

# INTRODUCTION

## **Public Procurement means:**

“THE PROCESS OF ACQUIRING GOODS WORKS AND SERVICES BY GOVERNMENT PROCURING ENTITIES.”

This process includes purchasing, hiring, leasing or any other contractual means of engaging suppliers in the provision of public services to the public. It would be correct to say that, the job of a public buyer is to fulfil national programmes and initiatives by having the right thing in the right place at the right time while maintaining public trust. Although the formula is simple, it involves questions of accountability, integrity and value with effects far beyond the actual buyer/seller transactions at its centre.

Goals listed for this Government’s procurement system include:

- Satisfying the customer in terms of cost, quality and timeliness of the delivered product or service.
- Minimising administrative operating cost.
- Conducting business with integrity, fairness, and openness.
- Fulfilling public policy objectives.
- Encouraging small and medium size enterprises
- Achieving best value for money.

## **GOVERNMENT PROCUREMENT EFFECTS ON SOCIETY**

Government procurement affects many different elements of society. First are the procurement officers with the responsibility to buy what is necessary to perform designated missions for the country. Others include:

- Internal Government customers requiring material support (e.g. roads, hospitals, desks and educational supplies, etc) depend on the procuring entity so they can accomplish their jobs.
- The national and international business communities of actual or potential suppliers to government entities are affected by public procurement.
- The largest interest group is the general public, who benefit from procurement made by Government procurement professionals.

All these elements of society have a vested interest in making sure public procurement serves them well. Their questions are best answered when public expenditures are made through a procurement system that is economical, rational and fair.

Because public procurement represents the bulk of procurement activities within most countries including The Gambia, it can have a profound effect on the overall national economic the concepts, attitudes, and standard practices of business communities within its national boundaries and globally.

## **GOOD PROCUREMENT GOVERNANCE:**

Many organisations, including The Gambia Competition Commission are working together for the improvement of public procurement to ensure the delivery of tools and resources necessary to play a pivotal role in strengthening national economies. One current goal is to help all procurement professionals understand what good governance means. This goal is supported through such essential concepts and values as:

- **Accountability**- to establish clear lines of responsibility in decision-making structures and provide for internal audit checks.
- **Responsiveness**- to evaluate and respond to the public interest.
- **Professionalism**- to improve individual and system performance.
- **Transparency**- to ensure that procedures and policies are understood and acceptable to suppliers as well as procuring entities.
- **Competition**- to attract high-quality national and international partners to Government needs through contracts; and
- **Appeal rights**- to redress meritorious grievances of suppliers and correct system failures.

While these concepts and values will be presented here as matters of public policy, they will be discussed in greater detail in this document from the view point of the buyer and management.

## **PUBLIC PROCUREMENT LAW OF THE GAMBIA**

With the limited exceptions related to national defence or national security matters, 21 (1) the Act applies to all public procurements as defined in Section 2 of the Act.

“Procurement or Public Procurement” means the acquisition by any means, of goods, works or services, funded in whole or in part by public funds.

“Public Funds” means-

- a) Any monetary resources appropriate to procuring organisations through budgetary processes;
- b) Aid, Grants and Credits made available to procuring organisations by local and foreign donors and;
- c) Revenues of procuring organisations including the Consolidated Revenue Fund, the Development Fund and general funds of Local Government Authorities.

## **RECONCILING THE INTERNATIONAL DONOR RULES AND THE ACT**

Section 21 (4) of the Act provides that “where a provision of this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory pursuant to an obligation entered into by Government, the requirements of the rules shall prevail, but, in all other respect, the procurement shall be governed by this Act” (e.g. Thresholds)

## **THRESHOLDS, PROCUREMENT METHODS AND CONDITION FOR USE**

Section 13 (1) (a) of the Act states that-

“No procuring organisation shall engage in any procurement above such amount as may be specified in the Regulations without obtaining the approval of the Authority at every stage of the procurement proceedings, including tendering, request for proposals, awards and direct procurement.

