

**2ND GENERATION PROCUREMENT REFORM IN THE CONTEXT OF
LEGISLATIVE AND REGULATORY FRAMEWORK OF THE PUBLIC
PROCUREMENT SYSTEM IN THE GAMBIA**

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* *2nd Generation Procurement Reform in the Context of Legislative and r
egulatory Framework of the Public Procurement System in The Gambia by
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PART A: GENERAL COUNTRY BACKGROUND INFORMATION

1. COUNTRY CONTEXT OR SETTING

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\$350 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 1.5 million.

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.

1.1 Location, Size, Geography and Demography

1.1.1 Location and Size

The Gambia lies between 13.79° and 16.82° West longitude and entirely within 13° North latitude. It has an estimated area of 11,300 km² and is bounded by Senegal to the North, South and East and by the Atlantic Ocean to the West. The Country is widest at its westerly end towards the ocean, narrowing to about half this width at its eastern tip, 480 km inland. The country is bisected by the River Gambia that originates from the Futa Djallon highlands, forming the

2000

North and South banks. Banjul, the administrative center and capital, is situated on an island on the southern bank at the mouth of the river.

1.1.2 Climate (Temperature and Rainfall)

The Gambia is one of the Sahelian countries. The country has a Sudano-Sahelian type of climate characterised by a **long dry season from October to early June** and a **short rainy season from mid-June to early October**. Annual average rainfall ranges from 850mm to 1,200 mm and average temperatures range from 18 to 33°C. Relative humidity is around 68 % along the coast and 41% inland during the dry season and generally over 70% throughout the country during the **wet season**. In The Gambia, there has been decreasing rainfall and increasing temperatures from the mid-forties to date (**Figure 1**).

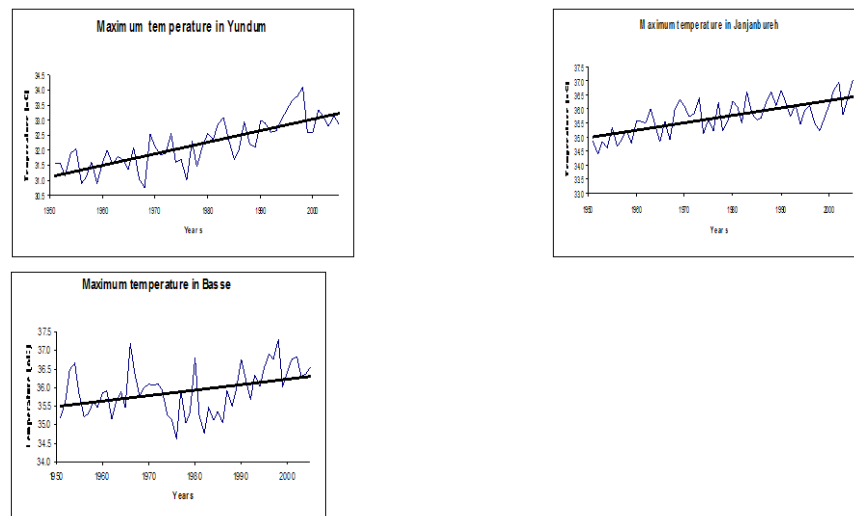
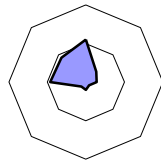


Figure 1: Trend of maximum temperature in western (Yundum), central (Janjangbureh) and eastern (Basse) Gambia (Source: Climate Section, Department of Water Resources, 2007)

In the dry season, mainly northeasterly winds dominate the flow, resulting in general cloudless skies and presence of dust particles in the air. During the wet season, south westerly monsoon winds combined with heat on the continent give rise to the formation of thundery activities, usually accompanied by strong winds, heavy downpours of rain and severe lightning flashes (Figure 2).

Dry Season



Wet Season

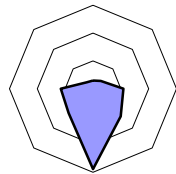


Figure 2: Average Wind Flow Pattern

The rainfall amount has been decreasing progressively from the mid-forties at a deficit of approximately 30% (Figures 3a and 3b). The length of the rainy season has been decreasing while surface temperatures are increasing making the atmosphere dry.

2002

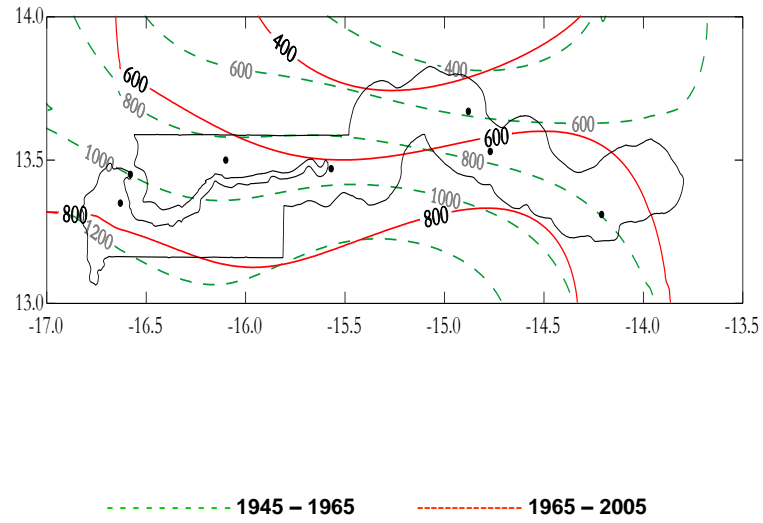


Figure 3a: Observed Rainfall Trend (Source: Climate Section, Department of Water Resources, 2007)

