Ex ante approval thresholds are low (US\$35,000 equivalent) and the workload resulting from a large number of contracts to be reviewed could create bottlenecks and delays;
- (iii) The PPA should be modified to enable implementation of Community Driven Development (CDD) operations.

### ***The Institutional Capacity: the Gambia Public Procurement Authority***

1.08 The Gambia Public Procurement Authority (GPPA) is the key institution for public procurement. Since its creation, GPPA has played a significant role and most of progress made is attributable to its pro-active involvement in the strengthening of public procurement activities. Through the impetus given by GPPA public procurement is showing signs of becoming more professional. GPPA is mainly a small team of competent professionals who has a good grasp of public procurement. The challenge GPPA is facing is to obtain full compliance of procuring organizations with the rules established by the PPA and regulations. To this end, GPPA should strengthen its activities in three main areas: monitoring and controls; procedures; and, capacity building and training.

1.09 GPPA should strengthen its role in the monitoring and control of procuring entities and to disengage gradually from ex ante approvals. As the capacity of the procuring entities develops, GPPA resources will be freed and be available to focus on tasks that are more of a managerial nature such as: prepare reports to the Auditor General Office, the Minister of Finance or to Parliament, follow-up on bid protests, carry out relevant studies and propose policy improvements. To secure its future and better fulfill its mission, GPPA should prepare a long term business plan that identifies opportunities for its own development as well as its needs in terms of human and financial resources.

1.10 Secondly, GPPA should streamline, simplify and improve the procedures when needed, especially standard bidding documents for small and medium size contracts. This includes the review of suppliers' registration requirements and the elaboration of simple and relevant qualification criteria in standard bidding documents for works contracts. Dissemination of information on best practices, advertisement of tenders and awards should also be set as a short term priority.

1.11 Thirdly, GPPA should strengthen its leadership in capacity building and training. Its role should gradually shift from training delivery to managing the development of the capacity building program and the delivery (by existing institutions) of the training program for all players involved in public procurement.

### ***Procurement Operations and Market Performance***

1.12 The efficiency of procurement operations depends largely on the availability of qualified procurement staff. As a general rule, GPPA, as well as a few major public enterprises

and externally funded projects have qualified procurement staff. Ministries and local governments, other public enterprises and public entities do not have as qualified procurement staff as in the first group. As a result, procurement is carried out in these institutions in a manner that is less than optimal. Excessive recourse to sole sourcing, restricted bidding procedures, slicing and other practices that are not conducive to transparency, efficiency, economy and competition are very frequent. In the private sector, procurement capacity is also very low.

1.13 In general, the management of procurement cycle is very weak. In Bank-financed projects it is slightly better for small contracts but major difficulties are encountered in the case of large contracts; Bid evaluation and award of contracts are often characterized by insufficient transparency, lack of technical qualifications and experience of members of evaluation committees; delays arising from the clearance process at higher levels of Government. Follow-up of contract execution is generally inadequate. Standard bidding documents (SBDs) need update and procurement staff need some training on how to use the SBDs; record keeping is also deficient which has a direct impact on the quality of audits and reviews to ensure the integrity of the system; a record keeping system ought to be implemented and procurement staff to be trained.

1.14 Delays in payments are reported to be frequent and constitute a major concern for the business community. Another concern expressed by the private sector is the lack of transparency. The private sector has expressed its dissatisfaction with the poor quality of technical specifications in bidding documents prepared by public procurement entities. On the other hand, the private sector has commended GPPA for its role and its performance and its ongoing efforts to professionalize the sector.

### ***Integrity of Public Procurement System***

1.15 GPPA plays a key role in building-up integrity in the public procurement system. The PPA entrusts GPPA with the tasks of control and external audit of public procurement, the latter under the supervision of the Auditor General's Office (AGO). So far, GPPA has conducted inspections of several procuring organizations in 2004 and only a handful of agencies came close to compliance with the PPA. Thus, GPPA should continue reviewing the procurement activities of the procuring entities with a view of assisting in the diagnosis of their problems and identification of solutions.

1.16 Another important recommendation concerns the role of GPPA in the appeal process. Indeed, an aggrieved bidder can file a complaint with GPPA. However, the fact that GPPA is involved in ex ante approval of procurement decisions could lead to a situation of conflict of interest, clearly not compatible with the principles of an appeal mechanism. Therefore, the GPPA should in consultation with the Auditor General examine whether its role in control of procurement activities and debarment of bidders is compatible with its current role in reviewing appeals filed by bidders.

1.17 Last, GPPA should disseminate integrity provisions provided for in the PPA through its sensitization and training activities.

***Risks for Bank-financed projects***

1.18 As mentioned above Bank-financed operations require close supervision; the following level of prior review thresholds are recommended:

Works	US\$ 500 K
Goods	US\$ 200 K
Consultants	US\$ 100.K

1.19 In addition to the general risk arising from the weak performance of the overall portfolio, the procurement risk appears to be higher in the case of large contracts. Indeed, the approval by the Cabinet of contracts exceeding US\$715,000 constitutes an additional risk considering the delays as the Cabinet does not meet frequently. Since this additional step is not envisioned in the PPA it is strongly recommended to consider its elimination. This will contribute to improved efficiency and greater transparency. It is also recommended to strengthen supervision by the World Bank of procurement activities by including a procurement specialist in supervision missions at least twice every year.

***Action plan***

1.20 The action plan emphasizes the need to strengthen capacity, in order to improve accountability, integrity and transparency of public procurement and reduce the scope for waste of resources and corruption. It focuses on fundamental issues which are to be addressed in the short term, and selected medium and longer term issues.



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Activity	Responsible	Indicator	Deadline	Comments
<b>0. Procurement reform follow up</b>				
Approval of the action plan	Cabinet	The action plan is discussed and the agreement is approved	October 31,2005	
Put in place a steering committee and nominate the members to follow up the reform	DoSFEA	The steering committee organization defined , the members are identified and the appropriate text signed	December 31,2005	
<b>1. Legal and Regulatory Framework</b>				
1.1 Revision of Public Procurement Act to remove conflicting functions of GPPA (ex ante approval, ex post review and appeal responsibility) and to enable CDD operations	DoSFEA, GPPA, Auditor General	PPA revised	June 30, 2006	
1.2 Revision of Regulations, Instructions and standard documents to clarify domestic preference and small enterprises preference	DoSFEA, GPPA	Regulations, Instructions and standard documents revised	March 31, 2006	
1.3 Assessment of the procurement performance	DoSFEA, GPPA	Appropriate performance indicators are defined and approved  First assessment of the performance of the procurement system is conducted	March 31,2006  December 31,2006	

