

IN THIS ISSUE

Page 1
Message from the
Ag Director General
Public Procurement Reforms

Page 2
PPOA Updates Market Price
Index
The African Development Bank
(ADB) & Procurement in Africa

Page 3
PPOA Continue Process
to Issue Standard Tender
Documents

Page 4
Towards Improved compliance
with the Public Procurement
Law

Page 5
International Corner
Overview On The Public
Procurement Review System
Of Slovenia

Page 7
Editor's Picks
Feedback From Our Readers

Page 8
Meeting of the OECD/DAC
Task Force on Procurement

Message from M.J.O. Juma, Acting Director General, PPOA

PUBLIC PROCUREMENT REFORMS



The public procurement system in Kenya has evolved to an orderly and legally regulated system governed by the Public Procurement and Disposal Act, 2005. Prior to this, in Central Government it was governed by Treasury Circulars from 1969, then the Supplies Manual of 1978, before the promulgation of the Exchequer and Audit (Public Procurement) Regulations, 2001.

All the aforesaid reform initiatives were geared towards improving the public procurement system by enhancing accountability and transparency with the aim of achieving value for money, and attracting investments by creating a sound business climate. These reforms have ensured fairness and competition among suppliers of goods, works and services, thereby restoring the confidence of Kenyans in the public procurement process while at the same time ensuring that the Government gets the best value for its money.

It is imperative to note that the total value of Public Procurement in Central Government is currently estimated at 10% of the GDP. In 2008, Kenya's GDP was estimated at Kshs. 2,099.79 billion putting the total expenditure on procurement by the Government at around Kshs. 209.9 billion annually. It can therefore be argued that even a 10% savings due to improvements in procurement practices and controls would mean a yearly gain to the exchequer of about Kshs. 21 billion. The gains expected to accrue from a streamlined procurement system will allow the Government to invest more resources in other needy areas such as health and education and improve the quality of life of the citizens of this country, a venture that has the potential of greatly improving productivity and service delivery by public entities.

It is in that premise that the current legal dispensation created the Public Procurement Oversight Authority (PPOA) to oversee public procurement system with its principal functions of ensuring that the public procurement law is complied with and capacity of the function among stakeholders is enhanced.

Continued On Page 6

Facts You Should Know

Public procuring entities, are required to submit details of contracts awarded monthly; and within 14 days of the ensuing month by way of reports as follows:-
Serialized Tender/Contract Number • Tender particulars • Status • Procurement method Invitation date • Closing/opening date • Notification of applicants • Approval for contract award • The name of the contractor/supplier • Date contract signed • Contract Value Progress status • Contract completion date

The procurement report must be prepared by the head of the procurement unit and confirmed and signed by the accounting officer/head of procuring entity.
PPOA reminds all public procuring entities that publication of contract awards is mandatory and not optional

PPOA UPDATES MARKET PRICE INDEX

Henock K. Kirungu
Manager, Policy & Research Public Procurement Oversight Authority



What is the correct price that public entities should pay particularly for commonly used items? This question has been canvassed for a long time and though it has been unanimously agreed that price results from the market forces of demand and supply, it was found in a 2007 baseline survey conducted by PPOA on procurement of common-user items that public entities lost substantial amounts of funds in the past due to overpricing. The initial findings indicated that common-ser items were being procured at about 60% above the prevailing market prices. This was largely occasioned by collusive practices and bid rigging by persons involved in the procurement process.

To forestall the practice PPOA developed a price reference guide and piloted in 10 procuring entities. In a subsequent impact assessment for use of the Pilot Price Guide, PPOA established that the pilot entities were able to procure the items at an average of 20% above the market price. This rate was acceptable as it was within the hitherto prevailing monthly CBK rate of inflation, and it translated into a saving of about 40% of the initial procurement spend on common-user items. It is in the premise of that success that PPOA developed a Market Price Index starting from August 2008, to periodically inform accounting officers and persons involved in the procurement function on the prevailing market prices of the most procured items.