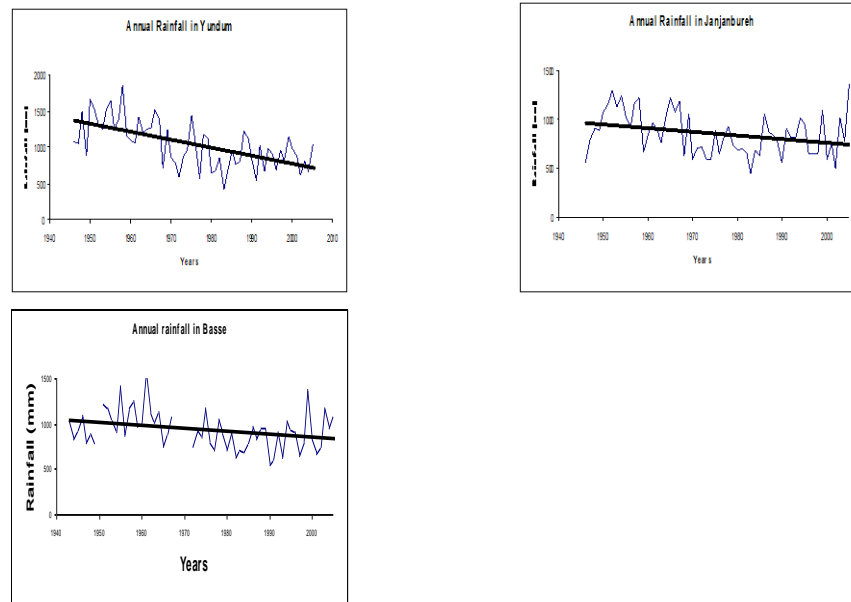


Figure 3b: Trend of Annual Rainfall in Western (Yundum), Central (Janjangbureh) and Eastern (Basse) Gambia (Source: Climate Section, Department of Water Resources, 2007)

1.1.3 Vegetation

Like the rest of the Sahelian countries, The Gambia's vegetation is dominated by Savannah woodland. The Guinea Savannah, characterized by broad-leafed trees, is dominant in the West of the country. The Guinea Savannah thins into the Sudan Savannah, characterized by shrubs and grasslands, moving east of the country. Gallery forests and mangroves dominate the coastline vegetation, with the latter extending inland to the inland limit of the estuary.

2004

1.1.4 Drainage

The natural drainage in The Gambia is highly dependent on the River Gambia. As the River enters the Gambian territory, 680 kilometers from its source in the Fouta Djallon Highlands in Guinea, it flows generally along an East-West axis, emptying west in the Atlantic Ocean. Drainage density is quite low reflecting the quasi-linear nature of the River Gambia system, with permeable soils and low topography. **The major tributaries of the Gambia include the Sandougou, Nianija, Sofaniama, Bao and the Bintang bolongs.** Similar to the main river, a large portion of these catchments also overlie within neighboring Senegal territory. Runoff generated from these catchments is however insignificant due to low gradients and permeable soils. Imperfectly drained depressions and inactive streams and drainage channels further inhibit the runoff process.

1.1.5 Geology

The Gambia occupies the south-central parts of a regional sedimentary basin that extends along the coast of West Africa from Mauritania to Guinea (Conakry) usually known as the Senegal Basin or now the Mauritania-Senegal-The Gambia-Guinea Bissau-Conakry basin (MSGBC).

The surface geology of The Gambia is entirely Upper Tertiary and Quaternary. The Upper Tertiary consists of mainly poorly consolidated sandstones, argillaceous (clayey) sandstone and clay stone. The sandstones are white to pink or red in colour and are composed of quartz grains with very minor amount of stable heavy minerals, such as ilmenite, zircon, tourmaline, staurolite and rutile. The clay stones are commonly kaolinitic which are found within the stratigraphic sequence sometimes forming thick beds such as at Kundang in the Upper River Region.

Coastal Beach Complex is another important geological formation in The Gambia. This complex includes both the modern beaches (the surf zone) and older raised beaches that lie behind the surf zone along the Atlantic Coast. Both beaches are predominantly fine to medium-grained sands with significant amount of heavy minerals (ilmenite, rutile, and zircon). The ancient or older beaches are usually covered by vegetation such as those at the Kartong sand mines.

1.1.6 Soils

Four basic elements make up the landscape of The Gambia. Flat areas, comprising the floodplain, represent the recent past in which alluvial material was deposited. This landscape lies adjacent to the main river and its major tributaries. Narrow bands of similar alluvium occur in the depressions associated with the minor tributaries and subjected to water logging.

Lying above the alluvial flats occur the colluvial slopes, being very gently sloping areas covered by the colluvial deposits of eroded Tertiary plateau. The remainder of the terrain comprises a Tertiary plateau in which two different levels may be distinguished. The upper plateau level is the dominant element of the landscape in the Eastern sector of the country. This sector occurs only rarely West of Farafenni on the North bank and Bwiam on the South bank. The lower plateau level is exposed by dissection and erosion of the higher plateau and forms the basic landscape of most of the North Bank and Western Regions. Further East, this segment occurs in depressions associated with tributary streams.

1.1.7 Demography

Between the 1983 and 1993 censuses, population growth rate was 4.2 percent per annum. Natural growth was 2.9 percent, and inward

2006

migration, resulting from the influx of refugees, at 1.3 percent. The 2003 population census showed that the population is now 1.3million with a growth rate of about 2.8% per annum. Over the years the population of The Gambia has been gradually increasing (Table 1 & Figure 5). The population is expected to double by 2040.