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Activity	Responsible	Indicator	Deadline	Comments
<b>2. Institutional Capacity</b>				
2.1 Improve Procurement Planning	GPPA and procuring organizations	<ul style="list-style-type: none"> <li>- Simpler procurement plan format drafted, and approved</li> <li>- Letter for instruction and guidance is drafted and sent to procuring organizations</li> <li>Training (including on-the-job) of procuring organizations planned and conducted</li> <li>- All major procuring organizations prepare and follow Procurement Plan</li> </ul>	<ul style="list-style-type: none"> <li>March 31, 2006</li> <li>March 31, 2006</li> <li>June 30, 2006</li> <li>October 31, 2006</li> </ul>	
2.2 Establish a Training Plan and deliver training (including integrity provisions)	GPPA, Procuring Organizations, MDI	<ul style="list-style-type: none"> <li>- Training plan, including modules, designed and scheduled</li> <li>- Training of Procuring Organizations started</li> </ul>	<ul style="list-style-type: none"> <li>March 31, 2006</li> <li>June 1, 2006</li> </ul>	Support by a consultant needed
2.3 Simplify standard documents and reporting forms	GPPA (along with Proc. Organizations)	Standard documents and reporting forms simplified	June 30, 2006	Use GAMEWORKS models, including qualification criteria

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Activity	Responsible	Indicator	Deadline	Comments
2.5 Complete Staffing Plan and Scheme of Service for Procurement Officers/Clerks	Cabinet  GPPA, PMO, PSC, DoSFEA	<ul style="list-style-type: none"> <li>- A staffing Plan and Scheme of Service is designed and approved</li> <li>- Procurement officers/clerks recruited and trained in 5 priority procuring organizations</li> <li>- Procurement officers/clerks recruited and trained in all major procuring organizations</li> </ul>	<p>December 31, 2005</p> <p>December 31, 2005</p> <p>June 30, 2005</p>	
2.6 Sensitize development partners about the reform	GPPA, DoSFEA	Additional support from development partners for the reform	January 31, 2006	
2.7 Submit Annual report to Auditor General and DoSFEA	GPAA	First Report submitted, based on information already on GPAA's files	December 31, 2005	
2.8 Revise of suppliers registrations requirements	GPPA	Registration requirements more flexible for small assignments by informal suppliers and more demanding for formal sector suppliers	March 31, 2006	

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Activity	Responsible	Indicator	Deadline	Comments
2.10 Collect sample technical specifications and Terms of Reference for commonly purchased equipment, furniture and services	GPPA	Technical specifications and Terms of Reference for commonly purchased equipment, furniture and services posted on GPPA website	June 30, 2006	
<b>3. Procurement Procedures and Market Performance</b>				
3.1 Streamline bidding process at (i) evaluation phase by including on the evaluation committees experienced and qualified professionals (consultants as needed) and (ii) contract award phase by considering only evaluation criteria within bidding documents and qualification of supplier in the decision of award.	DoSEFA  GPPA, Procuring Organizations	- A letter of reminder is drafted and sent to line Ministries and contracting agencies  All Evaluation committees composed with qualified personnel  - Contract awarded only on basis of evaluation criteria and qualification of bidders	October 31,2005  December 31,2005  Ongoing	
<b>4. Integrity of the Public Procurement System</b>				
4.1 Disseminate information of the appeal mechanism to the potential bidders	GPPA	Potential bidders aware of appeal possibilities  Appeal mechanism system is put in place and functioning	Ongoing  October 31,2006	

## **GENERAL REPORT**

### **I CONTEXT OF THE ASSESSMENT**

#### **INTRODUCTION**

1. The Gambia is a small state located on the West Coast of Africa. It extends about 400 kilometers inland on the two banks of the Gambia River with widths varying from 24 to 48 kilometers. The country has an approximate land area of 11,000 square kilometers and is bordered on the East, North and South by Senegal and on the West by the Atlantic Ocean. It is a predominantly agricultural country with a limited resource base. With a per capita income of about US\$258 in 2003, and it ranked 160th out of 173 countries in the United Nations Human Development Index. The Gambia has a high population growth rate of approximately 3 per cent per annum, with a population of approximately 1.4 million.

2. With a share of 55 percent, more than half of the GDP is generated from the service sector. By virtue of its location and a relatively efficient port, the country acts as a regional hub for transit trade and re-export trade. The next largest sector is agriculture at 31 percent of GDP. A key export item is groundnuts. Many of the poor are small, groundnut farmers. Finally, the industry sector is the smallest at 14 percent of GDP. The construction industry is the largest in this sector.

#### **OBJECTIVE OF THE COUNTRY PROCUREMENT ISSUES PAPER (CPIP)**

3. The CPIP is an interim assessment of the public procurement system of The Gambia following the Country Procurement Assessment Report (CPAR) that was carried out in 1998, and the subsequent program of public procurement reform undertaken by Government, which is still in the early stages of actual implementation. Given the current transition stage of the country's procurement institutions and the fact that Government is still in the process of implementing the new Public Procurement Law (Gambia Public Procurement Act 2001), it was decided to carry out a CPIP in lieu of a full scale CPAR; the CPIP focuses on fundamental issues which are to be addressed in the short term, and selected medium and longer term issues. A full scale CPAR may be conducted at a later stage, when implementation of the reform is more substantially completed. Hence, the assessment and the actions will focus on the following areas: (i) the clarity of the legal and regulatory framework within which public procurement currently operates; (ii) the public procurement institutions, organization and associated risks; and (iii) the capacity of the staff to carry out and manage all phases of the procurement process efficiently. The action plan emphasizes on the need to strengthen capacity, in order to improve accountability, integrity and transparency of public procurement and reduce the scope for waste of resources and corruption. Thus, the CPIP will contribute to assisting the government to pursue and achieve its objectives of strengthening

governance and capacity building. Since the 1998's review, some progress has been made especially in the legal framework. For the most part, progress made is attributable to the creation of The Gambia Public Procurement Authority (GPPA) which plays a critical role in the improvement of the country's procurement environment.

**RELATIONSHIP WITH THE COUNTRY FINANCIAL ACCOUNTABILITY ASSESSMENT (CFAA) AND PUBLIC EXPENDITURE REVIEW (PER)**

4. A CFAA carried out in 2003 identified serious fiduciary risks related to public sector financial management. Concerns associated with the highest risk levels are: (i) the budget is not comprehensive, nor fully aligned with national development anti-poverty strategies, (ii) poor control of yearly expenditures; use of a cash budget increases the bureaucratic burden and delays, and undermines spending departments ownership of their budget allocation, (iii) lack of timely and accurate reporting of expenditures, and (iv) no effective independent scrutiny of government expenditure. The report includes an Action Plan for its improvement.

5. A multidonor PER was conducted in 2004, facing the major challenge of lack of available public expenditure data. The report (Report No. 31459-GM, January 2005) includes the following findings which are all relevant to the current review of public procurement: (i) recent economic performance in The Gambia was extremely poor and undermined efforts to implement the PRSP as well as the MDG objectives, (ii) poor data quality is symptomatic of underlying fundamental deficiencies in the institutions and governance of public financial management which need substantial upgrading, (iii) the development budget is poorly prepared, internal control and audit are weak and large amounts of expenditures are executed outside of the normal budgeting process, (iv) the civil service struggles with weak capacity and high turnover, (v) when deficiencies are identified, experience has shown that implementation of the suggested solutions has been problematic.

6. The Bank and DFID are jointly preparing a PER Update with the Authorities. The main objective of this PER Update exercise is to analyze the 2005 budget in terms of the PRSP priorities, and to provide a progress report of the reform agenda prepared in the previous PER exercise. The PER Update builds on the previous PER conducted in 2004. The general conclusions from this PER Update exercise are the following: (i) fiscal and monetary discipline significantly improved in 2004; (ii) the 2005 budget maintains this aggregate fiscal discipline but its composition is not entirely aligned with PRSP priorities; (iii) the preparation and execution of the development budget could be improved; and (iv) overall there has been progress with the public sector reform agenda, but implementation of some initiatives has been slower than expected. The public sector reform agenda includes recommendations which draw on this CPIP exercise.