Continued On Page 6

THE AFRICAN DEVELOPMENT BANK (ADB) AND PROCUREMENT IN AFRICA

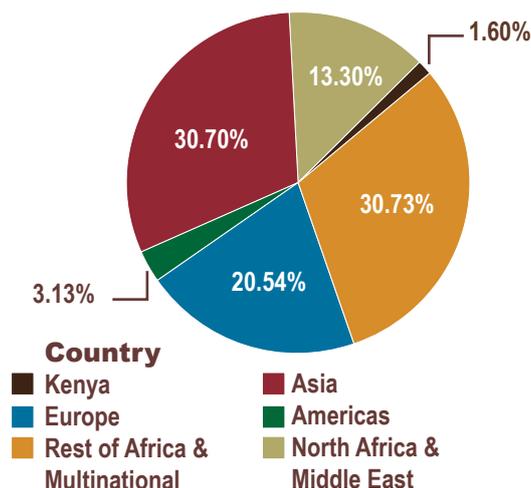
The ADB is a regional, multilateral development bank whose shareholders include the 53 countries in Africa and 24 non-African countries from the Americas, Asia, and Europe. Created in 1964, with headquarters in Abidjan, Côte d'Ivoire, the ADB began operating in 1967 to promote the economic development and social progress of its regional member countries (RMCs) -- individually and jointly.

The Agreement establishing the ADB requires that the proceeds of any loan be used with due attention to considerations of economy and efficiency. Although the Bank normally finances only part of the cost of contracts under projects and programs, it requires that in most cases a system of international competitive bidding be used in purchasing any goods and in contracting for works needed to implement any of the projects or programs wholly or partially financed with its loans. Furthermore, the Bank requires that any other bidding procedures and contract awards which may be used for procurement of goods and works on projects and programs wholly or partially financed by the Bank should be subject to conditions acceptable to the Bank, consistent with its policies and the purpose for which the loan is being granted. On the other hand, for contracts not financed by it, the Bank shall be satisfied that the procedures to be used will fulfill the Borrower's obligations to cause the project to be carried out diligently and efficiently.

The table summarize the statistics on procurement under Bank Group Funded projects in 2009

CONTRACTS AWARDED BANK GROUP PROCUREMENT - KENYA COMPANIES				
YEAR 2009	Goods	Civil Works	Consultants Services	Total
	Contracts Awarded			
Number	40	23	6	69
Amount (UA 000)	5,545	12,006	570	18,120
Share in ADB's Overall Awarded Contracts				
% of Number	8.21%	4.23%	1.58%	4.88%
% of Amount	1.81%	1.81%	1.03%	-1.76%

CONTRACT DISTRIBUTION AMONG MEMBERS COUNTRIES FROM 2004 TO 2009



PPOA CONTINUE PROCESS TO REVIEW AND ISSUE STANDARD TENDER DOCUMENTS



Report by Jeff Woodhams at Karen Country Lodge workshop 24th-26th February 2010



PPOA organised its second workshop with procurement experts to review the standard tender documents for the purpose of aligning them with the Procurement Law. The Workshop was funded by GTZ under its programme of Capacity Development in Public Procurement (CDPP). These revised documents were initially revised by a team of consultants working for ARD Inc under US Millennium Challenge Account before being tabled before the experts for validation. This was an excellent example of inter-donor cooperation.

The first workshop for stakeholders of the built environment reviewed the documents relating to procurement of works in December 2009. The Stakeholders considered and validated the Standard Tender Document for Small Works, which is now available in the PPOA website.

The second workshop with procurement experts and Heads of Procurement Units concentrated on the standard documents for goods, services and standard procurement forms. The workshop was chaired by the Policy and Research Manager of PPOA, Mr Henock Kirungu. The organizations represented were PPOA, Kengen, KPLC, Kenyatta National Hospital, Ministry of Trade, Ministry of Labour, Ministry of Finance, Nairobi City Council, Communications Commission of Kenya, GTZ, and ARD Inc. The workshop was initially convened for 3 days at the Karen Country Lodge where agreement on the majority of the standard procurement forms and about half of the common sections of the new standard tender documents was reached. The agreed sections include the advertisement, invitation to tender and instructions to tenderers.