Sixty-three percent of the population is living in the Greater Banjul Area (GBA) as opposed to 40% in 1993. This is attributed to a high internal migration into Western Region and Greater Banjul Area.

About 45 percent of the population is less than 15 years old, increasing the burden of providing adequate health and education services as well as gainful employment opportunities. The incidence of malnutrition is quite high with children being the most affected group. Infant mortality rate is estimated at 84 per thousand live births while life expectancy at birth is 56 years for men and 59years for women (GBoS, 2003) compared to 55 years for the average for Africa. Malaria and HIV remain the biggest public health problems.

Table 1: Population Growth in The Gambia Over the Years

Year	Both Sexes	Population		Growth Rate (% per annum)
		Male	Female	
1901	90,404	-	-	-
1911	146,101	73,793	72,309	4.9
1921	210,611	111,020	99,591	3.7
1931	199,520	104,894	94,626	-0.5
1951	279,686	-	-	1.7
1963	315,486	160,849	154,637	1.0
1973	493,499	250,386	243,113	4.6
1983	687,817	342,134	345,683	3.4
1993	1,038,145	519,950	518,195	4.2

2ND GENERATION PROCUREMENT REFORM

2007

2003 1,360,681 670,841 689,840 2.8

Source: Gambia Bureau of Statistics

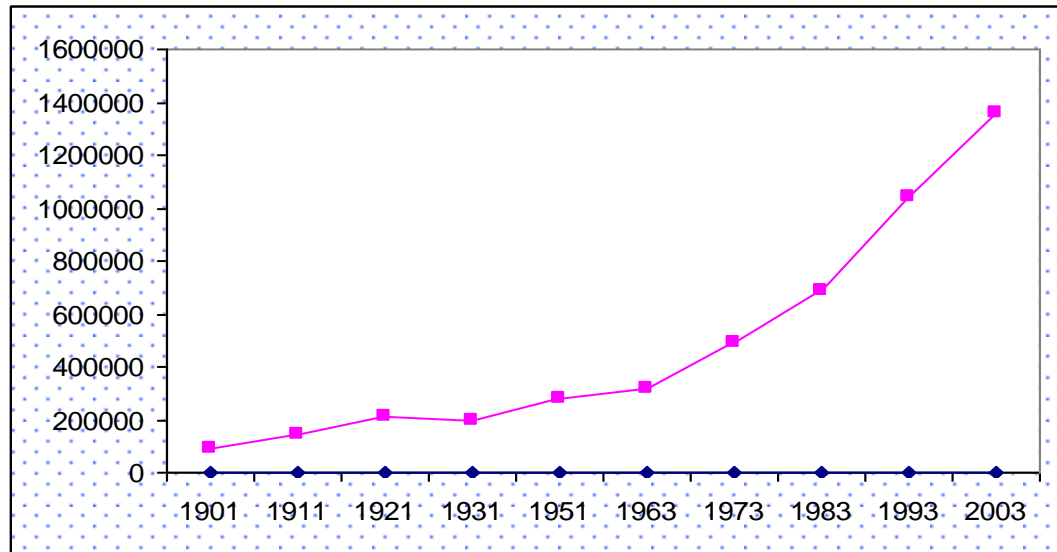


Figure 4: Population Growth of The Gambia Over the Years: 1901 - 2003

1.2 Development Paradigm and Economy

Over the years, The Gambia has witnessed a series of development paradigms. The most important of them have been the Economic Recovery Programme, 1985 (ERP, 1985), the Programme for Sustainable Development, 1990 (PSD, 1990), Strategy for Poverty Alleviation (SPA), replaced by the Poverty Reduction Strategy Paper (PRSP), the Millennium Development Goals (MDGs) and Vision 2020 The Gambia Incorporated.

2008

National development has a beginning but once started it becomes a continuum with no end in sight. The direction that this continuum takes is dictated by internal and external factors working singly but in many cases in tandem. These factors constitute a development paradigm and the development stages are known as paradigm shifts.

The national development paradigm shifts that the country has gone through over the years are discussed below in descending order beginning with where the GOTG wants to lead the country's development, Vision 2020 The Gambia Incorporated and ending with the Economic Recovery Programme, 1985 (ERP, 1985).

1.2.1 Vision 2020 The Gambia Incorporated

The Government of The Gambia adopted the Vision 2020 The Gambia Incorporated in May 1996. The mission statement of Vision 2020 is:

“To transform The Gambia into a financial centre, a tourist paradise, a trading, export-oriented agricultural and manufacturing nation, thriving on free market policies and a vibrant private sector, sustained by a well educated, trained, skilled, healthy, self-reliant, and enterprising population, and guaranteeing a well-balanced ecosystem and a decent standard of living for one and all, under a system of government based on the consent of the citizenry”.

The Vision 2020's important medium to long-term objectives of the agriculture and the natural resources sector are to:

- increase ANR output of both domestic and export produce in order to ensure food security and generate earnings of foreign exchange to finance other aspects of the development process

- create employment and generate income for the majority of the rural population who are largely dependent on ANR
- diversify the ANR base to facilitate the production of a wider range of food and export produce in order to reduce the fluctuations and uncertainties associated with rural household incomes and export earnings
- reduce disparities between rural-urban incomes as well as between men and women, curb rural – urban drift and accelerate the pace of development of the rural sector
- provide effective linkages between ANR and other sectors of the economy such that developments in the non-agriculture sectors, particularly manufacturing and tourism, are founded on a firm and diversified ANR base capable of progressively releasing both labour and financial services to other sectors of the economy
- create a sustainable and balanced mix between rain-fed and irrigated agriculture, thus, ensuring an optimal use of natural resources of surface and ground water, animal, aquaculture and crop production as well as between chemical and organic inputs and the use of agricultural by-products

These objectives of the ANR are considered important due to the fact that the ANR sector is the dominant sector in the Gambian economy. The sector employs over 70% of the total workforce, contributing on average 22 % of the GDP. Despite these attributes, the sector continues to lag behind other sectors in productivity, and is characterized by an undiversified primary agricultural system, conditioned by a seemingly unbreakable cycle of erratic and

2010

inadequate input supplies, inappropriate technology, low output and productivity growth, low incomes and an acute inability to generate savings for investment. The lack of progress in the development of large scale commercial agriculture at a modern, economically viable scale is attributed to an unsatisfactory land tenure system.