7. The CPIP will complement the CFAA and PER work, and the subsequent plans of action when implemented will assist the PRSP by contributing to developing capacity at national and local levels and thus making the expenditure management process more efficient. In effect, their objective is to maximize the impact of public resources in the fight against poverty, which in turn will reassure the donors that their aid when channeled eventually through the budget will serve the purpose intended. A sound public procurement system and good procurement practices are critical to the success of this mode of resource transfer. The CPIP will provide much needed support to the design and implementation of such a system.

## **RELATIONSHIP WITH THE COUNTRY ASSISTANCE STRATEGY (CAS)**

8. The current CAS (FY03-05) was prepared within the framework of the PRSP<sup>1</sup>, and its strategic vision was further focused as the result of a development policy review, a portfolio review, and consultations with the Government, civil society and other development partners. The CAS objectives are to: improve public expenditure management, enhance the equity and quality of service delivery, and promote private sector-led growth. Under the base case (US\$25 million), the Bank planned financing for health, education and rural development. CAS implementation has been slow. Two operations are currently under preparation, namely the second phase of the Education APL and a Community-Driven Development operation.

9. As of June 2005, the IDA portfolio includes five projects with a total commitment of US\$ 79 million<sup>2</sup>, of which 28.5 million is undisbursed. Portfolio performance is weak, with two projects out of five rated unsatisfactory. The last CPPR was conducted in May 2004, and procurement was identified as one of the areas for performance improvement. The problems to be addressed were: (i) procurement planning not effective and not updated on a regular basis; (ii) poor quality of bidding documents and requests for proposals although preparation is laborious, taking more time than normally needed; (iii) delays in bid evaluation and contract award sometimes due to political interference (approvals from Cabinet required); and (iv) the no-objections process takes more time than the standard time set by the institutions responsible for ex ante reviews (GPPA and IDA). Most of the same issues surfaced again during Procurement Post Reviews (PPR) carried out by the Bank procurement staff in late 2004-early 2005.

## **II LEGAL AND REGULATORY FRAMEWORK**

### **RECENT HISTORY**

10. In 1998, the World Bank conducted a CPAR<sup>3</sup> in collaboration with the Government of The Gambia which concluded that The Gambia lacked the four basic elements of a sound public procurement system, namely:

- a) An adequate set of policies and procedures (regulations/codes);
- b) A strong and effective procurement organization;
- c) A sufficient number of competent and dedicated procurement staff;

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<sup>1</sup> The PRSP completed by The Gambian Authorities in July 2002 is based on five pillars: (i) creating an enabling policy environment to promote economic growth and poverty reduction, (ii) enhancing the productive capacity and social protection of the poor, (iii) improving coverage of the basic social service needs, (iv) building the capacity of local communities, and (v) mainstreaming gender equity, environmental issues, nutrition, governance and HIV/AIDS awareness into all development programs.

<sup>2</sup> The projects currently in the portfolio are (i) Poverty Alleviation and Municipal Development Project (closing date to be extended to December 31, 2006), (ii) Participatory Health, Population and Nutrition Project (expected to close on June 30, 2005), (iii) Gateway Project (closing date on April 30, 2007), (iv) HIV/AIDS Rapid Response Project (closing date December 31, 2005), and (v) Capacity Building and Economic Management Project (CBEMP) (closing date December 31, 2006). A supplemental credit for the Poverty Alleviation and Municipal Development Project has been approved recently

<sup>3</sup> Country Procurement Assessment Report, The Gambia, Volume I October 1998

d) An overseer and adjudicator to assure compliance.

11. The prior system focused heavily on financial controls. Generally, the procurement functions were carried out by Accounting Officers, not Contracting or Procurement Officers, seldom trained or prepared for the procurement task they were given nor evaluated on the quality of their performance in buying. The Gambia Financial Instructions regulated public procurement. Relying on general principles of local preferences and control of individual actions through most centralized Major and Minor Tender Boards, the Department of State for Finance and Economic Affairs (DOSFEA) aimed to ensure funds were used for the benefit of Government. The Major Tender Board reviewed all Government contracts for the procurement or disposal of goods, services and works where the estimated cost or benefit exceeded D100,000 (about US\$10,000 at the time). In addition, a Minor Tender Board reviewed all Government contracts in excess of D10,000 but not more than D100,000<sup>4</sup>. The procurement system was deemed inadequate, unnecessarily bureaucratic, onerous and cumbersome.

12. The CPAR recommended reforms of the public procurement system to introduce and/or strengthen best international practices, such as:

- a) A sound government-wide procurement strategy to support the country's ability to deliver services;
- b) An effective public procurement system to influence both micro and macro economic efficiency;
- c) Procurement procedures that assure objectivity, fairness and transparency in the award of contracts. These are essential ingredients in avoiding cause for allegation of corruption and at the same time enhance both respect for public institutions and government efficiency;
- d) Sound procurement practices to attract and absorb foreign investment and to participate in the growth of international trade.

### ***The Public Procurement Act***

13. A Public Procurement Law was drafted with technical assistance from the International Trade Center (ITC) in 2001 funded under the Capacity Building and Economic Management Project (CBEMP)<sup>5</sup>. The procurement law was approved by Parliament in 2001 and approved by the Head of State in January 2002, and is known as the Public Procurement Act (PPA). For various reasons, the PPA came into force later, in July 2003, following the issuance of implementing regulations and standard bidding documents also prepared with assistance from ITC in 2002-2003.

14. The PPA is a modern, state-of-the-art procurement law which was inspired from the UNCITRAL Model Law for Public Procurement. It mainly provides for (i) broad coverage of

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<sup>4</sup> DOSFEA, when required to support a major project, could also establish a Ministry Tender Board with representation from the DOSFEA and the Accountant General. It had the same powers and limits as the Major Tender Boards and its findings were reported to the Minister of Finance.

<sup>5</sup> A task force was also constituted to oversee the reform process, comprising of Donors and concerned government departments, namely, World Bank, European Union, DIFID (UK), UNDP, Gambia Chamber of Commerce and Industry, DOSFEA, Department of State for Justice, Office of the Accountant General, Department of State for Local Government and Land, Management Development Institute, and Office of the President.



ministries (known as Departments of State), organs of the State and public enterprises, local government authorities, all defined as “procuring organizations”, and use of public funds (also defined in a comprehensive manner) by these procuring organizations, (ii) decentralization of procurement responsibilities to the procuring organizations, (iii) the creation of a Gambia Public Procurement Authority (GPPA) with responsibilities over drafting regulations, monitoring and evaluation, capacity building, reviewing and adjudicating on complaints filed by bidders; GPPA was also given oversight responsibilities over procurement transactions carried out by the procuring organizations, including ex ante approvals – which unfortunately creates an ambiguous situation as discussed below, (iv) methods of procurement and their conditions for use; open tendering is the preferred method for procurement and goods and works, and recourse to other methods needs justification, (v) the right for bidders to challenge decisions made by procuring entities, and (vi) the creation of a recognized procurement career stream within public service.