At the outset, it is essential to note that the Act has a preference to “Open Tendering”.

Section 39 of the GPPA Act states that “except as otherwise provided in this part, public procurement shall be through the use of open tender proceedings.

## **INSTITUTIONAL STRUCTURES (CONTRACT COMMITTEE AND THE SPECIAL PROCUREMENT UNIT)**

It is a sincere fact that in any Organisation, the procurement function cannot work in isolation- it must work with other functions that make up the Organisation. It is always best to work as a team.

On procurement teams, (Contract Committees) the membership will vary with the type of procurement. For example, the team responsible for procuring the construction of a bridge might consist of members from a consulting architectural-engineering firm, from the engineering department, from accounting, from the long term planning group, from the transportation department, from the legal department, and of course, one or more representatives from the procurement group. Team members should be empowered to make decisions within their area of expertise and responsibility.

Any one team will vary in size and membership through the process of the buying. For some discussions and tasks the expertise of many disciplines will be necessary. Members will come into the process. Other times only a small team will be needed to carry out the tasks. Members will leave (at least temporarily) the process.

There are times when a team is not possible. In this case the public buyers benefit greatly from membership in professional organisations where they can meet others with liked experiences and compare methods of completing the important business of public buyers.

A procurement team should consist of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.”

The role of each member of the Contract Committee is to exercise personal initiative and sound business judgement in providing the best value product or service to meet the customer’s needs. In exercising initiative, Government members of such contracts committees may assume if a specific strategy, practice, policy or procedure is in the best interest of the Government.

Personal initiative and sound business judgement are key elements of the Committees. Without these, from each committee member, the successful accomplishment of the Government’s mission is compromised.

With reference to Section 50 of the Act, the general functions of a Contract Committee shall include;

- a) Verification of proper procurement planning and availability of funds;
- b) Approval of the invitation to bid and the bidding documents
- c) Approval of use of Single-Source procurement in accordance with the Regulations;
- d) Conducting the opening of bids;
- e) Comparing and evaluating the bids, and selecting the winning bid, subject to (f)
- f) Submitting the recommendations resulting from the evaluation of bids to the Minister of State concerned or other official designated in the Regulations, in case the value of the procurement exceeds the authority of the Contracts Committee; and
- g) Considering applications for variations.

## **THE SPECIAL PROCUREMENT UNIT**

It is recommended by the Act Section (51) through (52) that a specialised procurement unit be established and staffed with personnel that are well trained concerning public procurement. Their qualifications should meet the requirements that are established in accordance with guidelines issued by the GPPA.

The number of personnel in this Unit can be determined by the size of the organisation.

## **PROCUREMENT PLANNING**

Under Section 30 of the Act, Procurement Planning is required of every Procuring Organisation. The purpose of procurement planning is to achieve maximum value for public expenditure and the other objectives set out in Section 3 of the Act, and in accordance with applicable budgetary procedures.

In developing a Procurement Plan for an individual procurement package, the following activities must be factored;

- 1) Describing accurately the scope (quality, quantity requirement and time aspects of the delivery of goods and services and if necessary prepare a revised cost estimates for the package.
- 2) Conducting a Market Research for the purpose of determining the scope for the competition, including the existence of suitable Suppliers, Contractors and Vendors

The Law requires each procuring organisation to prepare an annual Procurement Plan. The plan which shall be provided to the GPPA, should describe the extent, timing and purposes of the projected requirements. Public notice of any procurement of D35, 000.00 and above should be made public for all and sundry to know.

Market research is necessary and studying acquisition history of alternatives as well as making substitutes is very useful

## **THE LACK OF PUBLIC PROCUREMENT PLANNING**

Sound procurement planning has been lacking in most cases of the public sector procurement. Public sector procurement planning in The Gambia and most developing countries is highly driven by the desire of securing higher budget allocation from the national or international sources. As a result:

- There is higher emphasis on securing maximum budget allocation that leads to the inflation of material requirement.
- There will be a rush of procurement activities towards the end of the budget year driven by the desire of full budget utilisation, and
- This leads to a significant volume of wastage and disposal caused by over-procurement of items.