1.2.2 Program for Accelerated Growth and Employment

1.2.3 The Poverty Reduction Strategy (PRSP) and the Millennium Development Goals (MDGs)

The Gambia's medium-term strategy is presented in the Poverty Reduction Strategy Paper (PRSP/SPA II). The second Strategy for Poverty Alleviation (SPA II) is a "home-grown" version of the PRSP, covering the period 2007 to 2011. It is based on five pillars:

- Improving the enabling policy environment to promote growth and poverty reduction in areas such as economic management, including macroeconomic stability, public finance management, public debt management, divestiture, and civil service reforms.
- The second pillar aims at enhancing the capacity and output of the productive sectors of the economy mainly agriculture, fisheries, industry, trade, tourism and infrastructure, with emphasis on productive capacities of the poor and vulnerable populations. The private sector investment particularly addresses constraints to investment in the production of goods and services as these relate to job creation.
- The third pillar aims at improving coverage of the basic social services and social protection needs of the poor and vulnerable. This pillar focuses on publicly provided social services, particularly health and education with special concern on access to these.

- Pillar 4 aims at enhancing governance systems and building the capacity of local communities and civil society organizations (CSOs) to play an active role in economic growth and poverty reduction. This pillar looks at the effective implementation of local governance and decentralization processes. Key issues in this regard are fiscal as well as political decentralization. This pillar is related to pillar 3 on delivery of social services. One added aspect is empowerment of local communities and their involvement in decision-making that affects their lives.
- This fifth pillar is concerned with mainstreaming cross-cutting issues – gender, youths, population, HIV/AIDS, nutrition and environment – into the development process.

The PRSP sets out the poverty reduction strategy and implementation modalities for Vision 2020, which provides the national context for poverty eradication and seeks to transform The Gambia into a dynamic middle-income country.

Bilateral and multilateral development assistance to The Gambia is reflected in a number of agreements: the UN Country Cooperation Framework (CCF), the UN Development Assistance Framework (UNDAF), the World Bank Group Country Assistance Strategy (CAS I, II), EDF, DFID, etc, which have in addition targeted various sectoral programmes.

The PRSP makes explicit reference to the MDGs as the framework for poverty reduction in the long term. The most relevant MDGs to the agricultural and natural resources sector are:

MDG 1: Eradicate Extreme Poverty and Hunger

- The targets are to halve, between 1990 and 2015, the proportion of people whose income is less than a US\$1 a day; halve,

2012

between 1990 and 2015, the proportion of people who suffer from hunger.

MDG 2: Achieve Universal Primary Education

- Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling

MDG 3: Promote gender equality and empower women

- Eliminate gender disparity in primary and secondary education and preferably by 2005 and in all levels of education no later than 2015

MDG 4: Reduce Child Mortality

- Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate

MDG 5: Improve Maternity Health

- Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio

MDG 6: Combat HIV/AIDS, Malaria, and Other Diseases

- Have halted by 2015 and begun to reverse the spread of HIV/AIDS

- Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases

MDG 7: Ensure Environmental Sustainability

- Integrate the principles of sustainable development into the country's policies and programmes and reverse the loss of environmental resources; halve, by 2015, the proportion of people without sustainable access to safe drinking water; have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers.
- Half by 2015 the proportion of people without sustainable access to safe drinking water
- Have achieved by 2020 a significant improvement in the lives of at least 100 million slumdwellers

MDG 8: Develop a Global Partnership for Development

- Develop further an open, rule-based, predictable, non-discriminatory trading and financial system (includes a commitment to good governance, development and poverty reduction – both nationally and internationally).
- Address the special needs of the least developed countries (includes tariff- and quota-free access for exports, enhanced programme of debt relief for and cancellation of official bilateral

2014

debt, and more generous ODA for countries committed to poverty reduction).

- Address the special needs of landlocked countries and small island developing states (through the Programme of Action for Sustainable Development of Small Island Developing States and 22nd General Assembly provisions).
- Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term.
- In cooperation with developing countries, develop and implement strategies for decent and productive work for the youth.
- In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.
- In cooperation with the private sector, make available the benefits of new technologies, especially information and communications technologies.

The Government of The Gambia has made substantial efforts to integrate the MDGs into the current planning process. Budget allocations, particularly from 2003, reflect a growing trend in increasing the percentage of spending for the social sectors. The Public Expenditure Reviews (PERs) of some of these HIPC sectors also devote sufficient attention to the MDGs as part of the HIPC triggers.

The missionaries introduced western education in The Gambia during the nineteenth century, but it was seen by the rural population (which

was, and is still, predominantly Muslim) as a tool for converting their children to Christianity, it was, to a very large extent, resisted (CSD-MFEA, 1995: p7).