The revised documents incorporate several features designed to strengthen the fight against corruption and to improve the effectiveness of contract management. For instance, there is now an anti-corruption integrity pledge which all tenderers must sign and which enables them to be debarred from all public procurement in Kenya very easily in case of breach. The documents also introduce a tender securing declaration – this is intended to secure the bids even where tender securities were not required by the procuring entity, and in turn reduce the tendering costs for the prospective bidders; this would also serve as an incentive to micro, small and medium enterprises. Another innovation is to introduce a role for an adjudicator, which follows international best practice in providing a very quick and relatively cheap means of resolving contractual disputes. It was noted that adjudicators were already being used in Kenya with great success in the private sector.

The Standard Procurement Forms are used primarily for the Request for Quotation procedure, which covers the vast majority of the procurement transactions undertaken by procuring entities. Entities with electronic systems would be allowed to use the formats that come with those systems provided they secure PPOA's permission (permission has already been granted for SAP, Oracle and Microsoft systems). Also, agreement was reached on the following forms: the procurement requisition; the request for quotation; the Local procurement order; an

order amendment form; the tender opening forms (summaries of the tenders submitted, the details of the tender opening committee and the register of those attending the tender opening); the requisition and issue voucher for getting items that are held in stores; the receipt voucher and the inspection and acceptance report; the rejection voucher; a disposal requisition; disposal certificate and destruction certificate.

Stakeholders also agreed on the minimum content of the following registers of information: quotation progress register; procurement order progress register; register of samples; suppliers and vendors register; tender documents issue register; tender register; contracts register. These registers contain the minimum information which PPOA requires PEs to retain about their procurement activities. They are not intended to be used in their printed paper form, although very small entities can do this – rather it is expected they will be kept electronically, either in databases or spreadsheets. But entities must work out a secure way to back them up – it will not be acceptable to have a single flash disk storing the files.

In the meantime PPOA intends to post the new forms in their website and send them to the Government Printer so that PEs who need paper versions can obtain them. Agreement of the forms goes a long way to help operationalize the Procurement Act and its attendant Regulations in a very practical way.

TOWARDS IMPROVED COMPLIANCE WITH THE PUBLIC PROCUREMENT LAW



By Peter K. Ndung'u

Deputy Manager, Compliance Department, PPOA

Since inception, PPOA has been spearheading a number of initiatives aimed at improving and sustaining compliance with the procurement law in the public procurement system. Some of these initiatives are Procurement and Disposal Reviews, procurement assessments and attending to complaints by the stakeholders. The latter underscores the role and critical input by the stakeholders in ensuring adherence with the procurement law, an effort PPOA highly cherishes.

Equally, PPOA has been carrying out Procurement and Disposal Reviews of the Kenya's public procurement system in order to establish its state of compliance with the procurement law, circulars and directives issued by the Authority. The principal goal of this exercise is to help entities develop capacity building programs to enable them better apply the provisions of the procurement law.

The reviews are carried out pursuant to Section 49(1) (a) of the Public Procurement and Disposal Act, 2005 with the purpose of ensuring that public procurement and disposal activities are conducted in a manner that promote transparency, accountability and fairness. The reviews are guided by a Procurement Review Manual developed by PPOA under MCA-TP Component 1 Programme. The exercise is conducted in selected procuring entities with the long term goal of reviewing all public entities.

In a standard review process, a draft report of the findings is shared with the management of the procuring entity for comments before an exit meeting is held to discuss the report and agree on an action plan. An action plan contains implementation time-lines and stipulates measures to be undertaken to address the weaknesses revealed by the review. The action plan not only provides a roadmap for implementation but also helps PPOA to monitor and assist the procuring entity.

So far, reviews in the Ministry of Health (before split), KEMSA, Ministry of Energy, Ministry of Roads, Ministry of Education (including KIE and KNEC), Office of the President, Kenya Ports Authority and National Environmental Management Authority (NEMA) have been finalized and reports posted in the PPOA website, www.ppoa.go.ke.