These are reflections of the document of the dominant supply-driven nature of public sector procurement rather than being demand-driven. The key element for overcoming these constraints is to have a public sector procurement policy which:

- Emphasises the importance of transparent and broad-based need identification as the basis for efficient resource utilisation and procurement decision.
- Institutes a mechanism for encouraging saving on annual procurement budget utilisation, therefore avoid the last-quarter procurement rush.

Furthermore, organisations have to pay particular attention to reviewing operational constraints in order to improve the economic and environmental performance of their procurement operations. This includes, carrying out an analysis of procured items on the basis of levels of expenditure, volumes, supply risk and their criticality to the organisation's operations, as a basis for deciding on supply strategies, stock levels, and allocation of space and resources.

## **METHODS OF PROCUREMENT AND THRESHOLDS**

The Act clearly has a preference for Open Tendering. For this reason it is explicit on when it is appropriate to use other Methods of procurement.

### **OPEN TENDER**

When the value of the proposed procurement is above D500, 000.00

Domestic up to D10 million if competition is effective without foreign bidders.  
International above D10 million

The Form to use is the GPPA Form 001

### **TWO STAGE TENDERING (OPEN/RESTRICTED)**

This method of tendering is used when it is not feasible to define fully the technical or contractual aspects of the procurement

When, because of the complex nature of the procurement the procuring organisation wishes to consider various technical and contractual solutions

### **FRAME WORK AGREEMENT**

Open/Restricted Tender Methods can be used to enter into Frame work agreements with suppliers to avoid repetitive procurements. This is applicable to goods, routine services that would be required on a continuous or regular basis.

Refer to the GPPA Instructions for more details.

### **RESTRICTED TENDER**

This method of procurement may be used only;

When the goods/works/services are only available from a limited number of bidders known to the procuring organisation;

When time and cost of considering a large number of bids disproportionate to the value of the procurement.

The GPPA Form to use for this method of procurement is Form 002

## **SINGLE/SOLE SOURCE**

This method of procurement may be used only in the following circumstances-

- a) when the estimated value of the procurement does not exceed the amount set in the Regulations;
- b) when only one supplier has the technical capability or capacity to fulfil the procurement requirement or the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured and no suitable alternative exists;
- c) when there is an emergency need for the goods, works or services, involving an eminent threat to the physical safety of the population or of damage to property, or in the case of other unforeseeable urgent circumstances not due to the dilatory conduct of the procuring organisation, and engaging in tendering proceedings or other procurement methods would therefore be impractical;
- d) when the procuring organisation, having procured goods, works or services from a supplier, determines that additional goods, works or services must be procured from the same source for reasons of standardisation or because of the need for compatibility with existing goods, equipment, technology, works or services, taking into account-
  - 1) the effectiveness of the original procurement in meeting the needs of the procuring organisation,
  - 2) the limited size of the proposed procurement in relation to the original procurement;
  - 3) the reasonableness of the price, and;
  - 4) the unsuitability of alternatives to the goods or services in question;
- e) for purchase of perishable commodities such as fresh fruits, vegetables or other similar items which are purchased on competitive market terms.

The GPPA Form to be used for this method of procurement is Form 003 (Records of single source procurement)

The thresholds for single-sourcing are, D10, 000.00 for Goods and Services and D30, 000.00 for Works.

## **REQUEST FOR QUOTATION (RFQ)**

Request for quotation is used for the procurement of-

- a) readily available commercial standard goods not specially manufactured to the particular specifications of the procuring organisation;
- b) small works; or
- c) routine services,

When the estimated value of the procurement does not exceed the amount set in the regulations.

Request for quotation proceedings shall be used when the desired goods, works or services are ordinarily available from three or more sources in The Gambia at competitive prices and conditions.