For the British colonial government, education was intended as a means of fostering language links between the colonial administration and its subjects. Consequently, only one school, Armitage in CRR, was established in the rural area to prepare the sons of chiefs mainly for leadership. Hence, for a very long time, educational facilities were concentrated in the urban area and as a result, the majority of children in the rural area did not have access to education. In fact, on attainment of independence in February 1965, the colony (the urban area), which comprised approximately **13%** of the total population of the country, had **44%** of the primary schools and **86%** of the secondary schools. This was a trend that continued until the inception of the Education Policy 1988 – 2003 which ushered in an era of expansion of educational opportunities.

The Revised 1988 – 2003 Policy and its successor policy 2004 – 2015 both aim at increasing access to, and improving the quality and relevance of, education. Specifically, the following areas have been accorded priority:

- Increasing access to and equity in Basic Education
- Increasing participation, performance and retention rates for girls
- Improving the quality of teaching and learning
- Strengthening Early Childhood Educational Services
- Increasing access to Adult and Non-Formal Education
- Meeting appropriate learning and life skills for young people.

1.2.4 Programme for Sustainable Development (PSD)

2016

In 1990, the Programme for Sustainable Development was launched in order to deepen the gains and address the socio-economic effects of the economic recovery programme.

In 1998, the government adopted a long-term strategy for accelerated and sustainable development, Vision 2020 The Gambia Incorporated, in order to transform the country into a middle-income nation.

1.2.5 The Economic Recovery Programme (ERP)

Since the mid-1980s, The Gambia has been implementing economic policies that emphasize achieving macroeconomic stability, liberalization and private sector development. The government implemented an ambitious Economic Recovery Programme in 1985 with assistance from the World Bank and IMF, and other multilateral and bilateral development partners with the objectives of:

- reducing government expenditure
- liberalizing trade
- deregulating domestic prices and eliminating subsidies.

These measures also led to a significant retrenchment of civil servants, and a zero growth moratorium was placed on the government machinery staffing situation. With the later high attrition rate of the civil service sector, this zero growth on the civil service had a significant adverse effect on government's absorptive capacity and the attendant loss of Gambian civil servants with institutional memory. Coupled with the inadequate financial resources, this led to the subsequently bigger challenge to government to adequately address the issues of poverty reduction and the broader development goals.

THE GAMBIA PUBLIC PROCUREMENT SYSTEM

1. Background

The Gambia Public Procurement System has undergone since the early 2000s a reform process which followed a Procurement assessment carried out by the World Bank in 1998[†]. The reform process was initiated with the preparation of a Public Procurement Act (Gambia Public Procurement Act 2001 or “the Act”), made effective in 2004, and implementation Regulations and standard procurement documents, all drafted with technical assistance from the International Trade Center (ITC) financed under the Capacity Building and Economic Management Project (CBEMP).

An interim assessment of the Gambia public procurement reform process (Country Procurement Issue Paper - CPIP) was conducted by the World Bank in 2005, in close collaboration with the Government, and a Plan of Action was subsequently proposed and validated by the Gambian authorities following a CPIP workshop held in 2008.

In March 2010, the Government has issued its own procurement report as an update of the action plan of the CPIP, but it appears that the absence of financial support has delayed the implementation of the procurement reform in The Gambia because no significant support has been allocated following the completion of the CBEMP project. This was confirmed following a World Bank mission in December 2011 which found that progress since the 2005 CPIP had been limited, and the Public Procurement system is still far from being fully operative in accordance with the Act.

[†] The Gambia Country Procurement Assessment Report (CPAR), 1998

2018

2. Assessment of the Gambia Public Procurement System and Identification of Areas for Strengthening

The system was assessed in the 2006 CPIP focusing on the following areas, called the four pillars of a sound procurement system: (i) the clarity of the legislative and regulatory framework within which the public procurement 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.

3. Legislative and Regulatory Framework

1. The Act 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 ministries (formerly 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 created an ambiguous situation as discussed below, (iv) methods of procurement and their conditions for use; open tendering is rightly defined as the preferred method for procurement of goods and works, and recourse to other methods needs justification, (v) the right for bidders to challenge decisions made by procuring organizations – however while providing access to

bidders for administrative review, and appeal to GPPA, the Act does not provide for review by an independent Complaints Review Board as further discussed below, and (vi) the creation of a recognized procurement career stream within public service.

2. A major issue is that the Act gives GPPA the mandate to review and approve or disapprove ex ante the procurement actions of procuring organizations above amount defined in the Regulations at every stage of the procurement process. The Regulations have set the threshold at a relatively 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), and has the potential of creating a serious bottleneck in procurement processes if and when more procuring organizations are in compliance with the Act.

3. Another issue is that while providing for a right to appeal against a procurement decision to the GPPA, neither the Act nor the Regulations provide for a review by an independent Complaints Review Board which should preferably have tripartite representation from the public sector, the private sector and civil society.

4. Although the Act stipulates that “a violation of any provision of this Act or the Regulations shall be referred to the relevant authorities for applicable administrative, civil and criminal sanctions”[‡], it may be appropriate to define sanctions more specifically in the Act, in order to constitute a stronger deterrent for non-compliance by procuring organizations.

5. The above three issues may be addressed through a limited amendment to the Act and Regulations; such amendment could in principle be drafted by GPPA and Ministry of Finance on the basis of the current UNCITRAL Model Law, even before external financial support is made available, as the related cost is minimal.

Subsequently the current standard procurement documents should also be revised based on current international best practice as

[‡] Re. Section 28 (6) of the Act.

2020

reflected in the Master Procurement Documents[§] of the Multilateral Development Banks, and the revised standard documents should be disseminated to the procuring organizations through a capacity development program to be designed and carried out under the proposed project.