15. The PPA gives responsibility for drafting implementing regulations to GPPA, and accordingly such detailed regulations were issued by July 2003, including standard procurement documents (which need revision as explained below) and reporting forms.

16. A major issue is that the PPA gives GPPA the mandate to review and approve or disapprove ex ante the procurement actions of procuring organizations above amounts defined in the Regulations at every stage of the procurement process. The Regulations have set the threshold at a low level of GMD 1 million (US\$35,000 equivalent). This provision conflicts with other functions of GPPA (e.g. the compliance inspection and the administrative review of bid protests) as discussed in Para. 3.4-2, and has the potential of creating a serious bottleneck in procurement processes if and when more procuring organizations are in compliance with PPA<sup>6</sup>.

17. The objectives of the PPA<sup>7</sup> are defined as providing for a system for ensuring transparency, efficiency and economy, accountability, fairness to all prospective suppliers, prevention of fraud and corruption, and “improvements in social and economic capacity in The Gambia, including providing opportunities for local small enterprises and individuals to participate in an economic manner as suppliers, contractors and subcontractors in public procurement”. The PPA further stipulates that GPPA “shall in collaboration with the heads of procuring organizations, establish a program to facilitate participation by small local enterprises and individuals in public procurement”. This has so far materialized in a provision to be used at the option of procuring organizations for domestic preference (similar to the preference provision for ICB in the 1995 version of the Bank Guidelines) in the implementing regulations, and a provision –also to be used at the option of procuring organizations– for a system of preference (up to 10%) for small local enterprises in Instructions issued by GPPA. It is not clear whether both provisions could be used cumulatively. According to GPPA these provisions have not yet been used by procuring organizations.

18. A notable exception of public procurement activities not covered directly by the PPA is the business conducted by GAMWORKS, the agency created in 1993 under a Bank-financed Public Works and Employment Generation program. This agency was constituted as a private sector company with no state ownership, and as such it is not identified as a “procuring organization” under Section 2 of the PPA. It executes public works and service delivery

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<sup>6</sup> GPPA has opened about 200 files of ex ante review of procurement transactions in 2004 and about 30 during the first four months of 2005. One single file includes all steps of a given procurement transaction. The aggregate amount of procurement concerned could not be determined.

<sup>7</sup> Section 3 of the PPA

activities (mostly donor funded) on behalf of a number of Procuring Organizations (Ministry of Education, Health, Municipalities) through a delegated contract management scheme which has no references in the PPA. Hence the contracts awarded by GAMWORKS are not subject to the provisions of the PPA; however, the contracts awarded to GAMWORKS by these Procuring Organizations are subject to the PPA.

19. The PPA has no relevant provision for any procurement activities to be decentralized at the beneficiary community level under Community Driven Development (CDD) programs, since the lowest levels to carry out procurement activities are the six local government bodies, and the procedure of ex ante review by GPPA would create delays and undermine ownership by communities. Consequently CDD activities would only be feasible if the PPA were amended to allow community organizations to carry out procurement activities in a decentralized manner, or if CDD projects were to be implemented under a private sector structure with a status similar to GAMWORKS.

20. The PPA addresses (under its Section 47) in broad terms (hence enabling) the procurement of privately financed infrastructure (as public private partnerships), and provides for Regulations to be issued to set out specific procedures for procurement carried out on the basis of private financing.

Recommendations	
LRF 1	Clarify the exercising of conflicting functions by GPPA, and monitor whether the low level threshold for ex ante review is viable when procuring organizations come to comply with the PPA
LRF 2	Review the domestic preference and small enterprises preference schemes in the Regulations, Instructions and standard documents for relevance, consistency and to prevent misuse by procuring organizations
LRF 3	When CDD operations are considered, the PPA will need revision or a structure similar to GAMWORKS will need to be created to enable their implementation without undue procedural delays

### III INSTITUTIONAL CAPACITY

#### *The Gambia Public Procurement Authority (GPPA)*

21. GPPA is a key institution created under the Public Procurement Act. It is defined by the PPA as a “body corporate with perpetual succession and a common seal”, with a seven-member Board or an autonomous agency of the Government under the supervision of the Cabinet. The functions of GPPA are to (i) regulate and monitor procurement, (ii) develop in consultation with concerned professionals and official bodies, standardized and unified procurement regulations, instructions and bidding documents binding on all procuring organizations, (iii) promote the development of a professional procurement workforce through professional training and development of relevant government policies on personnel (positions, career paths, and performance incentives), (iv) monitor compliance of procuring

organization with procurement legislation, and refer any violations to the Auditor General, (v) provide administrative review of bid protests, (vi) carry out relevant studies and serve as the contact point for consultations and discussions with donors, and the Gambia Chamber of Commerce and other private sector bodies on public procurement issues, and (vi) prepare for the Ministry of Finance and subsequently, the National Assembly an annual report on its activities.

22. GPPA has a small staff of (currently) six professionals who are well trained and have a good experience of public procurement and management (Director, Manager for Compliance and Practice, Manager for Finance and Administration, a Training Coordinator and two other officers for compliance and training respectively).

***The Procuring Organizations***

23. The procuring organizations are mandated under the PPA to set up a Contract Committee (CC) supported by a specialized procurement unit established in-house or jointly shared with another procuring organization. The CC has authority to make contract awards (in principle solely though, as this is subject to the prior approval of GPPA above the specified threshold and for single source contracting, and the approval from Cabinet above certain thresholds are indicated in Para 4.1(e) below). Currently, only a few procuring organizations (some public enterprises and ministries with Bank-funded projects) have adequate staff for their procurement unit. Recruitments are being considered as discussed in Para. 3.4-5.

***Integration of Procurement with Budgeting***

24. Although the PPA makes it an obligation for all procuring organizations to plan their procurement activities based on budget allocations, procurement planning is still generally very deficient in both ministries and a number of public enterprises. Ministries have little capacity to plan their procurement, and also little incentive to do so as budget allocations are confirmed on a quarterly basis, and released on a monthly basis, and often for amounts below the budget allowances. As a result and for convenience, ministries carry out small value purchases on an ad hoc basis, while at the same time evading the procedures applicable if the orders for similar items were consolidated under an annual contract or framework agreement. Payment delays are commonly reported, reflecting a chronic lack of budget funds to pay for ongoing commitments.

Recommendations	
IC 1	GPPA to develop a simple procurement planning format for Ministries and other procuring organizations
IC 2	GPPA to provide (possibly on-the-job) training to ministries for procurement planning, beginning with the largest spenders of public funds

***GPPA’s Challenges***

25. As the key institution spearheading the implementation of the public procurement system, GPPA has a number of (all critical) challenges to meet as listed below:

1. The overarching objective is clearly to obtain full compliance of procuring organizations with PPA and Regulations. This will require on the part of GPPA a subtle mix of (a) controlling activities, (b) actively seeking the participation of

procuring organizations in contributing to systems improvement and possible simplifications, and (c) sensitization/training efforts. This cannot be achieved without strong political support from the highest levels of Government. The Secretary of State for Finance has requested these actions from GPPA, clearly showing her support. In addition GPPA must issue standard procurement (tender) documents which are user friendly and fully consistent with the legislation.