The threshold for the use of RFQ is D500, 000.00 and the Form to be filled is GPPA Form 004 (Records of Request for Quotation)

#### **REQUEST FOR PROPOSALS (RFP)**

Request for proposals may be used for the procurement of consultants' services and other types of intellectual services

The Form to be filled is GPPA Form 005 (Records of Request for Proposals)

### **GPPA PROCUREMENT PROCESS**

To be able to understand the complete process and the different procedures, it is necessary to have an idea of the environment in which that process takes place.

#### **STARTING THE PROCUREMENT PROCESS:**

What to do before starting the process;

Before starting the process of obtaining bids, the procuring organisation should ensure that various actions have first been carried out. All of these will have involved in one way or the other, as well as in several cases the relevant user departments in the organisation.

These prior actions include the following;

- a) The buyer must have the appropriate authority to purchase
- b) The buyer must have defined the context for the purchase;
- c) The buyer must have access to all of the documents needed.

#### **PROCUREMENT REQUESTS AND AUTHORISATION**

The purpose of the formal authorization process is to:

- 1) Secure technical approval for the product or service specification;
- 2) Secure approval for the purchase from the budget holder;
- 3) Notify the finance function of an upcoming financial commitment;
- 4) Code the purchase in accordance with the organisation's coding systems, thus facilitating various analysis;
- 5) Provide a record for audit purposes.

### **Stage (1)**

#### **PREPARATION STAGE**

In which the buying organisation plans its solicitation process, meaning that the appropriate procedure is chosen, the specifications are decided upon, etc.

Step 1:

Develop a plan;  
Specifying the requirements  
Choice of procurement procedure  
Contract and contract conditions  
Preparing the solicitation package

### **Stage (2)**

#### **THE ADVERTISING STAGE**

In which the buying organisation goes public with its requirements by advertising the solicitation documents to interested suppliers.

Step 2:

Identifying suppliers  
Supplier Registration (Make sure all suppliers doing business with you are registered with the GPPA)  
The use of the Internet as a procurement Tool can also be effective.

### **Stage (3)**

#### **THE RESPONSE MANAGEMENT STAGE**

In which the buying organisation receives the offers made by the suppliers and evaluates them to make a recommendation for award.

Step 3:

Solicitation opening  
Methods used e.g. ICB, RFQ, and RFP etc.  
Negotiation  
Evaluation and recommendations based on the review of the foregoing;  
Confirmation of receipt of solicitation package  
Request for clarification of solicitation by bidders (if necessary)  
Submission and opening of bids  
Rejection of non-compliant bids  
Evaluation and clarification of bids  
Negotiations of offers (when authorised)  
Recommendation for award

## **Stage (4)**

### **THE AWARD STAGE**

In which the buying organisation chooses the supplier (s) with whom it will do business and in which the final contract is signed.

Step 4:

Selection and identification of suitable suppliers

Debriefing (Suppliers that are unfortunate)

Award

Protest processing

It is important to note that suppliers should receive information on why they did not win, to prepare for next time. It is an advantage to both the buyer and supplier to improve competition as well as identify main weaknesses, main strengths and how to improve next time.

As a buyer, you should normally respond to requests after award with;

Name of winner, approximate prices and basis of award.

## **Stage (5)**

In which the contract is performed and completed and in which the relationships between the two parties have to be managed.

Step5:

In managing the contract, the following has to be observed;

- 1) overview of the contract management stage
- 2) contract administration
- 3) managing relationships
- 4) contract completion

Administrative functions during the course of a contract include;

Setting up systems

Dealing with Bonds and Guarantees

Document management

Controlling contract variations

Making payments to suppliers

## **PUBLIC BUYERS AND SUPPLIERS RELATIONSHIPS**

Buyers should be responsible for ethical relationship with suppliers

Honesty

Professionalism

Adherence to relevant rules and regulations

### **RESPONSIBILITIES OF THE BUYER**

As a Buyer you should:

Follow national rules and regulations

Abide by policies of the organisation

Accountable for procurement decisions

Contribute to transparency

Create and maintain appropriate relationships with suppliers

## **THE PROCUREMENT ACTION FILE**

It is a request that all procuring organisations provide procurement action file for the five procurement methods recommended by the GPPA namely;

- 1) Open Tender OT/001/2011
- 2) Restricted Tender RT/001/2011
- 3) Single Source SS/001/2011
- 4) Request for Quotation RFQ/001/2011
- 5) Request for Proposal RFP/001/2011

The Procurement Action File should also include;

Request/specification

Documentation about procurement strategy

Evaluation criteria and process

Information about bids

Explanation of award decision

Original signed contract and amendments

Supplier/customer/other related communications

Delivery schedules and certifications

Vouchers and payment advices

Other information required by law

Post-award negotiations

Contract management reports

## **MAKING PAYMENTS**

Always establish that all invoices are accurate and correctly submitted as well as the work is satisfactorily completed.

## **CONTRACT REVIEWS**

As a very important process in the management of contracts, the following should always be considered;

Time, cost and quality performance

Risk analysis

Effectiveness, procedures and controls

Suppliers' performance (Ref. to GPPA Form 041)

Focus on problems:

- a) What went wrong
- b) What impact
- c) Causes
- d) Peculiar to this contract
- e) Likelihood of recurrence
- f) Prevention

## **GPPA FORMS AND REPORTING FORMS**

The GPPA has recommended the use of the GPPA Reporting Forms for all procurement transactions done in The Gambia. There are 28 reporting forms to be used accordingly depending on the chosen method of procurement.

However, Forms 006 and 200 known as the Monthly Summary Report on status of procurements has to be filled at the end of each month and sent to the GPPA.

Names and references of all other GPPA Forms are annexed to this document.

## BIDDING DOCUMENTS

Upon reading through this chapter, one should be able to;

- 1) Discuss the impact of poorly drafted bid documents;
- 2) identify the types of bidding documents;
- 3) List the main sections of bidding documents for the procurement of goods.

### **INTRODUCTION:**

The overall aim of bidding documents is to ensure equal treatment of all bidders. The documents should clearly communicate to the eligible bidders such timely and adequate information as is necessary to prepare responsive bids. In general, the bidding documents should answer the following questions:

- What is to be procured and what technical requirements apply?
- How, when and in what form should the bids be submitted?
- Which evaluation criteria will be used for the evaluation of the bids?
- What will be the form of contract to be awarded?

In the case of consulting services, the term “Request for Proposals” (RFP) may be used instead of bidding documents. Other terms can be used in other organisations. Here, we will use the term bidding documents.

### **PREPARATION OF BIDDING DOCUMENTS**

Preparation of bidding documents should start as early as possible to allow adequate time for review by your organisation and timely dispatch of the documents to bidders.

#### **A) Impact of poorly formulated bidding documents**

It is important that adequate consideration is given to formulating the bidding documents. A combination of the following consequences can be expected if the bidding documents are poorly formulated:

- Complaints of bidders
- Selection of wrong or poorly qualified firm.
- Delays in start up and completion of project.
- No disbursement of the loan.
- Decrease in the credibility of the institutions attempting to make the procurement.
- Misprocurement

## **B) Format of bidding documents**

In the GPPA Bidding Documents all necessary steps/procedures to be taken are clearly explained for both the Procuring Organisations and bidders to know and what normally should be included in the bidding documents. The sequence and content of each part is well defined to encourage consistency and to facilitate review by GPPA.

The bidding documents for goods and works generally include:

- 1) Invitation to Bid.
- 2) Instruction to Bidders.
- 3) Bid Data Sheet (goods) or Bid Data (works)
- 4) Conditions of Contract (standard and special)
- 5) Specifications and drawings.
- 6) List of goods and/or bill of quantities.
- 7) Delivery time or schedule.
- 8) Form of Bid.
- 9) Form of Contract.