In addition, PPOA carries out procurement assessments in selected Procuring Entities. These are spot checks that take 2-3 days aimed at assessing the level of performance of the procurement function so that the Authority may understand Procuring Entity's strengths, weaknesses and areas that require assistance and improvement. Procurement assessments focus on such key indicators as Procurement Institutional Arrangements or Structures; Procurement Processes; Mandatory Reporting to PPOA; and Stores, inventory Control and Management.

The Common Areas of Non-Compliance as revealed in the Reviews and Assessment include:

- ***Poor records management, documentation and filing system***
- ***Lack of proper procurement planning***
- ***Lack of effective post award contract management***
- ***Inconsistency in making mandatory reporting to PPOA***
- ***Lack of use of standard requisitions***

It is worth noting that Section 137 of the Act provides for penalties and sanctions that may be imposed on individuals and corporate bodies for breaching the law. To this end, PPOA on its own volition would not hesitate employing the powers conferred to it for ensuring effective compliance with the provisions of the procurement law for the purpose of achieving transparency, accountability and realization of value for money.



THE SLOVENIAN PUBLIC PROCUREMENT REVIEW SYSTEM

By Vida Kostanjevec and Mathias Muehle*

Introduction

In 1999 Slovenia established the National Review Commission for the Review of Public Procurement Award Procedures (NRC) under the Act on the Review of Public Procurement Procedures (PPRP Act). Decisions over disputes brought to the NRC are made on the basis of:

- Public Procurement Act (PP Act) and
- Public Procurement in the Water, Energy, Transport and Postal Services Act (PP Utilities Act)

The review procedure itself is governed by PPRP Act.

Organization

The NRC consists of 5 members (one as president). All are elected for 5 years by Parliament. The president and 2 members must have law degrees and a bar vocational degree. Administrative support is provided by a secretariat, accounting and personnel divisions. NRC currently employs 21 people.

Review Procedure

NRC is not entitled to commence a review procedure on its own. However, any person having an interest in obtaining a particular contract and who risks being harmed by an alleged infringement has standing. The fee for filing in a request for review is about € 2,500 (supply and services) or € 5,000 (works).

The review procedure is conducted in 2 steps: First a bidder has to request for review with the respective PE. Only if the request is rejected as unfounded, the bidder is allowed to initiate proceedings before the NRC. The only exception to this rule is the so called "silence of the PE". In this case the PE has not decided over the request for review in a due time limit (15 days) and therefore the bidder can proceed directly with the NRC.

A submission of a request for review has an suspension effect. There is an absolute ban on concluding a contract during the review procedure is pending. A contract concluded in breach of this ban is automatically void.



The NRC decides within 15 days from the receipt of the claim and within the limits of the request for review. The time may be extended to a maximum of 20 days. The decision of the NRC is final and cannot be challenged at any court instance.

Number Of Review Procedures

The following table shows the number of cases treated by NRC:

Year	No. of cases	Year	No. of cases
2000	242	2005	497
2001	306	2006	640
2002	323	2007	362
2003	363	2008	258
2004	378		

Numbers show a constant upward trend during the first years. In 2007 a decline becomes obvious. A reason for this is an Amendment to the PPRP Act, which brought a drastic increase of fees that have to be paid to initiate the review procedure.

Way Forward

Slovenia is in the process to amend its current PPRP Act. The following improvements are being debated:

- longer mandate (9 years) term for members of NRC
- introduction of judicial remedies
- decreasing fees for review procedures
- introduction of a Public Procurement Inspection

* This is a summary of a presentation held on a workshop with PPARB members in 2009. Mrs Kostanjevec is a member of the Slovenian National Review Commission for Reviewing Public Procurement Procedures. Mr. Muehle is a Senior Officer of the Ministry of Infrastructure and Agriculture of Brandenburg, Germany. Currently he works with GTZ "Capacity Development in Public Procurement" at PPOA

PPOA UPDATES MARKET PRICE INDEX Continued From Page 2

PPOA recognizes the challenges faced by Accounting Officers and Heads of Procuring Entities in their endeavour to achieve value for money. As a result, PPOA in collaboration with the Kenya National Bureau of Statistics updated the Market Price Index in January 2010. The main purpose for the publication is to guide accounting officers and heads of procuring entities to make informed procurement decisions.