Recommendations	
IC 3	GPPA should organize consultation with Procuring Organizations in a constructive manner to collect their views on desired procedural simplification and needs for training, and get them to further buy in the reformed system
IC 4	GPPA should resume sensitizing/training activities
IC 5	GPPA should revise (a) standard bidding documents, in particular taking into account comments from the Bank on possible simplification/streamlining, and using whenever relevant GAMWORKS' standard documents as a reference, and (b) reporting forms and reporting requirements to make them as simple and user friendly as possible

2. GPPA must be able to reconcile its policy, monitoring, inspection and administrative review functions with its prior review function. The two sets of duties involve a clear risk of conflict of interest. As it may be difficult at this time to segregate these duties by assigning them to separate bodies, given the capacity constraints, it is then necessary to manage the dual functions within GPPA. This may be achieved through assigning different staff of GPPA to carry out the two sets of functions with the maximum amount of independence, while aiming at increasing ex ante review threshold based on the assessment of procuring organizations' capacity. In the longer term, the ex ante function could be virtually phased out for the well performing procuring organizations<sup>8</sup>.

Recommendations	
IC 6	GPPA should in consultation with Auditor General define how dual and potentially conflicting functions may be exercised as best as possible, in a transparent, fair and rigorous manner
IC 7	GPPA should monitor its review threshold in light of the developing capacity of Procuring Organizations, undertake with them a risk analysis, and increase the review threshold for those who acquired the needed capacity.

3. Ensuring financial sustainability of GPPA for 2006 and beyond is also most critical, as the alternative would be to lose the newly created regulatory and monitoring capacity, and the procurement system would lack its integrity and strategic vision as well. Furthermore, GPPA will need more staff (the need for six additional professionals is being formulated by GPPA, which appears quite reasonable). In order to meet its financing requirements, GPPA must be able to secure the required budget

<sup>8</sup> At this time, GPPA is not confident that the threshold may be increased, in the absence of well established procurement planning and capacity to conduct procurement in compliance with the PPA. The ex ante reviews enable GPPA to amend procurement documents and avert problems beforehand.

from Government, with possible contributions from the donor community, which are however more likely to materialize in the medium term rather than the short term, especially if/when budget support assistance is under consideration.

Recommendations	
IC 8	GPPA should prepare a staffing plan based on needs analysis, and prepare/submit budget request based on such analysis
IC 9	In due time, GPPA should organize in coordination with DoSFEA a campaign of sensitization of development partners, to inform them on the achievements of the reform, and build up their support

4. In order to be itself in compliance with the legislation, GPPA needs to promptly improve its capacity to collect procurement data, record and monitor these data. GPPA is obligated to prepare annual reports to DoSFEA/National Assembly, and also needs such data to be able to monitor compliance by Procuring Organizations.<sup>9</sup>

Recommendations	
IC 10	GPPA to prepare a first (overdue) annual report, using the information available in GPPA's records, and the data collected from Procuring Organizations

5. The lack of capacity in the procuring organizations to carry out procurement activities in a professional manner must be addressed rapidly or most of them will not be able to comply with the PPA. It is therefore most urgent to finalize and enforce the Scheme of Service of a Procurement Cadre – already well advanced-, and to recruit the positions defined in each procuring organization<sup>10</sup>. GPPA should actively assist in the recruitment process.

Recommendations	
IC 11	GPPA/Personnel Management Office/Public Service Commission should promptly finalize the Scheme of Service
IC 12	Public Service Commission should promptly undertake recruitments of procurement staff, with assistance from GPPA

6. GPPA must develop and deliver a comprehensive training program for all players in Public Procurement. The needs are extremely diverse, but they must be prioritized. For example, for Procurement staff training should focus on periodic reporting, proper use of documentation for procurement of goods, works, services; for Contract Committees, training should focus on procurement planning, proper use of evaluation criteria, qualification requirements, debriefing requirements, etc.; for private sector, training should focus on making them responsive bidders, as well as effective players

<sup>9</sup> It is currently not possible to determine the aggregate volume of public procurement and/or number and amount of contracts in The Gambia.

<sup>10</sup> The Gambia is in advance discussions with the International Monetary Fund and the Bank to reduce the staff numbers in Government; so, if an agreement is found recruitments can only be envisaged for a new position only if a former one is canceled. GPPA and PMO have identified five procuring organizations (Departments of Health, Education, Agriculture, Works and Finance and Economic Affairs) which are the largest spenders (besides a few public enterprises) to receive a total of ten new positions of Procurement Officers/clerks. These positions have been approved for 2005. SoS Finance has instructed that all Procuring Organizations should be staffed in accordance with their needs by 2006.

contributing to the proper enforcement of the PPA requirements. The training program, which was started in 2003 and then temporarily suspended pending recruitment of procurement personnel, should be resumed urgently as the demand from users is strong. GPPA has a database of close to 20 trainers (from government, public and private sector) who have already undergone a Training-of-Trainers program given by ITC.

Recommendations	
IC 13	GPPA should prepare a priority training program, including training modules which may be based on the modules received from ITC
IC 14	GPPA with Management Development Institute (MDI) should organize and deliver the priority training program without further delay.

7. Complaints from users at various levels were formulated on the suppliers' registration requirements. On the one hand, users would like the registration system to guarantee that the suppliers/contractors have the required qualifications (technical and financial) for the proposed procurement<sup>11</sup>. On the other hand, users urged GPPA to lighten, or even exempt from registration requirements small requirements (e.g. car repairs, small over-the-counter purchases, occasional purchases of second hand equipment by municipal councils). These requests should be reviewed by GPPA and a reasonable compromise may be found.

Recommendations	
IC 15	GPPA should review suppliers' registrations requirements with a view to responding to users' demands for simplifications/exemptions, and increased scrutiny for selected items.
IC 16	GPPA should include relevant and simple (sample) qualification criteria in standard bidding documents for works contracts (similar to those used by GAMWORKS) rather than developing a contractor classification system which would require disproportionately heavy development and maintenance efforts

8. In order to achieve the desired level of transparency in public procurement, GPPA should put in place a free access website for bid adverts and contract awards publication. The same website could also serve as a library to be created by GPPA for sample technical specifications/Terms of Reference for commonly purchased equipment, furniture and services.

<sup>11</sup> It would be excessively demanding on GPPA if it had to administer a comprehensive system of registration cum qualification of suppliers. However, partial solutions for certain types of supplies (computers, generators, vehicles, engineering consultants, etc...) may be feasible whereby registered suppliers would have to demonstrate that they have adequate facilities and/or expertise to service and maintain the equipment which they claim to supply and/or carry out professional engineering services.

Recommendations	
IC 17	GPPA should actively pursue the recruitment of a consultant to design/create a website with the required interactive functions, and have the portal available
IC 18	Once the website is in operation, GPPA should prepare regulation mandating (free access) bid adverts and contract awards publication on its website
IC 19	GPPA should initiate the collection of sample technical specifications and Terms of Reference for commonly purchased equipment, furniture and services, to be made available for procuring organizations on its website

## IV PROCUREMENT OPERATIONS AND MARKET PERFORMANCE

### *Efficiency of Procurement Operations*

26. GPPA, major public enterprises and externally funded projects have procurement officers who are expected to be capable of supervising and/or carrying out procurement activities in a professional manner, whereas most Ministries and local governments do not have qualified procurement staff, and encounter serious difficulties with procurement activities. In the latter, procurement is still carried out by Accounting Officers who have had little training to do so.