4. Institutional Framework and Management Capacity

1. Integration and mainstreaming of the public procurement system into the public sector governance system still constitutes a major challenge for The Gambia. Many procuring organizations do not have a suitable Contract Committee and a specialized procurement unit as mandated by the Act**, and/or do not prepare and disclose procurement plans, whereas procurement planning and costing should be part of the budget formulation and implementation process. This major deficiency is associated with the lack of procurement expertise in many procuring organizations. The adoption of suitable procurement planning procedures in the various procuring organizations is a key priority which needs to be addressed under the proposed project.

2. Institutional development capacity is deficient and this issue must be addressed as a matter of priority. A structured system for collecting and disseminating procurement information (Procurement Information and Management System – PIMS), including tender invitations, requests for proposals, and contract award information, and related procedures for collecting and monitoring national procurement statistics is required and should be developed and

[§]Re. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:22989220~menuPK:8118597~pagePK:8271521~piPK:8271523~theSitePK:84266,00.html>

** Re. Section 48(1) of the Act.

implemented as part of the project. This system should ideally be connected to an integrated financial management system.^{††}

3. Equally important is the need for a sustainable strategy and training capacity to provide training^{‡‡}, and assistance to develop the capacity of government, procuring organizations and their contract committee members, and private sector participants in public procurement; these all need to understand the rules and how they should be implemented, including the use of standard procurement documents. Such strategy should be anchored on a training needs assessment, the development of suitable training modules, the implementation of a comprehensive training program, including training of trainers to ensure sustainability, and on-going evaluation and periodic adjustment based on feedback and needs. The need for developing sustainable capacity to conduct procurement audits on a regular basis should also be addressed under this capacity building effort.

4. GPPA is currently too thinly staffed to correctly fulfill its responsibilities, lately experiencing unplanned staff turnover, and de facto giving priority to ex-ante reviews of procurement. Consequently, GPPA lacks sufficient resources (human and financial) to fully carry out its mandate as the oversight and regulatory body^{§§}.

5. Procurement Operations and Market Performance

^{††} GPPA has a website with some information on procurement, including the Act, Regulations and Standard tender Documents, but it appears not to be used for dissemination of procurement information and is rather stale (<http://www.gppa.gm/>).

^{‡‡} The Management Development Institute has been giving a course based on the curriculum of the Chartered Institute for Purchases and Supplies, which is mostly for private sector purchasers; the Public Procurement modules (9 hours training) which GPPA was able to insert in the program are of limited impact.

^{§§} Re. The GPPA 2010 Activity Report and the GPPA Compliance Review Report on Procuring Organizations for 2010.

2022

The efficiency of procurement operations will greatly depend on the capacity of procurement units in the procuring organizations; these units need to be staffed with suitably-trained procurement specialists, and the contract committee members should also be selected and trained adequately. In turn the availability of procurement capacity in the procuring organizations will allow for more decentralization of procurement and/or increasing the ex-ante review threshold. Whereas the public enterprises generally have staff in charge of procurement, most ministries do not have such staff, and only four or five ministries have procurement officers in place. A scheme for procurement staffing (Procurement Cadre), including job descriptions was developed by the Personnel Management Office (PMO), and reportedly by 2012 most ministries will have been allocated with procurement officer/clerk positions. The recruitment is done by the respective ministries with assistance from GPPA. However, suitable candidates are not always found for the position when advertised. The Procurement Cadre presently does not have a head yet, unlike other personnel cadre in the administration –according to PMO, GPPA not being in the mainstream civil service may not serve as the head of the procurement cadre; this shortcoming needs to be addressed as an adequate governance of the procurement cadre is capital for recruitment and retention of staff, as well as for their their career development.

The training strategy discussed above is expected to greatly contribute to addressing this issue. The preparation of skill and knowledge profiles for procurement positions, possibly including a certification program, should be undertaken as part of the project.

6. Integrity and Transparency of the Public Procurement System

Key ingredients for integrity and transparency are: (i) the existence of suitable and effective controls and audits, (ii) the availability of an effective appeals mechanism available to bidders, (iii) the accessibility of information on procurement, and (iv) effective ethics

and anti-corruption policy and measures^{***}. The various activities to be supported by the proposed project would contribute to building capacity for addressing all these aspects which are provided for in the Act^{†††}. Performance audit procedures and manual, and code of conduct/ethics for government officials involved in public financial management, including procurement should be prepared and disseminated as part of the project.

It is further proposed to use the existing GPPA website as the country's Public Procurement Portal, for dissemination of information on procurement, including mandatory publication of procurement plans prepared by the procuring organizations, procurement notices (invitations to bid and requests for expressions of interest), contract awards, decisions on appeals. These functionalities of this Public Procurement Portal would be developed and disseminated under the project.

^{***} In Transparency International CPI 2011, the Gambia (with a 3.5 score) ranks 79 among 182 countries, when in CPI 2010, the score was 3.2 and the country ranked 91 among 178 countries, and in 2009, the CPI score was 2.9 and the country ranked 106 among 180 countries (158 out of 180 in 2008). Corruption perception appears to have decreased in recent years; however, anti-corruption provisions applicable to public procurement are contained in Section 28 (2) of the Act and are rather vague as to the applicable sanctions, and there is no specific enforcement agency for a sustained effort to prevent and/or combat corruption.

^{†††} Re. the GPPA 2010 Activity Report and the GPPA Compliance Review Report on Procuring Organizations for 2010.

2024

BENEFITS OF 2ND GENERATION PROCUREMENT REFORM IN THE CONTEXT OF LEGISLATIVE AND REGULATORY FRAMEWORK OF THE PUBLIC PROCUREMENT SYSTEM IN THE GAMBIA

1. Background

The Legislative and Regulatory Framework set the basic conditions for the manner in which procurement may be undertaken procedurally, including the results that can be expected and potential efficiency gains that can be achieved. In 1998, a Country Procurement Assessment was conducted jointly by the Gambia Government and the donors. The outcome of this study were recommendations to provide better value for money in the acquisition of goods, works and services and at the same time enhance the development of local enterprises. A Task Force was formed to review how the necessary changes should be made. This review gave birth to the Gambia Public Procurement Act 2001.