The Guide recognizes that the prices are indicative and that the real prices may contain slight variations. Procuring entities were advised to ensure that any deviation from the reference prices should be based on the prevailing Consumer Price Index obtained from Kenya National Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya. In addition, procuring entities were encouraged to make reference to the Guide when preparing procurement plans, evaluating bids, awarding of tenders and shopping for low value procurements.

Section 30(3) of the Public Procurement and Disposal Act, 2005 provides that procurement of standard goods, services and works with known market prices shall be procured at the prevailing market price. To strengthen that requirement, Section 30(4) of the of the aforesaid Act, outlaws all transactions by public officials in which standard goods, works and services are procured at unreasonably inflated prices. Public officials who contravene the aforementioned provisions are required under the Act to inter alia pay for the loss resulting from their actions

Currently, PPOA with the support of the World Bank and in collaboration with the Kenya ICT Board is developing a web-based Market Price Index. This is envisaged to be an efficient way of updating the guide in real time. It is hoped that based on this, goods, works and services would be procured at prevailing market prices so that savings arising can be used for availing more services to Kenyans.



REFORMING THE PROCUREMENT RECORDKEEPING

By Joseph M. Rembe, ARD
Records Management Specialist

Look forward to the continuation of this series, started in our December 2009, issue No. 4, in our subsequent issues

PUBLIC PROCUREMENT REFORMS Continued From Page 1

In that regard PPOA has put in place measures to guide the public procurement system towards attaining higher levels of integrity, transparency, accountability and efficiency. These measures include e-Procurement, Market Price Index, Internal Procurement Performance Monitoring Tool, an expeditious system of administrative review of tendering complaints, General and Sector-specific procurement manuals among others.

On e-procurement PPOA intends to pilot the system in 15 public entities before rolling it out within one year to the entire public sector. The expected benefit from these initiatives is a more efficient and transparent public procurement system.

In enhancing the capacity of the public procurement system, PPOA has embarked on a series of procurement sensitization/training programmes in six training regions, namely, Coast, North Eastern, Central/Eastern, the Rift Valley, Nyanza and Western provinces and Nairobi. The aim is to streamline procurement activities in the country and to familiarize the trainees with procurement problem areas and possible solutions. The training targets among others include: Local Authorities, CDFs, youth enterprises, members of Tender and Procurement Committees and procurement officers from districts, parastatals and ministries. The programmes are designed to create awareness and developing procurement expertise in staff of procuring entities in Kenya. The training also introduces some of the new materials available to purchasing officers, newly updated standard bidding documents and the general and sector specific procurement manuals.

In enhancing compliance levels, PPOA has been conducting procurement assessments and reviews in about 100 major procuring entities. Procurement reviews are conducted to establish state of compliance with the procurement law, circulars and directives issued by the Authority. The principal goal of this exercise is to help entities develop capacity building programs to enable them better apply the provisions of the Act and the Regulations. In addition, PPOA carries out procurement assessments. These are spot checks that take 2-3 days aimed at assessing the level of performance of the procurement function in the selected entities to establish their strengths, weaknesses and areas that require assistance and improvement. Procurement assessments focused on key indicators such as Institutional Arrangements or Structures; Procurement Process; Mandatory Reporting Requirements; and Stores, Inventory Control and Management.

With increased allocations to the Community Development Funds (CDF) and Local Authority Transfer Funds (LATF), the reforms will serve as a vehicle for delivering to the Kenyan people such benefits as economic growth and poverty-reduction.

Though the reform path of public procurement in Kenya has had its share of challenges, the gains expected to accrue from a streamlined procurement system will allow the Government to invest more resources in other needy areas and deliver Vision 2030's flagship projects in real time.

We want to hear from YOU!

Do you have an opinion that might highlight a different perspective that other readers can benefit from?