27. The lack of adequate procurement planning results not only in hastily processed procurement packages, but also most likely in a large amount of resources spent through non-economical purchases below the GPPA threshold due to extensive fractioning.

28. For procurement reviewed by GPPA, the use of open competitive bidding is being actively promoted by GPPA which turns down requests for approval of direct contracting when these have no clear justification.

29. However, direct contracting and/or use of unadvertised procedures not reviewed by GPPA in excess of the threshold is not uncommon<sup>12</sup>. This is done in a non-transparent manner, most likely in violation of the PPA which stipulates that open competitive bidding is the preferred method, and restricted bidding, direct contracting and other less competitive methods constitute exceptions which needs to be justified in the relevant records of proceeding. Public enterprises have been used to carry out procurement in house without much supervision, and they often had recourse to direct contracting and did not do much planning. Although they have more qualified staff than ministries to handle procurement, it will take some time for them to comply with the new rules.

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<sup>12</sup> The cases of airport extension, Mandena Bar to Soma road, repaving of urban roads, and purchases of petroleum imports have been mentioned to the mission.

30. Although not specified in the PPA nor the implementing regulations, procurement in excess of GMD 12 million (US\$430,000) for ministries and GMD 20 million (US\$715,000) are subject to approval by the Cabinet. As the Cabinet does not meet on a frequent nor regular basis, this causes delays in addition to being conducive to political interference.

31. Other donors interviewed by the Bank mission (DFID, EU, UNDP) have had little experience of the current public procurement environment in The Gambia, as their current operations are managed outside or at the margin of the public procurement system (procurement is carried out in accordance with EU Directives for DFID, with the European Development Fund procedures for EU funded operations, and by IAPSO for UNDP operations). Some donors are cautious about using the public procurement system based on past experience, but all express hope at the prospect that the reformed system should bring in major improvements. All donors expressed interest in contributing to the current review and being informed of its outcome, as they would have to rely on the public procurement system in the future if budget support was to be considered.

### ***Procurement Cycle Management***

32. The management of procurement cycle by executing agencies has been found to be seriously lacking efficiency in Bank-financed projects mainly for large contracts. Evaluation of bids and award of such contracts has often been delayed due to the following reasons: insufficient transparency, insufficient qualification and experience of the evaluation committee members, delayed clearances at higher levels of Government (The Cabinet), and inadequate follow-up<sup>13</sup>.

### ***Procurement Documents and Record Keeping***

33. The availability of standard procurement documents, when the current standard documents are revised and simplified will constitute a major improvement, as otherwise procuring organizations would struggle with a variety of documents and would not have the capacity to use them properly; however, these documents will only be used correctly when procurement units are adequately staffed with trained personnel; moreover, the various forms issued by GPPA are not always understood nor used properly by procuring organizations which in turn blame the system for its complexity.

34. Record keeping for procurement is an obligation of procuring organizations stipulated in details in the PPA. As documented in GPPA's statutory compliance reviews carried out in

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13 The following IDA-financed procurement cases provide practical illustrations of the deficiencies in managing the procurement process:

(i) The contract award for supply of 500 computers for the Third Education Project was delayed by more than one year pending clarifications on the issue of the qualification of the bidders.

(ii) The Cabinet kept the bid evaluation report for the procurement of computers for the HIV/AIDS Project pending for one year without giving reasons even though these equipment were urgently needed to enhance the performance of the implementing agency; it was finally approved when the Bank announced that cancellation of the tender and re-bidding would not be acceptable to the Bank.

(iii) Bids for the supply of biomedical equipments(phase 2) for the Health Project were opened on November 2003, but their evaluation was finalized only in February 2005 even though these equipment were considered critical for health centers under construction and the project will close on June 2005.

(iv) Despite the assistance obtained from a qualified and experienced expert, and proactive supervision by the Bank, the procurement process for the supply and installation of an IFMIS system has taken more than one year for bid preparation and advertisement only.

(v) Contract provisions on receipt and dispute mechanism were not enforced appropriately when a bidder failed to deliver biomedical equipment and the Project Coordinator was removed.



2004, record keeping is very frequently deficient, making it most problematic for GPPA to review and assess other areas for compliance.

### ***Contract Management***

35. Contract Management is done in a professional manner by a few procuring organizations, especially for externally funded projects. Engineering studies and work supervision are then carried out by professional engineers (e.g. Department of Works). The situation is far different and much unsatisfactory for most ministries, which do not have the same degree of professionalism, nor qualified staff in house. In construction activities, engineering studies are often of poor quality, leading to serious problems during the bidding process, and contract execution. Bidders complain about the poor quality and lack of clarity of bidding documents.

36. Delays in payment are reported to be frequent, and constitute the major cause of concern for the business community<sup>14</sup>. For construction projects, it was alleged that budgets are not prepared in a realistic manner. Payment delays also occur for Bank-financed projects, allegedly due to the various approvals required.

### ***Private Sector Participation in Public Procurement***

37. The contracting industry is relatively small, as the Gambia Association of Construction Contractors has a membership of 459, and the Gambia Association of Construction Consultants has a membership of 20. These groups have considerably benefited from and grown under GAMWORKS' programs aimed at small local contractors and consultants over more than one decade. The manufacturing industry is almost non-existent and most equipment and supplies are imported, often through local agents.

38. The public procurement system is in principle open (under the preferred open tendering procedure of the PPA), with no restrictions imposed, except that national participants have to be registered with GPPA. Registration is on a yearly basis. However, a number of purchases and construction contracts are still awarded without following the mandated procedure which means that the system is not as open as it should be. The level of competition for small and medium value construction contracts is said to be satisfactory as well as for vehicles and computers<sup>15</sup>.

39. The private sector representatives met by the Bank Mission unanimously expressed their satisfaction with GPPA's role, and considered it a substantial improvement over the previous Major and Minor Tender Boards system. They praised the ongoing efforts to professionalize public procurement. However, they expressed dissatisfaction with the poor quality of specifications prepared by procuring organizations -- often they are insignificant, or refer to brand names although the Regulations prohibit this practice -- or terms of reference in bidding documents or requests for proposals, the subsequent slow pace of bid evaluation, the frequent delays in payment and the consequent hardship suffered by them. They call on GPPA to create more awareness of all players of the new rules, and help improve on the quality of documents, which would in turn have a positive impact on reducing bid evaluation delays. They also expressed concern about the risk related to the sustainability of GPPA -- "if the staff were eventually to be paid government salaries<sup>16</sup>, usual problems would occur".

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<sup>14</sup> Delays of up to one year are mentioned.

<sup>15</sup> For example: 8-9 bids or more on construction tenders; 4-5 bids from 3-4 agents for vehicles; 5-6 bidders for medical goods, fertilizers, generators.

<sup>16</sup> The ratio of remuneration package of GPPA staff vs civil service at similar seniority is about 2.5.

***Supporting Bank Environment***

40. The private banking system should play a facilitation role in support of public procurement. Banks issue bid and performance securities which should be at a reasonable cost. Banks also extend credits to contractors. It is alleged that contractors find it sometimes difficult and costly to obtain securities (including bid securities) and would rather obtain them from insurance companies, with whom they have more flexibility to negotiate the fee charged. Suppliers appear to be more satisfied with the bank services<sup>17</sup>.