The Act seeks to provide a system for ensuring:

- a) transparent, efficient and economic public procurement;
- b) accountability in public procurement;
- c) a fair opportunity to all prospective suppliers of goods, works and consultancy services; the prevention of fraud, corruption and other malpractices in public procurement;
- d) 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.

To achieve these objectives, the Act brings to an end the current practice of public procurement being carried out by the Major and Minor Tender Boards. In its place is a system of decentralised procurement in which procuring organisations, (i.e. government entities, project implementation units, statutory bodies, Government

Agencies, local government authorities, and parastatals) will be responsible for their procurement. To do this they are required to establish Contract Committees supported by specialised procurement units staffed with individuals trained in public procurement for the conduct of public procurement. Nevertheless, the head of the procuring organisation remains accountable for the successes and failures of procurement in accordance with the Act.

2. Existing legal documents

The existing legal documents covering public procurement in the Gambia are:

- (i) Public Procurement Act 2001;
- (ii) The Public Finance Act (2001)
- (iii) The Prevention of Corruption Act (1971)

The Gambia Public Procurement Act and Regulations: The Gambia Public Procurement Act was enacted in 2001 and modeled on the UNICTRAL Model Law, replacing all previous procurement legislation. In August 2001, the Regulations were issued in two parts: 1) Procurement of Goods and Works Regulations, and 2) Public Procurement (Selection and Employment of Consultants). In December 2002, the Gambia Public Procurement Agency was created and issued a set of standard documents and guidelines.

3. Main features of the Gambia Procurement Act

The main features of the Gambia Procurement Act are to:

- Create the Gambia Public Procurement Authority as the policy body responsible for regulation and monitoring of public procurement.

2026

- Establish a standing review committee with the Gambia Public Procurement Authority as a credible complaints mechanism for public procurement.
- Provide for the establishment of a Procurement Cadre as a new professional stream within the civil service
- Introduce a new set of procurement methods with well-described conditions for use, thereby containing discretionary decision making within appropriate units.
- Decentralize public procurement decisions and responsibility to the procuring entities through the Internal Procurement Committees and their Special Procurement Units.

The Public Finance Act (2001): this is a comprehensive document regulating public procurement and expenditure. The document contains general principles regulating public expenditure and does not contain comprehensive procurement regulations. Important provisions of this law include establishment of Consolidated Fund, role of the Minister of Finance, certification for payment and liability and offences.

Anti-Corruption Legislation: The Prevention of Corruption Act (1971) with subsequent changes and amendments serves as the basis for the establishment of the Prevention of Corruption Bureau (PCB) in 2000 with authority for monitoring and prosecuting malpractice in public procurement.

4. Regulatory authority

The Gambia Public Procurement Act 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. In mid-December 2002, the Gambia Public

Procurement Authority (GPPA) issued a set of standard documents and guidelines. The Gambia Public Procurement Act covers procurement carried out by both central government and local authorities.

The Gambia Public Procurement Authority (GPPA) assumes oversight and regulatory functions, which also has extensive executive functions. The Procurement Act assigns a comprehensive list of functions to the Gambia Public Procurement Authority including:

5. Policy and regulatory role

- Advise Government on policy in procurement matters
- Develop Regulations, instructions and standard bidding documents
- Carry out economic studies and future projections on procurement
- Promote the procurement profession
- Promote the application of modern information and communication technology in public procurement

6. Complaints

- Provide administrative review

7. Monitoring

- Monitor performance of procuring entities and suppliers and refer violations to relevant authorities
- Provide periodic assessments of procurement activities
- Collect data on procurement performance

2028

- Appoint members to the procurement committees when procurement exceeds a certain value
- Maintain and circulate lists of debarred bidders (blacklists)

8. Information dissemination and capacity building

- Ensure the availability of legal texts
- Organise training and build capacity within the procurement cadre

The Gambia Public Procurement Authority is given broad powers in the Act to assist procuring organisations in carrying out their new responsibilities. In the exercise of its powers, the Authority is to ensure that the rules are complied with by procuring organisations to achieve the objectives of the Act. In other words the GPPA's mandate is to help the public get its money's worth. Its staff of professionals in the fields of law, education and finance will work closely with heads of procuring organisations to make these reforms successful

The Authority, in its bid to achieve the objectives of the Act, has developed new regulations and instructions along with standard bidding documents and forms to help manage the paperwork. Within the first quarter of every year, the Authority is required to prepare an annual report for the Secretary of State for Finance, which will be laid before the National Assembly, to describe the status of the system and the level of compliance. The Authority will use its reports to provide information for future comparison of positive and negative trends in accomplishing its goals. This will include such things as the degree of competition and the amount of money spent and where they can be identify associated savings.

The new system provides for the registration and in some cases the qualification of bidders, debarment of non-performing bidders and suppliers, contract management, public notice of procurement

contract awards, open and restricted tendering, international tendering and controls on single-source procurement. In addition, a comprehensive review procedure is set out to allow for bidder complaints.

9. The Procuring Organizations

The procuring organizations are mandated under the Public Procurement Act to set up a Contract Committee supported by a specialized procurement unit established in-house or jointly shared with another procuring organization. The Contracts Committee has authority to make contract awards (in principle solely though, as this is subject to the prior approval of Public Procurement Authority for single source contracting, and the approval from Cabinet above certain thresholds.