Maybe you have a pressing issue or suggestion on what topics we should include in future editions of this publication?

This is your opportunity to share your thoughts and feedback!

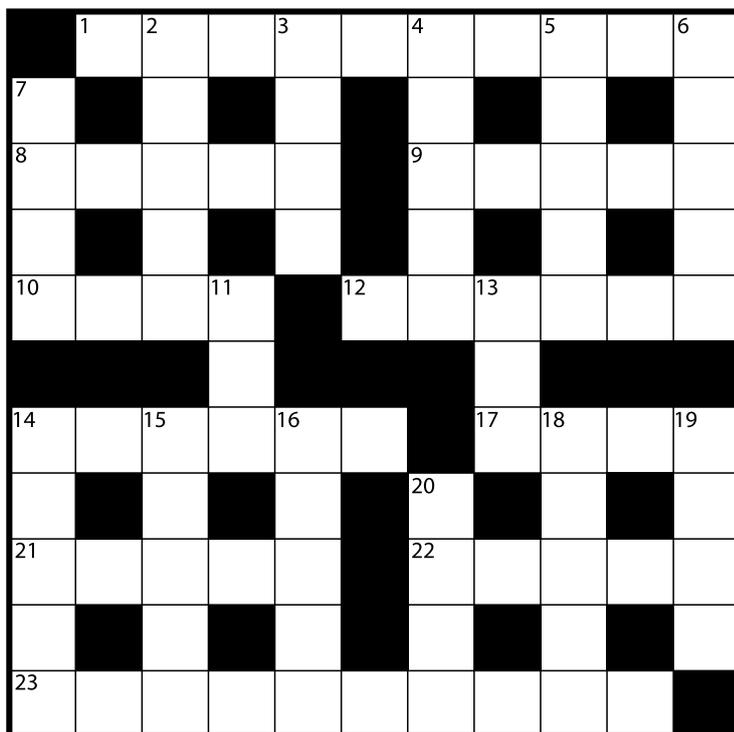
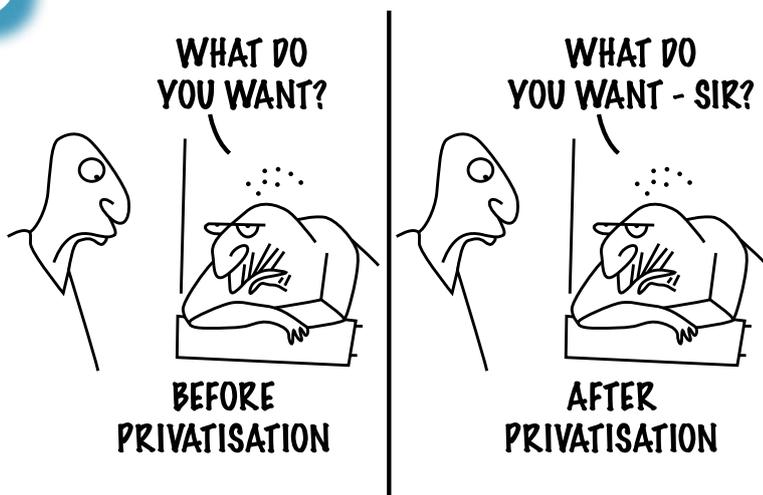
We are striving to make each edition of *The Kenya Procurement Journal* engaging and interactive and want to express the views and opinions of our diverse readership.

Please send your questions and/or comments to:
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 Nairobi, KENYA

E-mail:
 info@ppoa.go.ke

Submissions should be received by **31st May 2010** for inclusion in the next quarter print run date.

HAVE YOUR SAY



ACROSS

- 1. Eager involvement (10)
- 8. Stream of water (5)
- 9. Take as one's own (5)
- 10. Ball game (4)
- 12. Guard (6)
- 14. Language communication (6)
- 17. Fruit (4)
- 21. In addition (5)
- 22. Boundary (5)
- 23. Executives (10)

DOWN

- 2. Pertaining to warships (5)
- 3. Solid (4)
- 4. Apportion (5)
- 5. Concerning (5)
- 6. Friendly (5)
- 7. Boast (4)
- 11. Enemy (3)
- 13. Doze (3)
- 14. Water vapour (5)
- 15. Consumed (5)
- 16. Loud, resonant sound (5)
- 18. Yellowish citrus fruit (5)
- 19. Mongrel dog (4)
- 20. Shut with force (4)

Quotable Quotes!