Recommendations	
	Relevant recommendations formulated under the previous chapter are not repeated here
POP 1	Authorities should consider the negative implications of the requirement for Cabinet review above certain thresholds, and make relevant decision in accordance with PPA
POP 2	Bid evaluation should be conducted by qualified and experienced personnel and in case of lack of capacity, independent external experts including consultants should be called for assistance
POP 3	Contract award decision and/or approval of such a decision by the authorities must be based only on the objective determination of the lowest evaluated bid and the qualification of the bidder having submitted this bid to execute the contract, as per the criteria specified in the Bidding Document, excluding other considerations
POP 4	Enforce the obligation of procuring organizations to prepare annual procurement plans, and publish them using the GPPA web site. Procuring organizations should follow up on the approved procurement plan and all procurement activities in the pipeline to prevent delays.
POP 5	Mandate recourse to professional expertise for design and supervision of construction activities

**V INTEGRITY OF THE PUBLIC PROCUREMENT SYSTEM*****Controls and Audits***

41. The functions of control and external audit of public procurement are de facto assigned to GPPA under the supervision of the Auditor General's Office (AGO), as the latter does not have any in house capacity to audit procurement. Internal audit is non-existent in procuring organizations, and cannot be realistically envisaged in the short/medium term in the current environment of scarce technical capacity. GPPA is mandated under the PPA to inspect procurement activities carried out by procuring organizations (in addition to conducting ex ante reviews as explained earlier) and report any violations to the AGO. So far GPPA has conducted inspections of several procuring organizations in 2004 (22 inspection reports of the same number of organizations are in GPPA's files); only a handful of agencies came close to

<sup>17</sup> Suppliers indicated the following cost of securities: 1 percent of cover requested for a 90-day guarantee, 2 percent of cover requested for one year guarantee.

compliance, whereas most of the others were not compliant especially in the area of periodic reporting to GPPA, while some had no decent records at all to review. Follow-up actions have been limited to GPPA issuing the report to the organization inspected with recommendations for better compliance. GPPA estimated that this inception period should be judged as a training exercise, and did not report non compliance to the AGO at this time.

***Appeals Mechanism***

42. The PPA provides for the right of bidders to seek review of decisions made by procurement organizations. The first step of the procedure is for an aggrieved bidder to apply for review by the head of the procuring organization prior to the entry into force of a contract; the second step (or in the first place, if the contract has entered into force) is to file a complaint with GPPA which is expected to make a decision (including overturning a decision wrongly made by the procuring organization) within specified time limits. However, the selection of a method of procurement may not be subject of a complaint by a (potential) bidder. So far GPPA reports only two or three cases of appeals by bidders, including for procedures which had not been subjected to ex ante review by GPPA in violation of the PPA, although bidders often complaint verbally to GPPA. The fact that GPPA is involved in ex ante approval of procurement decisions is clearly not compatible with the proper functioning of this appeal mechanism which might lack credibility. Moreover, bidders are said to fear being victimized if they complained formally.

***Procedure for Debarment of Bidders and Suppliers***

43. The PPA provides for the right of GPPA to exclude a potential bidder/supplier from participation in public procurement for a minimum period of one year and a maximum period of five years, after due process. The reasons for such action may be inter alia: refusal by a successful bidder to sign a contract or furnish a performance security, fraud, misrepresentation, collusion, serious breach of contractual obligations, conviction of a criminal offence relating to a contract or subcontract, and conviction for an “economic crime”. So far no such action has been taken or considered by GPPA.

***Ethics and Anti-Corruption***

44. The PPA provides for the obligation of decent conduct and integrity of public officials and bidders. It further stipulates that violations should be referred to the relevant authorities for applicable administrative, civil and criminal sanctions. The Regulations further expand on the PPA provision, including on situations of conflict of interest. There are no reports on any case in which this provision has been invoked so far, nor is there a clear track record of anticorruption actions by Government. In the absence of compliance with the PPA and Regulations, it is clear that the opportunities for corrupt and unethical behaviors would likely perpetuate.

Recommendations	
INT 1	GPPA should continue reviews of procurement activities of procuring organizations, and report non compliance to AGO and relevant authorities
INT 2	GPPA should disseminate information of the appeal mechanism to the potential bidders which would contribute to making them more effective players in enforcing the new procurement system

Recommendations	
INT 3	GPPA should in consultation with Auditor General examine whether its role in control of procurement activities and debarment of bidders is compatible with its current role in reviewing appeals filed by bidders, and determine how best the latter function could be fulfilled
INT 4	GPPA should disseminate the integrity provisions in the procurement law in the sensitization and training programs, in the first place to raise awareness

## **VI PROPOSED ACTION PLAN**

45. The proposed action plan (Attachment 1) will be discussed with the government authorities, donors intervening in The Gambia and other stakeholders during a workshop which is scheduled at the end of October 2005. The main outcomes of the proposed action plan would be (i) the better enforcement of and increased compliance of procuring organizations with the Public Procurement Law and related tools including standard bidding documents; (ii) the clarification of GPPA's mission, which should primarily focus on policy formulation, monitoring and evaluation, and capacity building, and (iii) a more adequate supply of trained procurement staff.

## **VII FOLLOW UP MECHANISM AND ASSESSMENT OF THE SYSTEM**

### *Putting in place a steering committee*

46. As soon as the action plan is approved, a steering committee comprising national authorities, private sector and civil society representatives should be put in place to follow up on the implementation of the proposed reforms and actions. This committee will report to the DoSEFA and will draft periodical reports (at least on a quarterly basis ) communicated to the donors. The World Bank experts will conduct supervision missions so as to review the progress done

### *Assessment of the procurement performance in the country*

47. To periodically evaluate the performance of procuring organizations it is recommended to set up a few indicators well suited to the context of the country; a list of indicators developed by the Bank may be proposed for discussions during the workshop. GPPA will be invited to select performance indicators to assess the procurement system so as to identify potential deficiencies and propose adequate solutions; the availability and reliability of required data should be a key criterion in the selection of the indicators.

## **ANNEXES**

1. Proposed action plan
2. List of people met
3. Public Procurement Act
4. Implementing Regulations

**Annex 1: Proposed Action Plan**

<b>Activity</b>	<b>Responsible</b>	<b>Indicator</b>	<b>Deadline</b>	<b>Comments</b>
<b>0. Procurement reform follow up</b>				
Approval of the action plan	Cabinet	The action plan is discussed and the agreement is approved	October 31,2005	
Put in place a steering committee and nominate the members to follow up the reform	DoSFEA	The steering committee organization defined , the members are identified and the appropriate text signed	December 31,2005	
<b>1. Legal and Regulatory Framework</b>				
1.1 Revision of Public Procurement Act to remove conflicting functions of GPPA (ex ante approval, ex post review and appeal responsibility) and to enable CDD operations	DoSFEA, GPPA, Auditor General	PPA revised	June 30, 2006	
1.2 Revision of Regulations, Instructions and standard documents to clarify domestic preference and small enterprises preference	DoSFEA, GPPA	Regulations, Instructions and standard documents revised	March 31, 2006	
1.3 Assessment of the procurement performance	DoSFEA, GPPA	Appropriate performance indicators are defined and approved  First assessment of the performance of the procurement system is conducted	March 31,2006  December 31,2006	