10. Integration of Procurement with Budgeting

Public Procurement Authority makes it an obligation for all procuring organizations in the public sector to plan their procurement activities based on their budget allocations and prepare procurement plan for monitoring and timely implementation of procurement activities.

11. Procurement Cycle Management

The management of procurement cycle by executing agencies could seriously bring more efficiency in public sector and donor-financed projects mainly for large contracts. Evaluation of bids and award of such contracts could be achieved on timely manner due to the following reasons:

2030

Sufficient transparency, sufficient qualification and experience of the evaluation committee members, prompt clearances at higher levels of Government (The Cabinet), and adequate follow-up.

12. Procurement Documents and Record Keeping

The availability and the use of simplified standard procurement documents 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 are used by procurement units.

Record keeping for procurement is an obligation of procuring organizations stipulated in details in the Public Procurement Act. As documented in Public Procurement Authority's statutory compliance reviews carried out in procurement cases provide practical illustrations of the deficiencies in managing the procurement process:

13. Private Sector Participation in Public Procurement

Example of the contracting industry of the Gambia is relatively small, as the Gambia Association of Construction Contractors has a membership of 144, 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.

The public procurement system is in principle open (under the preferred open tendering procedure of the Public Procurement Act), with no restrictions imposed, except that national participants have to be registered with Public Procurement Authority.

Developing Strategic procurement function within public sector is regarded as being at the centre of better local government, and at the

forefront of change. Procurement is a key driver for improving local services. It covers all stages of managing service delivery, from identification of needs to measuring the impact on service users.

14. The Essence of the Regulated Process

The essence of public procurement legislation is to define, and enforce, those procedures that are most likely to produce an economic and efficient result, while respecting the public nature of the process and the duty of fairness to the suppliers. Economy in public procurement is not subject to a test similar to that of purchasing in the private sector: namely, good procurement contributes to profits and poor purchasing creates the risk of going bankrupt. Instead, the best way government entities demonstrate that they obtained the best terms available under the circumstances is to make use of competition between all those interested in, and qualified for, supplying the goods or services in question.

Public procurement procedures must therefore be designed to generate maximum competition. This explains the preference for open tendering in most national and international procurement systems. This preference is subject, however, to the need for eliminating competitors who are not qualified and the goal of keeping the procurement process efficient in the sense of adapting procedures to the size and complexity of the contract.

Public procurement legislation for this purpose normally

- a) Makes open tendering the preferred procedure;
- b) Describes in detail the steps involved in open tendering (preparation of invitations to tender and tender documents, advertisements, submission and opening of tenders, examination and evaluation of tenders, award and conclusion of contract);

2032

- c) Defines the circumstances under which methods other than open tendering may be used (e.g. restricted tendering, request for quotations);
- d) Describes those other procedures;
- e) Lays down rules concerning essential elements in the process (e.g. qualification of tenderers, technical specifications, records of proceedings, evaluation of tender).

ACTION PLAN TO ADDRESS THE IDENTIFIED WEAKNESSES AND PROPOSED PROGRAM OF SUPPORT

1. Legislative and Regulatory Framework

- A revision of the Act needs to be prepared and enacted in the very short term⁺⁺⁺ to (i) address the current conflict in responsibilities, which may be removed progressively by effectively decentralizing operational procurement responsibilities to the procuring organizations as these acquire the capacity to carry out their duties, (ii) create an independent Complaints Review Board which should be supported by a secretariat within GPPA, (iii) define applicable sanctions in case of violations of the provisions in the Act, and (iv) improve access to information on public procurement.
- A revision of the standard procurement documents (standard tender documents for goods, simple works, complex works and services especially) should be prepared in the medium term^{§§§}.

2. Institutional Framework and Management Capacity

- Procurement planning should be improved and better integrated with public financial management. A structured system for collecting and disseminating procurement information

⁺⁺⁺ « Very short term » is to be defined as a three-month time horizon.

^{§§§} « Medium term » refers to a 12-18 months' time horizon.

(Procurement Information and Management System – PIMS) should be developed. These related actions are expected to be carried out in the medium term.

- A procurement training and capacity development strategy should be prepared and a sustainable training program rolled out in the medium term.

3. Procurement Operations and Market Performance

- Building up the Procurement Cadre for The Gambia and setting up some form of certification scheme for procurement staff are key priorities to ensure sustainability of a strong public procurement system. A very short term priority is that all procuring organizations should have procurement staff in suitable number and with sufficient qualifications to be adequately trained. The governance of this procurement cadre should be properly organized in the medium term, with a head to be located in the Ministry of Finance.
- Procurement staff should be given access to international training opportunities, including short courses available for public procurement managers and officers, and master level courses as well****.

4. Integrity and Transparency of the Public Procurement System

- Performance audit procedures and manual, and code of conduct/ethics for government officials involved in public

**** Personnel Management Office indicated that the Gambia has a system of bonding for staff who are trained at government expense; currently trainees owe a one-year service to government which is under consideration for extension to three years.

2034

procurement should be prepared in the medium and short terms respectively.

- Strengthening the regulatory and oversight functions of GPPA should be actively pursued, and its sustainability needs to be ensured, including through adequate staffing and financial resources, and providing it with the appropriate tools such as a functional portal.

5. Proposed Program of Support

- The proposed project would be instrumental in supporting the implementation of this action plan, especially by: (i) providing technical assistance to building up the Public Procurement Cadre, (ii) funding the development and rolling-out of a strategic training program, (iii) strengthening GPPA as a regulation/oversight body to be equipped with proper tools (Procurement Information Management System and Public Procurement portal).