We must become the change we want to see.

Mahatma Gandhi

First ask yourself: What is the worst that can happen?
 Then prepare to accept it.
 Then proceed to improve on the worst.

Dale Carnegie

THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT/DEVELOPMENT ASSISTANCE COMMITTEE (OECD/DAC) TASK FORCE ON PROCUREMENT AND THE AFFILIATED NETWORKS OF SOCIAL ACCOUNTABILITY OF AFRICA(ANSA-Africa) MEETINGS IN KENYA.

Jane Njoroge, Acting Director Technical Services, PPOA



Since before the beginning of the implementation of the Paris Declaration on aid effectiveness in 2005 and the High level Forum held in Accra in 2008, there has been a dedicated forum of procurement professionals and interested development practitioners who have accepted to be responsible to the Organization for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC) Working Group on Aid effectiveness for the procurement aspects of the Declaration. This Group is the Task Force on Procurement (TF).

The TF has members from multilateral development banks and UN institutions, OECD donor countries and partner countries including Kenya. Today's TF has one donor Co-Chair (Pamela Bigart, World Bank) and one partner Co-chair (Ruby Alvarez, the Philippines). The co-chairs are supported by the members of the core working group of institutions and countries who plan, lead and finance the implementation of the TF work plan on behalf of the TF membership. Included are the World Bank, the African Development Bank, the Asian Development Bank, the InterAmerican Development Bank, the UNDP, DFID (UK), DANIDA (Denmark), the Millenium Challenge Corp. (USA), AusAID (Australia), Ghana, the Philippines and Tanzania (Rama Mlinga, CEO – PPRA). The TF is a component of an OECD/DAC work stream called the Global Partnership on Country Systems which includes Task Force on Public Financial Management (PFM); Saulos Nyirenda, Head – Public Financial and Economic Management Unit, Malawi Ministry of Finance, is the partner country Co-Chair.

As is the custom with the TF, a partner country hosts the event and Kenya has been identified to host the three day meeting of the TF planned to take place from 3rd to 5th May 2010 followed immediately on May 6th and 7th by a meeting of the ANSA-Africa (Affiliated Networks of Social Accountability of Africa) group, on enhancing civic engagement on public procurement in Africa.

The broad objectives of the meetings include:-

- *To update members on events and key decisions concerning the procurement work stream of the Paris Declaration since the last meeting in Arusha in 2008.*
- *To showcase procurement reforms in host country (Kenya)*
- *To provide members the opportunity to comment on and contribute to work plan outputs by means of sub-group discussions and*
- *To continue to share experiences and good practice in procurement reforms and to enhance the usefulness and extend the reach of the TF network of personal contacts.*

PPOA has put in place an organizing committee to plan for this event. The committee has been meeting weekly. The OECD/DAC Task Force on Procurement and the ANSA-Africa meetings in Kenya will immensely boost the country's public Procurement Reform efforts by providing a good platform for sharing experiences with other countries. Lessons learned will be used to improve our national procurement system. The meeting also gives Kenya an opportunity to show case milestones achieved in Public Procurement reforms.

Core Values

Ethics and Professionalism Integrity and courage commitment and teamwork
Customer focus Social responsibility
Creativity and innovativeness Fairness and efficiency Transparency and accountability

Vision

To be a world class Public Procurement Oversight Authority

Mission

To innovatively design and facilitate an effective procurement and supply chain system that provides value for money by ensuring competition, fairness, transparency and accountability while contributing to national socio-economic development

**Working
Towards
PPOA
Goals**



USAID | KENYA
FROM THE AMERICAN PEOPLE

From the American people and jointly supported by USAID/Kenya and the Public Procurement Oversight Authority

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