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Activity	Responsible	Indicator	Deadline	Comments
<b>2. Institutional Capacity</b>				
2.1 Improve Procurement Planning	GPPA and procuring organizations	<ul style="list-style-type: none"> <li>- Simpler procurement plan format drafted, and approved</li> <li>- Letter for instruction and guidance is drafted and sent to procuring organizations</li> <li>Training (including on-the-job) of procuring organizations planned and conducted</li> <li>- All major procuring organizations prepare and follow Procurement Plan</li> </ul>	<ul style="list-style-type: none"> <li>March 31, 2006</li> <li>March 31, 2006</li> <li>June 30, 2006</li> <li>October 31, 2006</li> </ul>	
2.2 Establish a Training Plan and deliver training (including integrity provisions)	GPPA, Procuring Organizations, MDI	<ul style="list-style-type: none"> <li>- Training plan, including modules, designed and scheduled</li> <li>- Training of Procuring Organizations started</li> </ul>	<ul style="list-style-type: none"> <li>March 31, 2006</li> <li>June 1, 2006</li> </ul>	Support by a consultant needed
2.3 Simplify standard documents and reporting forms	GPPA (along with Proc. Organizations)	Standard documents and reporting forms simplified	June 30, 2006	Use GAMEWORKS models, including qualification criteria

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Activity	Responsible	Indicator	Deadline	Comments
2.5 Complete Staffing Plan and Scheme of Service for Procurement Officers/Clerks	Cabinet  GPPA, PMO, PSC, DoSFEA	<ul style="list-style-type: none"> <li>- A staffing Plan and Scheme of Service is designed and approved</li> <li>- Procurement officers/clerks recruited and trained in 5 priority procuring organizations</li> <li>- Procurement officers/clerks recruited and trained in all major procuring organizations</li> </ul>	<p>December 31, 2005</p> <p>December 31, 2005</p> <p>June 30, 2005</p>	
2.6 Sensitize development partners about the reform	GPPA, DoSFEA	Additional support from development partners for the reform	January 31, 2006	
2.7 Submit Annual report to Auditor General and DoSFEA	GPAA	First Report submitted, based on information already on GPAA's files	December 31, 2005	
2.8 Revise of suppliers registrations requirements	GPPA	Registration requirements more flexible for small assignments by informal suppliers and more demanding for formal sector suppliers	March 31, 2006	



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Activity	Responsible	Indicator	Deadline	Comments
2.10 Collect sample technical specifications and Terms of Reference for commonly purchased equipment, furniture and services	GPPA	Technical specifications and Terms of Reference for commonly purchased equipment, furniture and services posted on GPPA website	June 30, 2006	
<b>3. Procurement Procedures and Market Performance</b>				
3.1 Streamline bidding process at (i) evaluation phase by including on the evaluation committees experienced and qualified professionals (consultants as needed) and (ii) contract award phase by considering only evaluation criteria within bidding documents and qualification of supplier in the decision of award.	DoSEFA  GPPA, Procuring Organizations	- A letter of reminder is drafted and sent to line Ministries and contracting agencies  All Evaluation committees composed with qualified personnel  - Contract awarded only on basis of evaluation criteria and qualification of bidders	October 31,2005  December 31,2005  Ongoing	
<b>4. Integrity of the Public Procurement System</b>				
4.1 Disseminate information of the appeal mechanism to the potential bidders	GPPA	Potential bidders aware of appeal possibilities  Appeal mechanism system is put in place and functioning	Ongoing  October 31,2006	

## **Annex 2: List of people met**

### **Department of State for Finance**

Mrs. Magret Keita, Secretary of State  
Abdou Touray, Permanent Secretary

### **The Gambia Public Procurement Authority**

Habib A.O. Jeng, Director General  
Howsoon Semega-Janneh, Manager, Compliance and Practice  
Kebba Am. Sallah, Training Officer  
Bunja Dibba, Manager, Finance and Administration

### **Capacity Building and Economic Management Project**

Mrs. Fatou Leigh, Project Manager, Project Coordination Unit  
Alieu Bittaye, Deputy Project Manager  
Momodou Cham, Procurement Specialist

### **Office of the Auditor General**

Boubacarr Sankara, Auditor General  
Mrs. Hanna Roberts

### **Office of the Accountant General**

Alieu Jobe, Accountant General

### **Department of State for Education (DOSE)**

Baboucarr Boye, Permanent Secretary  
Mrs. Sabel Jallow, Accountant  
Lamin Jallow, Acting Procurement Officer Project Coordination Unit/DOSE

### **Department of State for Health (DOSH) and National AIDS Secretariat**

Alh. Omar Toal, Deputy Permanent Secretary  
Saihou Ceesay, Director, National AIDS Secretariat (NAS)  
Moses Jenkins, Procurement Specialist, NAS

### **Personnel Management Office**

Yusupha Dibba, Permanent Secretary  
Dawda Fadera, Deputy Permanent Secretary  
Noah Touray, Deputy Permanent Secretary  
Lamin Jawara, Principal Personnel Officer  
Mrs. Fatou Kinneh Joba, Assistant Accountant  
Sarjo Jarjou, Sr. Personnel Officer

**Public Service Commission**

John Belford, Secretariat

**Gambia Divestiture Agency**

Baboucarr Koma, Principal Financial Analyst

**Public Utilities Regulation Agency**

Katim Touray, Director Administration and Human Resources

Alagi B. Gaye, Director Economics and Finance

**GAMWORKS**

Ebrima Cham, Director General

Baboucar Dibba, Project Manager

Sarjo Jah, AG. FAD

**Gambia Port Authority**

Capt. A.R. Bah, Deputy Managing Director

Abdoulie Tamedou, Director of Finance

Nicholas Blell, Director of Technical Services

Pierre B. Gomez, Estates and Civil Engineering Manager

Ebai Ebrima Gaye, Procurement Manager

**Kanifing Municipal Council**

Ebrima Jobateh, Ag CEO

Abass Kinteh, Ag Finance Director

Abdoulie Janneh, Procurement Officer

**Gambia Chamber of Commerce and Industry**

Abdoulie Touray, President

Yitbarek Tsegie, UNV

Mrs. Beatrice Allen, Director of Trade and Investment Promotion

**Gambia Association of Construction Contractors (GACCON)**

Momodou Sey, President

Gabriel Leonard Allen, Secretary General

**Gambia Association of Construction Consultants (GACSUL)**

Makafang Bayo, Secretary General

**Private Sector Representatives**

G. Mady, Shyben A. Mady & Sons

Muhammed Jah, QuantumNet Co. Ltd  
Ousman Kebbeh, QuantumNet Co. Ltd  
Momodou M. Bah, QuantumNet Co. Ltd

Aj. Penda Sankareh, Managing Consultant, Deloitte and Touche

**DFID**

Robert Watt, Head of DFID Office in The Gambia

**European Commission**

Thierry Matisse, Representative in Banjul Office

**UNDP**

John Kakonge, Resident Representative  
Abolou Kolley, National Economist

**Annex 3: Public Procurement Act**

**Annex 4: Implementing Regulations**